

LAWS OF SEYCHELLES

CIVIL CODE OF SEYCHELLES ACT

CHAPTER 33

REVISED EDITION 1991

CHAPTER 33

CIVIL CODE OF SEYCHELLES ACT

Act 13 of 1975.
S.I. 72 of 1976.
Act 23 of 1976.
Act 22 of 1980.
Act 14 of 1981.
Act 16 of 1982.
*Act 8 of 1992.

(1st January, 1976)

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Interpretation.
3. Commencement of Civil Code of Seychelles.
4. Civil Code of the French to cease to have effect.
5. Text to be deemed original version.
6. Previous amendments etc. of existing Code not affected.
7. Saving of existing laws altering existing Code except inconsistencies.
8. Act to prevail.
9. Construction.
10. Transitional, amendments and repeals.

First Schedule : The Civil Code of Seychelles.
Second Schedule : Transitional Provisions.
Third Schedule : Consequential Amendments.
Fourth Schedule : Enactments Repealed.

Short title and application.
S.I. 72/1976
3/23/1976.

1.(1) This Act may be cited as the Civil Code of Seychelles Act.

(2) This Act shall bind the Republic.

Interpretation.
3/23/1976.

2. In this Act, unless the context otherwise requires —

"appointed date" means the 1st day of January, 1976;

"Civil Code of Seychelles" means the Code set out in the First Schedule;

*Act 8 of 1992 the Obsolete Provisions (Repeal and Miscellaneous) Act 1992 was deemed to have come into operation on 31st December, 1991. This Act repealed the Civil Status Act (Cap 265) (1971 Rev.)

"enactment" means any Act, arrêtté, proclamation or regulations, and includes rules of court;

"existing Code" means the Civil Code of the French referred to in section 4;

"this Act" includes the Civil Code of Seychelles;

Commencement of Civil Code of Seychelles.

3. Subject to the provisions of this Act, the Civil Code of Seychelles shall come into operation on the appointed date.

Civil Code of the French to cease to have effect.

4. The Civil Code of the French, promulgated by the Arrête of 21st April 1808 (Decaen No. 168) as set out in Chapter 53 of the Laws of Seychelles, 1971 Edition, and all amendments thereto, shall cease to have effect in Seychelles.

Text to be deemed original version.

5(1) The text of the Civil Code of Seychelles as in this Act contained shall be deemed for all purposes to be an original text, and shall not be construed or interpreted as a translated text.

(2) Nothing in this Act shall invalidate any principle of jurisprudence of civil law or inhibit the application thereof in Seychelles except to the extent that it is inconsistent with the Civil Code of Seychelles.

Previous amendments etc. of existing Code not affected.

6(1) Nothing in this Act shall affect the operation prior to the appointed date of any enactment repealed or amended by this Act, or the previous operation of any amendment or modification by any such enactment of any article of the existing Code.

(2) Where, prior to the appointed date, any article of the existing Code ceased to have effect in Seychelles by virtue of any enactment repealed or amended by this Act, the inclusion of such article of the existing Code in the Civil Code of Seychelles shall not affect or be affected by the previous operation of any such enactment.

Saving of existing laws relating existing Code except [repealed] [amended] S.I. 73 of 93.

7(1) Subject to subsection (2), any enactment whereby the existing Code was altered, modified or varied in Seychelles shall not, as regards any such alteration, modification or variation in force immediately before the appointed date, be affected by the

coming into force of the Civil Code of Seychelles unless, and except to the extent that, it is inconsistent with the Civil Code of Seychelles.

(2) The Minister may, by order in the *Gazette*, provide that any enactment specified in the order, being an enactment referred to in subsection (1), shall notwithstanding anything therein inconsistent with the Civil Code of Seychelles, have effect in Seychelles, subject (if the order so provides) to such modifications or qualifications as may be specified in the order and to the extent so specified; and any enactment so specified shall, until such order is revoked, expires or otherwise ceases to have effect, be read and construed for all purposes in conformity with such order without reference to subsection (1).

(3) An order under subsection (2) shall come into force on such date as shall be specified therein, not being a date prior to the appointed date.

Act to prevail.

8. Save as provided in section 7, where there is any inconsistency between any provision of this Act and any provision in an enactment in force immediately prior to the appointed date, the provision of this Act shall prevail.

Construction. Cap 103

9. The Interpretation and General Provisions Act shall, subject to the provisions of this Act, apply in relation to the interpretation of this Act but shall not apply in relation to the Civil Code of Seychelles, which shall be read and construed for all purposes in accordance with the rules of interpretation set out therein.

Transitional, amendments and repeals.

10(1) The Second Schedule, shall have effect in relation to the matters specified therein.

(2) The enactments specified in the first column of the Third Schedule are amended respectively to the extent indicated in the second column thereof.

(3) The enactments specified in the Fourth Schedule are repealed.

FIRST SCHEDULE

(Section 2)

THE CIVIL CODE

OF

SEYCHELLES

1975

Note

The numbering of the articles of the Civil Code of Seychelles is intended, so far as possible, to correspond with the articles of the existing Code. Articles which exist only in number and which are described as repealed are intended to account for articles in the existing Code (as set out in the Fourth Schedule to this Act) which have no equivalent in the Civil Code of Seychelles or which have been repealed by the relevant Acts referred to in the Civil Code of Seychelles.

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PRELIMINARY TITLE

THE PROMULGATION, EFFECT AND APPLICATION OF LAW

Article 1

1. Law is a solemn and public expression of legislative will. Laws are promulgated in accordance with the Constitutional provisions in force in Seychelles.

2. All laws shall be published and take effect in the manner laid down in such Constitutional provisions as are applicable from time to time. Save as otherwise provided, they shall apply to all the Islands of the Seychelles Archipelago.

Article 2

1. No law shall be construed to have retroactive effect unless such a construction is expressly stated in the text of the law or arises by necessary and distinct implication.

2. Save as provided in paragraph 1 of this article, a retroactive provision shall not apply to vested rights which are immediately enforceable. However, the restriction of this paragraph shall not extend to a mere expectation of a benefit or to a claim which offends the rules of public policy.

Article 3

1. Police regulations and laws pertaining to the public order and security shall bind all persons in Seychelles, except as provided from time to time by laws extending diplomatic privileges and immunities to certain persons or categories of persons.

2. Immovable property shall be governed by the law of Seychelles. This rule also applies to immovable property under foreign ownership or control.

3. Status and capacity shall be governed by such laws as are from time to time enacted. Subject to this provision, capacity shall further be determined by the domicil of a person. Domicil shall be inferred from the fact that a person retains or voluntarily establishes his sole or principal residence in a country with the intention of remaining or making that country the centre of his personal, social and economic interests.

4. The time at which a person first becomes capable of having an independent domicil shall be when he attains the age of eighteen or marries under that age.

5. A married woman shall have her own domicil for all purposes.

6. Subject to laws referred to in paragraph 3, nothing in this article shall be construed as forbidding a person to conclude a valid contract in accordance with the proper law of the contract, or to affect his capacity to marry or make any family contract in accordance with the law of the intended matrimonial home.

7. The parties to a contract of sale of goods involving an international element may agree that the obligations of the seller and the buyer arising from the contract shall be governed by the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods, as laid down in the Annexes to the International Conventions under the aforementioned titles respectively. These Uniform Laws may only be made applicable as provided therein. Nothing in this paragraph shall be construed as preventing the parties from designating, in respect of the terms of the contract which are not covered by the afore mentioned Uniform Laws, the law of Seychelles or that of another country as the proper law of contract; nor shall they be prevented from making their contract subject to arbitration to be governed by the law of their choice.

Article 4

The source of the civil law shall be the civil Code of Seychelles and other laws from time to time enacted.

Article 5

Judicial decisions shall not be absolutely binding upon a Court but shall enjoy a high persuasive authority from which a Court shall only depart for good reason.

Article 6

It shall be forbidden to exclude the rules of public policy by private agreement. Rules of public policy need not be expressly stated.

BOOK I

PERSONS

TITLE I

THE ENJOYMENT AND LOSS OF CIVIL RIGHTS

CHAPTER I

THE ENJOYMENT OF CIVIL RIGHTS

Articles 7 and 8

Repealed

Civil Code (Amendment) Act. (Cap. 54 1971 Ed.)

Article 9

1. Subject to the provisions of any law, persons shall be entitled to the protection of the Court with regard to their rights to privacy and confidential information.

2. It shall be a defence to a civil action arising from an international act, which has led, in fact, to the invasion of the privacy of a persons or to the breach of confidential information to which he was entitled, that the act was performed as part of a legitimate investigation of allegations of behaviour against the public interest.

Articles 10 - 12

Repealed.

Civil Code (Amendment) Act. (Cap. 54 1971 Ed.)

Article 13

Repealed.

Domicile Act. S.3. Cap. 66.

Article 14 - 15

Repealed.

Civil Code (Amendment) Act. (Cap. 54 1971 Ed.)

Article 16

When one of the parties to a civil action is a non-resident, the Court may, at the request of the other party, and for good reason, make an order requiring such a non-resident to give security for costs and for any damages which may be awarded against him.

CHAPTER II

THE LOSS OF CIVIL RIGHTS

Articles 17 - 33

Repealed.

Civil Code (Amendment) Act. (Cap. 54 1971 Ed.)

TITLE II

ACTS OF CIVIL STATUS

Articles 34 - 101

Repealed.

Civil Status Act. Cap 34.

TITLE III

RESIDENCE

Article 102

1. The residence of a person shall be the place in which he resides in fact and shall not depend upon his legal right to reside in a country.

2. In determining whether a person is habitually resident in a place account shall be taken of the duration and continuity of the residence as well as of other facts of a personal or professional nature which point to durable ties between a person and his residence.

3. Residence or habitual residence shall only be an element to be taken into account by a Court in deciding which was pure in fact established in such a durable

Article 103 - 111

Repealed.

Domicile Act. Cap. 66.

TITLE IV

ABSENTEES

CHAPTER I

THE PRESUMPTION OF ABSENCE

Articles 112 - 114

Repealed.

Presumption of Deaths Act. Cap. 178.

CHAPTER II

THE DECLARATION OF ABSENCE

Articles 115 - 119

Repealed.

Presumption of Deaths Act. Cap. 178.

CHAPTER III

THE EFFECT OF ABSENCE

SECTION I

The Effect of Absence in relation to Property in the Possession of the Absentee at the Time of his Disappearance.

Articles 120 - 123

Repealed.

Presumption of Deaths Act. Cap. 178.

Article 124

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

Articles 125 - 127

Repealed.

Presumption of Deaths Act. Cap. 178.

Article 128

Persons who have been granted provisional control shall not convey or mortgage any part of the immovable property of the persons declared absent.

Articles 129 - 133

Repealed.

Presumption of Deaths Act. Cap. 178.

Articles 134

After a judicial declaration of absence or death, claims against a person so declared shall only be enforceable against those who have been granted legal control of the property.

SECTION II

The Effect of Absence upon the Contingent Rights which may accrue to the Absentee.

Article 135

Any party claiming the benefit of a right that has accrued to a person who has been declared absent, must prove that the said person was alive at the time when the right arose; in default of such proof, his claim shall be declared to be inadmissible.

Article 136

Where a right devolves upon a person who has been declared absent, it shall

devolve exclusively upon such other persons as may jointly with him be entitled to succeed. In the absence of such persons, the succession shall devolve upon those entitled in his place.

Article 137

The provisions of the two foregoing articles shall not affect the right to maintain an action for the recovery of an inheritance, or to claim other rights to which a person declared absent or his representatives or assigns are entitled. Such actions and rights shall only be extinguished by the lapse of time required for prescription.

Article 138

So long as the absentee does not re-appear or any rights of action are not exercised on his behalf, those upon whom the succession has devolved, shall be entitled to any profit and income received in good faith.

SECTION III

The Effect of Absence upon Marriage

Article 139

Repealed.

Presumption of Deaths Act. Cap. 178..

Article 140

If a spouse declared absent has not left any relatives qualified to succeed him, the other spouse shall be entitled to claim the provisional control of the property.

CHAPTER IV

THE CUSTODY OF MINOR CHILDREN OF AN ABSENTEE PARENT

Article 141

If the father has disappeared leaving minor children, born of his marriage to the mother, she shall have the custody of the children and shall exercise all the rights of the husband pertaining to their education, and the administration of their property.

Article 142

After a period of six months since the disappearance of the father, if the mother was dead at the time of such disappearance or if she dies before the judicial declaration of disappearance, the custody of the children of the marriage shall be granted by the Court to a provisional guardian pending the appointment of a guardian.

Article 143

The same rule shall apply if one of the spouses that disappeared has left minor children from a previous marriage.

TITLE V

MARRIAGE

CHAPTER I

CONDITIONS REQUIRED TO CONTRACT MARRIAGE

Articles 144 - 164

Repealed.

Civil Status Act. Schedule A. Cap. 34.

CHAPTER II

FORMS RELATING TO THE CELEBRATION OF MARRIAGE

Articles 165 - 171

Repealed.

Civil Status Act. Schedule A. Cap. 34.

CHAPTER III

OBJECTIONS TO MARRIAGE

Articles 172 - 17?

Repealed.

Civil Status Act. Schedule A. Cap. 34.

CHAPTER IV

ACTIONS FOR NULLITY OF MARRIAGE

Articles 180 - 193

Repealed.

Matrimonial Causes Act. Schedule I. (Cap. 72 1971 Ed.)

Article 194

1. No one shall claim married status and the benefits therefrom unless he is able to produce a certificate of marriage registered in the register of civil status.

2. A birth, marriage or death may be proved by any oral or written evidence when the registers have been lost, or leaves of the register, into which such acts are alleged to have been entered, have been partly or entirely destroyed or defaced. The same proof shall always be admissible when no registers have been kept.

Article 195

The fact that the spouses are commonly reputed to enjoy marital status shall not relieve such alleged spouses, respectively claiming the benefit of such status, from producing the certificate of marriage performed before an officer of civil status.

Article 196

1. When the spouses possess marital status and the certificate of marriage has been produced, they shall not be permitted to plead the invalidity of such certificate.

2. The provisions of paragraph 1 of this article shall not apply if the certificate has been issued outside Seychelles and if the Attorney General, acting on his own initiative or at the request of a spouse, can make out a prima facie case that the certificate has been issued in circumstances which disclose a breach of the rules of public policy.

Article 197

Nevertheless, if in the case of articles 195 and 196 there are children born to two persons who have openly lived as husband and wife and where such [illegible]

legitimacy of such children shall not be disputed merely on the ground that the certificate of marriage cannot be produced, provided that the legitimacy of the children is proved by the existence of marital status of the parents and is not disproved by a certificate of birth.

Article 198

When the proof of the celebration of a marriage is established by a judgment of a criminal Court, the entry of such judgment into the register of civil status shall bring into operation, as from the day of celebration, all the civil effects of the marriage, both in relation to the spouses as well as in relation to the children of such marriage.

Article 199

If the spouses, or one of them, have died without discovering the fraud, criminal proceedings may be initiated at the instance of any person interested in having the marriage declared valid as well by the Attorney-General.

Article 200

If the officer of civil status was dead when the fraud was discovered, the proceedings shall be conducted in a civil Court by the Attorney-General against the heirs in the presence of the interested parties and at their instance.

Article 201

1. A marriage which has been declared null shall have, nevertheless, civil effects with regard to the spouses provided it was contracted in good faith.

2. If one of the spouses was in good faith, the marriage shall have civil effects for the innocent spouse only.

3. Unless there is evidence to the contrary, good faith shall be presumed in favour of the spouses. Good faith need only have existed at the time of the celebration.

Article 202

1. A null marriage shall also have civil effects with regard to the children, irrespective of the good faith of either or both of the parents.

2. A Court shall have power to make an order with regard to the custody and care of such children as in the case of a divorce.

CHAPTER V

THE OBLIGATIONS ARISING FROM MARRIAGE

Article 203

The spouses jointly, by the mere fact of the marriage, undertake the obligation to maintain and bring up their children.

Article 204

A child is not entitled to enforce by a legal action against his father or mother a right to be set up in marriage or business or in any other way.

Article 205

1. The children shall be bound to maintain their father and mother or other ascendants who are in need.

2. A surviving spouse is entitled to maintenance from the estate of the deceased spouse. Such maintenance may be claimed within one year of the date of death or until the distribution or division of the estate of the deceased is completed, whichever is later.

3. Such maintenance shall be a prior charge upon the estate and shall take precedence over the claims and rights of heirs, and in the case of insufficiency, of those of legatees, in proportion to what they receive. If, however, the deceased had expressly declared that any legacy shall be paid in priority to the others, article 927 of this Code shall apply.

4. This article shall apply without prejudice to the provisions of any other enactment.

Article 206

1. Sons-in-law and daughters-in-law shall equally be bound to maintain, in similar circumstances, their father-in-law and mother-in-law. This obligation shall not be enforceable if the spouse, whose marriage created the link, and the children born of the marriage to the other spouse, are dead.

2. This obligation shall also be extinguished if the marriage which created the link has ceased to divorce.

Article 207

1. The obligations which arise from the aforementioned provisions shall be mutual.

2. Nevertheless, when a claimant has himself seriously failed in his obligation towards the person from whom he is entitled to maintenance, the Court may discharge such person of the whole or part of his obligation to maintain.

3. An obligation to maintain under this article and under articles 205 and 206 of this Code shall be enforceable by an order for attachment of earnings as provided by such laws as are in force from time to time.

Article 208

Maintenance shall only be granted in proportion to the needs of the claimant and the means of the party under the obligation.

Article 209

1. When the means of a person who provides, or of a person who is in receipt of, maintenance have changed in a way in which the former can no longer supply it or the latter no longer needs the whole or part of it, the parties may apply for a discharge from or a reduction of their obligation.

2. The right to ask for a variation of maintenance shall not be available to a creditor. Such a right shall not be assigned to a third party.

Article 210

If a person under an obligation to provide maintenance can show that he cannot pay any allowance, the Court, after considering all the facts of the case, may order that he shall receive in his house, maintain and provide for the person to whom maintenance is due.

Article 211

The Court shall, in the same manner, decide whether the father or the mother who offers to receive, maintain and provide in his house for the child to whom maintenance is due can be exempted from paying an allowance.

CHAPTER VI

THE RESPECTIVE RIGHTS AND DUTIES OF THE SPOUSES

Article 212

The Spouses owe to each other faithfulness, support, assistance and care.

Article 213

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

Article 214

1. When there is no provision in a marriage settlement concerning the proportion in which each spouse is to contribute to the family charges, each shall contribute according to his means.

2. The husband is primarily responsible for the family charges; he must supply his wife with all her necessaries, according to his means and standing.

Article 215

1. A married woman shall have full legal capacity as if she were a femme sole.

2. Provided that if a married woman is an interdicted person or a person judicially assisted under article 499 of this Code, the law relating to the incapacity of interdicted persons and assisted persons, as the case may be, shall continue to apply to her so long as such incapacity shall last.

Articles 216 - 226

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

CHAPTER VII

THE DISSOLUTION OF MARRIAGE

Article 227

A marriage shall be dissolved :

1. By the death of one of the spouses.

2. By a decree of divorce duly pronounced.

CHAPTER VIII

SECOND MARRIAGES

Article 228

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

TITLE VI

DIVORCE

Article 229 - 311

Repealed.

Matrimonial Causes Act. Schedule I. (Cap. 72 1971 Ed.)

TITLE VII

PATERNITY AND DESCENT

CHAPTER I

THE DESCENT OF LEGITIMATE CHILDREN BORN IN WEDLOCK

Article 312

1. A child conceived during marriage shall be presumed to have the husband as father.

2. Nevertheless, any presumption of law as to the legitimacy or illegitimacy of any person may, in any civil proceedings, be rebutted by evidence which shows that it is more probable than not that that person is illegitimate or legitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption.

Article 313

1. The husband shall be allowed to prove all the facts tending to show that he is not the father.

2. The Court may give a direction for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the father of that person and for the taking, for the purpose of those tests, of blood samples from that person, the mother of that person and any party alleged to be the father of that person. The Court may at any time revoke a direction previously given by it under this paragraph.

3. Where a Court gives a direction under paragraph 2 of this article and any person fails to take any steps required of him for the purpose of giving effect to the direction, the Court may draw such inferences, if any, from that fact as appear proper in the circumstances.

4. The use of blood tests as provided in paragraphs 2 and 3 of this article shall also be available in all cases in which the descent of a person is in doubt.

Articles 314 - 316

Repealed.

Matrimonial Causes Act. Schedule I. (Cap. 72 1971 Ed.)

Article 317

If the husband dies before entering his objection, the heirs may contest the legitimacy of the child within two months from the time when that child is put in possession of the property of the husband or from the time when the possession of the heirs has been disturbed by the child.

Article 318

Repealed.

Matrimonial Causes Act. Schedule II. (Cap. 72 1971 Ed.)

CHAPTER II

PROOF OF DESCENT OF LEGITIMATE CHILDREN

Article 319

The descent of legitimate children shall be proved by the acts of birth registered in the register of civil status.

Article 320

In the absence of such an act, the constant possession of the status of a legitimate child shall be sufficient.

Article 321

1. Possession of status may be established when there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which he claims to belong.

The principal facts are:

That that person has always borne the name of the father whose child he claims to be;

That the father has been treating him as his child and that, in his capacity as father, he has provided for his education, maintenance and start in life;

That he has always been recognised as a child of that father in society;

That he has been recognised as such by the family.

2. Natural descent may also be established by the possession of status, both as regards the father and the mother in the same manner as legitimate descent.

Article 322

No one may claim a status contrary to that which his act of birth confers upon him or to the possession of status corresponding to it.

Conversely, no one may contest the status of a person who has possession thereof corresponding to his act of birth

Article 323

In the absence of an act of birth and possession of status, or if the child is registered under false names or as a child of unknown parents, proof of descent may be adduced by oral evidence.

Nevertheless, such evidence shall not be admissible unless there is existing

providing initial proof or unless the presumptions or identifications arising from later facts of a permanent character, are sufficiently strong to warrant acceptance.

Article 324

The writing providing initial proof may consist of family documents of title, registers and family papers of the father or mother, public documents and even private documents emanating from one of the parties to the dispute, or from a deceased party that would have had an interest therein had he been alive.

Article 325

Proof of the contrary may be adduced by all the means tending to establish that the claimant is not the child of the mother he claims to be, or even, if the link of maternity be proved, that he is not the child of the husband of his mother.

Article 326

The Courts having civil or criminal jurisdiction shall have jurisdiction to decide claims relating to status.

Article 327

Repealed.

Civil Status Act. Schedule A. Cap. 34.

Article 328

There shall be no prescription with regard to the right of a child to establish his status.

Article 329

Proceedings to establish status may not be brought by the heirs of the child unless he died while he was a minor or within five years from attaining majority.

Article 330

The heirs may continue such proceedings if they were started by the child, unless the latter formally stopped them, or unless he had failed to pursue such proceedings for three years from the last procedure or act by him.

CHAPTER III

ILLEGITIMATE CHILDREN

SECTION I

The Legitimation of Illegitimate Children

Article 331

1. Illegitimate children are legitimated by the subsequent marriage of their parents, whether their descent is legally established before or after such marriage. The fact of such legitimation shall be noted in the margin of the act of birth of the child so legitimated.

2. The provisions of paragraph 1 of this article shall also apply to illegitimate children born of parents whose subsequent marriage is authorised by the Chief Officer of Civil Status or the judge, as the case may be, agreeably with the provisions of sections 40, 45, 47(3) and 49(1) of the Civil Status Act, Cap. 34.

Article 332

Legitimation may take place after the death of a child; if it has left any issue, legitimation shall benefit such issue.

Article 333

Children legitimated by a subsequent marriage shall have the same rights as if born of such marriage.

SECTION II

The Recognition of Illegitimate Children and proof of their descent.

Article 334

The recognition of an illegitimate child shall be made by an authentic document, if it has not been made in the act of birth.

It may also be made by a declaration signed or attested before a judge, a registrar, a civil status officer or the Registrar of the Supreme Court. (Ord. 4/1976/193)

Article 335

Such recognition may take place for the benefit of all children, even if born of an incestuous or adulterous relationship.

Article 336

The recognition by the father without any reference to and an admission by the mother shall only have effect with regard to the father.

Article 337

A recognition made during marriage by one of the spouses in favour of an illegitimate child born to him and a person other than his spouse prior to his marriage shall not affect the rights of such spouse nor the rights of children born of the marriage, except as provided by this Code.

Article 338

The rights of an illegitimate child shall be assimilated in so far as possible with those of a legitimate child. The rights of succession of illegitimate children are regulated in the Title *Succession*.

Article 339

The recognition by a father or mother and all claims on the part of the child may be contested by all those having a lawful interest therein.

Article 340 Sch.A/16/1982

1. It shall not be allowed to prove paternal descent, except:

(a) In cases of rape or abduction, provided that the time when the rape or abduction took place coincides with that of the conception.

(b) When an illegitimate child is in possession of status with regard to his natural father or mother as provided in article 321.

(c) In cases of seduction, provided that the seduction was brought about by fraudulent means, by abuse of authority or promise of marriage.

(d) When there exist letters or other writings from the alleged father confirming the unequivocal admission of paternity.

(e) When the alleged father and the mother have notoriously lived together as husband and wife, during the period of conception.

(f) When the alleged father has provided for or contributed to the maintenance and education of the child in the capacity of father.

2. The right to prove paternal descent under this Article is for the benefit of the child alone, even if born of an incestuous or adulterous relationship. (Sch.4/16/1982)

3. An action under this Article may be brought —

(a) by the child's mother, even if she is under age, or by his guardian, at any time during the child's minority; or

(b) if action has not been brought under sub-paragraph (a), by the child within 5 years of his coming of age or within 1 year of the death of the alleged father whichever is the later. (Sch.4/16/1982)

4. A child whose paternal descent has been proved under this Article is entitled to bear his father's name (in addition to a share in his father's succession under the title *Succession*). (Sch.4/16/1982)

Article 341

Proof of maternal descent is allowed. A child who claims such descent shall be bound to prove the confinement of the mother and his identity with the child of whom she was delivered. (Sch.4/16/1982)

Article 342

Proof of maternal descent shall carry with it, without prejudice to any special stipulations, the obligation to maintain and educate the child.

TITLE VIII

ADOPTION

Articles 343 - 360

Repealed.

Adoption Act, S. 23. (Cap. 79, 1971 Ed.)

Articles 361 - 370

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

TITLE IX

PARENTAL AUTHORITY IN RELATION TO THE CHILD AND HIS PROPERTY

Article 371

A child during his minority owes honour and respect to his father and mother.

Article 372

1. He shall remain under their authority until his majority or emancipation.
2. The authority of the parents shall be exercised in the interest of the child.

Article 373

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

Article 374

A child shall not leave the parental home without permission from his parents until he reaches the age of eighteen.

Article 375

If the parents are unable to exercise any control over the child or young person they may apply to the Court for an order. The Court shall make such orders as it thinks fit in the circumstances, having regard to the interest of the child. The Court may also order that the parents should make an appropriate contribution to the maintenance of the child or young person; it may also give instructions regarding any property of the child.

Article 376

The Attorney-General may also at his discretion and in the interest of the child

or young person bring such a person, being beyond control, before the Court for an order as in the preceding article.

The Attorney-General shall also have full powers to intervene in any proceedings before the Court relating to a child or young person, who is alleged to be beyond control.

Articles 377 - 382

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 383

The provisions of articles 375 and 376 shall apply to all parents having custody of their children, whether such children are legitimate or not.

Article 384

The father and mother during marriage, or, after the dissolution of the marriage the surviving spouse, shall have the enjoyment of the property of their children until they reach the age of eighteen, or until emancipation if this occurs earlier.

Article 385

The conditions of this enjoyment shall be:

1st Those that bind usufructuaries;

2nd The maintenance and education of the children in accordance with their standard of life;

3rd The payment of arrears or interest on capital;

4th The payment of funeral expenses and those of the last illness before death.

Article 386

A parent against whom a decree of divorce has been pronounced shall not have the enjoyment of the children's property.

Article 387

This right shall not extend to the property which the children may acquire through work or skill, or to property granted or bequeathed on the express condition that the parents shall not enjoy it.

TITLE X

MINORITY, GUARDIANSHIP AND EMANCIPATION

CHAPTER I

MINORITY

Article 388

A minor is a person of either sex who has not yet reached the full age of eighteen. (3/22/1980)

CHAPTER II

GUARDIANSHIP

SECTION I

The Guardianship of the Parents

Article 389

1. The father during marriage shall be the administrator of the property of his minor unemancipated children with the exception of such property as may have been given or bequeathed under the express condition that it be administered by a third party. He shall be accountable both for the property and the income from property which he is not entitled to enjoy; he shall be accountable for the property only if he is entitled to the usufruct of it.

2. If the father cannot act or if he is deprived of his administration, the mother shall have such administration with all the powers that the father previously enjoyed.

3. In case of divorce or judicial separation the administration shall be entrusted to the spouse who has the custody of the children, unless the Court orders otherwise.

4. An ad hoc administrator shall be appointed by the Court where there is a conflict of interests. The powers and duties of such a legal administrator are regulated by such laws as are enacted from time to time.

Article 390

After the dissolution of marriage caused by the death of either of the spouses, the guardianship of minor children who have not been emancipated shall belong as of right to the surviving spouse.

Article 391

Repealed.

Status of Married Women Act. Schedule 1. Cap. 231.

Article 392

A person entitled to appoint a guardian of minor children may do so -

1st by a last will;

2nd by a declaration made before a judge or before a notary.

Article 393

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 394

1. Illegitimate children shall have a guardian in the same manner as legitimate children. If the father and mother of the illegitimate child have both recognised the child, the Court may decide which of them shall become guardian. If only one of the parents has recognised his child he shall be his guardian.

2. If an illegitimate child has not been recognised he shall have his natural mother as guardian as of right. The Court shall be entitled to grant the custody of a child to the mother, even if the father has recognised the child and acts as guardian.

3. If the illegitimate child has no parent, or if the latter is unable to act, the guardian of the child shall be appointed by the Court.

Articles 395 - 396

Repealed.

Status of Married Woman Act. Schedule I. Cap. 231.

SECTION II

The Guardianship Conferred upon Third Parties by the Parents

Article 397

A guardian appointed by the parents or the survivor of them may be a relative or a stranger.

Article 398

This right shall only be exercised in accordance with the forms provided in article 392.

Articles 399 - 400

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

Article 401

The guardian appointed by the father or mother shall not be bound to accept the guardianship.

If the guardian who is appointed does not wish to act, the Court shall have authority either to compel him to act or to appoint another.

If no one is appointed, or in proceedings relating to the appointment of a guardian, the Attorney-General shall be entitled to intervene.

SECTION III

The Judicial Appointment of a Guardian

Article 402

"Where no guardian is appointed for a minor by his parents or the survivor of them, a guardian shall be appointed by the Court.

The Court shall have power to appoint any person or persons, having regard to the rights of paternal and maternal ascendants. Nevertheless the paramount consideration shall be the interest of the child.

If no one is appointed, the Attorney-General shall exercise the power conferred upon him by the preceding article.

Articles 403 - 404

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

SECTION IV

The Functions of a Guardian

Articles 405 - 416

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 417

If a minor has property abroad, the guardian may request the Court to appoint a co-guardian capable of dealing with such property.

Conversely, if a minor under guardianship resident outside Seychelles, has property in Seychelles, at the request of the interested parties, the Court may appoint a co-guardian. Such a co-guardian shall be subject to the same rights and duties as a guardian of a minor in Seychelles. He shall also be subject to the full jurisdiction of the Supreme Court of Seychelles.

Article 418

The guardian in his capacity as such shall act and administer the property as from the day he enters into his functions, if he is a guardian as of right. If he is appointed by the Court, as from the date of his appointment if he is present, or if not, as from the day on which he is notified of his appointment.

Article 419

Guardianship is a personal function which is not transmissible to the heirs of

guardian. However, as heirs they shall be responsible for the day to day administration and other duties of the deceased guardian until a new guardian is appointed.

SECTION V

The Sub-Guardian

Article 420

When the interests of the guardian are in conflict with those of the minor, a sub-guardian shall be appointed by the Court. His duty shall be to protect the interests of the minor.

Article 421

He shall act only in relation to the issue or issues in respect of which there is a conflict of interests; when the conflict is resolved, he shall account to the Court for his administration.

The Court, at the conclusion of the hearing, shall be entitled, if it thinks fit, to grant a sub-guardian a complete discharge from his functions.

Article 422

A sub-guardian may also be appointed if a guardian is absent or otherwise incapacitated, and if no provision has been made for the minor or his property during that time.

The sub-guardian shall be liable to the minor for any damage which may occur in consequence of his neglect or omission to comply with his proper functions.

Articles 423 - 426

Repealed.

Civil Code of Seychelles Act, Fourth Schedule, Cap. 33.

SECTION VI

Exemption from Guardianship

Article 427

Certain persons liable to this office are entitled to certain exemptions.

exempted from acting as guardians. Except in the case of disabilities, no one shall be deprived without good cause of his right to be a guardian of his own children.

Article 428

The following persons shall be exempt from being guardians:

Judges of the Supreme Court, the Attorney-General and other law officers; any officers of Court who are in a position to make decisions relating to issues before the Court; citizens holding a public office under which they may be called upon to make decisions with regard to the guardianship; military personnel on active service or citizens posted outside Seychelles.

Article 429

Persons who were capable of acting as guardians when appointed may apply to the Court to be released from their functions if they are subsequently appointed in any one of the cases enumerated in the preceding article. Such persons shall be released subject to the conditions imposed by the Court.

A person so released may apply to be appointed again, if he has resumed the status that allows him to be a guardian. The Court, however, shall have discretion to decide whether to accede to such request.

Article 430

Any person who is appointed by a Court as guardian may seek exemption. Such exemption may be granted by the Court for good reason.

Articles 431 - 432

Repealed.

Civil Code of Seychelles Act, Fourth Schedule, Cap. 33.

Article 433

A person aged sixty-five or over may refuse to act as guardian. If appointed before that age, he may continue until he reaches the age of seventy or he may ask the Court to release him when he reaches the age of sixty-five.

Article 434

A person suffering from a severe infirmity, duly established, shall be exempted from guardianship. If the infirmity is subsequent to his appointment, he may be released.

Article 435

A person who is entrusted with the guardianship of two children shall be entitled to refuse the guardianship of a third child.

A person who, as husband or father, acts as a guardian shall not be compelled to accept the guardianship of another child, unless it be his own.

Article 436

Persons who have five legitimate children may be exempt from a guardianship other than that of the said children.

Article 437

The birth of children to the guardian in the course of his guardianship shall not be a ground of resignation therefrom.

Article 438

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 439

A guardian who does not want to accept his appointment shall communicate to the Court the reasons for his refusal. If he has valid grounds to refuse, the Court shall release him as from such date as the Court may decide. If the Court finds that he has no valid grounds he may be made to pay the costs of the proceedings.

Any person with an interest and the Attorney-General shall be entitled to be heard in such proceedings.

A person appointed guardian by a Court must not until formally released

Articles 440 - 441

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

SECTION VII

Incapacity, Exclusion and Removal from Guardianship

Article 442

The following persons shall not be guardians :

1st, Minors except the father or mother;

2nd, Interdicted or judicially assisted persons;

3rd, All those who are, or whose parents are, engaged in litigation with the minor, in which his status or property or part of his property are involved.

Article 443

Where any person convicted of an offence under any law is sentenced to a term of imprisonment exceeding five years, he shall cease to be eligible for appointment to the office of guardian, and if he holds such office, he shall forthwith be deprived thereof. He shall not be eligible to hold such office for a period of five years after the expiry of the sentence imposed.

In other cases the Court may, on the application of any interested party or the Attorney-General, order that any person sentenced to imprisonment shall be excluded from holding such office or, as the case may be, deprived thereof : Provided that an application to deprive a peson of such office shall be made within six months from the date of his conviction, and an application to exclude a person from holding such office shall be made within five years from the date of expiry of the sentence.

Article 444

The following persons shall be ineligible as guardians, or if appointed, they shall be liable to removal :

1st, Those whose misconduct is notorious;

2nd, Those whose guardian is by law personally incompetent or dishonest.

Article 445

1. Any interested party or the Attorney-General may start proceedings for the removal of an incompetent or dishonest guardian.

2. A guardian whose conduct endangers the life or health of the minor may be removed upon an application of any interested party or the Attorney-General.

Article 446

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 447

The Court, in dealing with an application for the removal of a guardian, shall give an opportunity to the guardian to be heard if he objects to his removal.

A person so removed may be compelled to pay the costs of the proceedings.

The Court, if it decides to remove a guardian, shall give its reasons.

Article 448

In proceedings for the removal of a guardian, the Court shall have power to consider at the same time the appointment of another guardian.

Article 449

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

SECTION VIII

The Administration of Guardians.

Article 450

1. The guardian shall have the care of the person of the minor and shall represent him in all legal acts.

He shall administer his property diligently in this respect, reasonable care, and shall be liable for damages which may arise from his mismanagement.

He shall neither buy the property of the minor nor take it on lease, nor shall he consent to the assignment of a right belonging to the pupil or bind the minor's property to the payment of any sum.

2. Except when authorised by a Judge in chambers, the guardian shall only invest the minor's funds in such stocks and securities as are mentioned in laws enacted from time to time.

Pending investment, the guardian shall deposit into a Savings Bank or the Treasury or a Bank approved by a Judge all the funds which are not required for the yearly expenses of a minor and for the administration of the minor's property, and he shall owe interest on all funds not so deposited. He shall not withdraw the funds deposited, or any part thereof, without the authorisation of a Judge in chambers.

3. Provided that nothing in this article shall be construed as preventing a guardian from setting, up a fudiciary fund. However, in that case, the safeguards of the minor's prperty contained in this Code shall be read into the notarial document setting up such fund.

Article 451

Within ten days following the formal entry of the guardian into his functions, he shall apply for the removal of the seals affixed, if any, upon the property and proceed to draw up an inventory of the property of the minor, both of whcih shall take place in the presence of a notary.

If anything is due to him by the minor, he shall enter it into the inventory under penalty of forfeiture; the notary shall also ask him whether the minor owes anything to him; the declaration of the guardian shall be recorded in the report drawn up by the notary.

Article 452

1. In the three months following the drawing up of the inventory, the guardian shall sell by public auction, after due notices and publication which shall be recorded in the minutes of the sale, all the movables which cannot be used to maintain the minor as near as possible to the standard that he enjoyed before the need for guardianship arose. Property which is not sold shall be specifically listed in a separate record to be signed by the guardian and the notary.

2. No guardian shall, unless previously authorised by the Court, alienate any stock, share,interest or other incorporeal chattel or right of whatever nature belonging to a minor or to an interdicted person.

Provided that the authorisation of the Court shall not be required if the value of such property does not exceed 5,000 Rupees.

The Court may, on authorising the alienation, prescribe any measure which it may deem useful.

3. The guardian shall, within three months from his appointment to the guardianship, convert into nominative titles all titles to bearer belonging to a minor or to an interdicted peson and the alienation of which has not been authorised by the Court. He shall also, within three months from the final attribution of the titles of the minor or from his (the guardian) coming into possession of the titles, convert into nominative titles all titles to bearer which may, in whatever manner, have accrued to a minor or to an interdicted person. It shall be lawful for the Court to extend the time within which the conversion is to be effected.

4. When by their nature or on account of any agreement it is impossible to convert titles to bearer into nominative titles, the guardian shall, within three months, obtain from the Court the authorisation to alienate the said titles subject to investment of the proceedings thereof or to keep them; and in the latter case, as well as in the case mentioned in the preceeding paragraph, the Court shall have power to prescribe that the titles to bearer be deposited in the name of the minor or of the interdicted person at the registry of the Supreme Court or with some person or authorised institution specially designated by the Court.

The above period shall not interfere with the rights of third parties or with pre-existing agreements.

The Court shall order at the time when the authorisation to alienate (as provided in article 450 paragraph 2 and in paragraphs 2, 3 and 4 of this article) is granted that a statement, with supporting evidence, must be filed with the Supreme Court to the effect that the guardian has complied with his duties thereunder.

Article 455

As long as the father and mother have the parental and legal use of the property they are not bound to sell any movable fortune. If they decide to keep it, they may [illegible] it in kind. In either case, they shall require a proper valuation of such

furniture to be made at their own expense by an expert, who shall be appointed by the Court and shall be sworn in by the Registrar of the Supreme Court. They sha" pay the estimated value of all movables which they are unable to return in kind.

Article 454

Before a guardian other than a father or mother enters into his functions, the Court shall settle, on the basis of an estimate or a rough valuation of the property involved, the yearly expenditure of the minor as well as the expenditure of the administration of his property. This may be done by the Court as part of the proceedings of nomination of a guardian.

The Court shall also specify whether the guardian shall be authorised to seek the assistance of one or more salaried administrators who shall act under the authority of the guardian

The Court may decide that the property be delivered to a Bank or other reputable financial institution in the form of a fiduciary fund.

Article 455

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 456

If the guardian has failed to invest within a reasonable time any sum which ought to have been invested, he shall owe interest on that sum.

Article 457

1. A guardian, even the father or mother of the child, shall not borrow money on behalf of the minor or sell or mortgage his property without the authorisation of the Court.

Such authorisation shall also be required for a compromise involving the property of the minor.

2. The provisions of Chapter IV of the Immovable Property (Judicial sales) Act, Cap. 94, or of any other enactment applicable from time to time to judicial sales and relating to the sale of immovable property belonging to minors, shall have application.

Article 458

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 459

1. The sale shall take place by public auction in the presence of the guardian. The bids shall be received by the Court or by a notary appointed for the purpose. The sale shall be preceded by public notices published in three consecutive weeks in the *Gazette*.

2. However, if it is an absolute necessity or a manifest advantage that the property be sold, it shall be lawful to sell the said property by notarial contract, provided that in the first instance such sale and the conditions thereof be sanctioned and approved by the Court. The guardian shall state his opinion as to the proposed sale and the Judge, if satisfied that such sale is in the interests of the minor, shall grant his authorisation.

Article 460

Article 457 shall not apply to a case where the Court orders the sale through the Court of property held by a fiduciary on behalf of co-owners whose shares have been converted into money claims.

Article 461

A guardian shall only be able to accept a succession consisting of movable property only on behalf of a minor, subject to the benefit of an inventory. He may accept such a succession without such benefit with the permission of the Court. If the succession contains immovable property the distribution shall be regulated by Section VII of Chapter V of Title II of Book III of this Code.

Article 462

Whenever a succession of movable property which has been repudiated on behalf of the minor has not been accepted by another person, the guardian may later revive the claim thereto. The claims may also be revived by the minor who has reached majority or who has been emancipated. In either case, may or by be entitled to the share in which he would have participated had the succession

and other transactions which have been legally effected while the inheritance was vacant, shall not be attacked.

Article 463

A guardian may freely accept a gift on behalf of the minor. It shall have the same effect as regards a minor as it has in regard to a person of full age.

Article 464

A guardian shall require no authorisation from any source to bring an action in respect of the right of the minor to immovable property.

However, he may only admit claims of other parties in respect of such rights within the terms of article 457.

Article 465 - 467

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap 33.

Article 468

When a minor under guardianship is alleged to be beyond control, the guardian shall apply to the Court in the same manner as the father or mother.

SECTION IX

Accounting Procedure for Guardians

Article 469

1. Every guardian shall be bound to account for his management when the guardianship ends.

2. A father or mother shall also be bound to give an account as provided by article 389 of this Code. Insofar as they have to render accounts the provisions of this Section of this Chapter shall apply to them also.

Article 470

Every guardian shall file in the registry of the Supreme Court annual statements

of the account of his management. Such statements shall be drawn up, verified by affidavit and furnished free of all costs and duties.

Any person interested may inspect the statements so filed by the guardian with the permission of a Judge in chambers.

The Court or the Attorney-General may order a statement of account for any lesser period or for a specific transaction.

Article 471

The final account of the guardianship shall be delivered at the expense of the minor when he has reached majority or has been emancipated. The guardian shall advance the costs of same. The guardian shall be allowed all expenses properly incurred and the object of which was useful.

Article 472

An agreement between the guardian and the minor who has come of age shall be null if it has not been preceded by a statement of accounts and the handing over of the recepts thereof; the whole, evidenced by a written acknowledgement from the person to whom the account has to be rendered, at least ten days before the agreement.

Article 473

If there is a dispute as to the account, such dispute shall be dealt with and decided in the same manner as any other civil dispute.

Article 474

The balance due by the guardian shall bear interest without formal demand, and shall be calculated from the day of the closing of the accounts. The interest on what is due to the guardian by the minor only begins to run after the closing of the accounts, and from the day on which payment is demanded.

Article 475

An action by the minor against his guardian, relating to the guardianship, shall be barred five years after the minor has reached majority.

CHAPTER III

EMANCIPATION

Article 476

A minor shall be emancipated as of right upon his marriage.

Article 477 - 479

Repealed

Age of majority Act. S. 3. Cap. 4.

Article 480

The account of the guardianship shall be rendered to the emancipated minor as provieded by Section IX of Chapter II of this Title.

Article 481

The emancipated minor shall have full legal capacity in the same manner as a person of full age.

Nevertheless, with regard to marriage, he shall be subject to the rules that would have applied if he had not been emancipated.

Article 482

The emancipated minor shall cease to be under the authority of his father and mother. They shall no longer be liable by operation of law for any damage caused by the emancipated minor subsequent to his emancipation.

Articles 483 - 486

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 487

The emancipated minor may engage in commerce as a person of full age only if he has been specially authorised by the Court.

TITLE XI

MAJORITY, INTERDICTION AND THE PROTECTION OF SOME PERSONS OF FULL AGE

CHAPTER I

GENERAL PROVISIONS

Article 488

Majority shall be attained at the full age of eighteen years. At that age persons shall have full legal capacity. (3/22/1980)

CHAPTER II

INTERDICTION

Article 489

A person of full age who is habitually feeble minded, insane or a lunatic, shall be interdicted, even if he has lucid intervals.

Article 490

1. Proceedings for interdiction shall be entered in the Supreme Court and shall be commenced by petition addressed to the Court.

2. Such proceedings may be entered by –

(a) any relative of the person whose interdiction is sought; or

(b) a spouse with regard to the other spouse; or

(c) the Attorney-General.

3. The petition shall set out briefly the material facts on which the application for interdiction is based.

4. The person whose interdiction is sought shall be made a respondent to the petition and such other persons as the Court may direct shall be made respondents.

Article 491

When the application for interdiction is not made at the instance of the Attorney-General, a copy of the petition shall be served on him and the matter shall be referred to him in accordance with the provisions of section 151 of the Seychelles Code of Civil Procedure (Cap. 213).

Article 492

The respondent may file a written answer.

Article 493

The Court may, in its entire discretion and at any stage of the proceedings before judgment —

(a) request the guardian to give his opinion on any matter which the Court thinks fit to refer to him;

(b) interrogate the respondent or cause the respondent to be interrogated by a person appointed by the Court;

(c) cause the respondent to be examined by one or more medical practitioners or officers and for that purpose shall have such powers and issue such orders as may be necessary for such examination to take place.

Article 494

The Court shall not be bound by any opinion expressed by the guardian.

Article 495

No judgment shall be vitiated or rendered invalid on account of any error, omission or irregularity in the proceedings arising from or depending upon the provisions of the three preceding articles unless such error, omission or irregularity has in fact occasioned a miscarriage of justice.

Article 496

The sittings on interdiction shall take place in chambers unless the Court orders otherwise.

Article 497

At any time after a petition for interdiction has been filed the Court may appoint a person to act provisionally as guardian of the person and property of the respondent.

Article 498

1. The Court shall fix a date for the hearing of the case and the parties shall be summoned to attend. Where the hearing cannot be concluded in one day, the Court at its discretion may adjourn to the next or subsequent day and so on to any other day until the end of the hearing.

2. The provisions of sections 152 to 161 of the Seychelles Code of Civil Procedure (Cap. 213) shall apply *mutatis mutandis* to proceedings under these rules.

3. After considering the evidence (if any) adduced by the parties and such other relevant evidence which shall have been admitted by the Court, the Court shall give its judgment on the application for interdiction.

Article 498 - 1

The Chief Justice may, with the approval of the Minister, make rules for more effectively carrying out the provisions contained in this Chapter. (SI. 72/1976)

Article 499

If the Court rejects the request for interdiction, the Court shall, nevertheless, be empowered, if the circumstances require it, to order that the respondent shall no longer be allowed to compromise, borrow, receive any capital, or give receipts therefor, alienate or mortgage his property, without the assistance of a person, who shall be appointed in the same judgment.

Article 500

In the case of an appeal from the judgment of a Court of first instance, the Court of Appeal shall be empowered, at its discretion, to examine the person whose interdiction is requested or to have him examined by a person appointed for this purpose.

Article 501

A decree or judgment ordering interdiction or nominating a person to assist the interdicted person shall be issued, served upon the party and posted, within ten days, on the notice boards of Court rooms and notarial offices. It shall also be published in the *Gazette*.

Article 502

The interdiction or the appointment of a person to look after the interests of a person in need of such assistance under article 499 shall have effect as from the day of judgment. All legal acts executed subsequently by the interdicted person or the person in need of protection, as provided by article 499, shall be null by operation of law.

Article 503

Legal acts executed prior to the interdiction may be annulled if the ground of interdiction would have been obvious to a reasonable man at the time when the acts were executed.

Article 504

After the death of a person, the acts executed by him shall not be challenged on the ground of insanity unless the interdiction had been ordered before his death or unless the proof of insanity consists of the very act which is challenged.

Article 505

1. The Supreme Court may appoint a guardian to a person who is interdicted.

2. Such appointment may be made in the judgment of interdiction or at any time thereafter.

Article 506

1. A person who has been appointed a guardian may, with the consent of the Supreme Court or on giving six months' written notice to the Supreme court, resign his appointment.

2. The termination of a guardianship may be revoked by the Supreme court.

Article 507

The Supreme Court may appoint a temporary sub-guardian to a person who is interdicted during the absence from Seychelles of the guardian.

Article 508

1. The appointment of a person to act provisionally as guardian under the provisions of article 497 of this Code shall lapse on the appointment of a guardian under the provisions of article 505 of this Code.

2. The provisional sub-guardian shall render accounts to the guardian.

Article 509

The interdicted person is assimilated to a minor, both in regard to his person and to his property; the laws relating to the guardianship of minors shall apply to the guardianship of interdicted persons.

Article 510

The income of an interdicted person shall, in principle, be employed to improve his condition and speed up his recovery. According to the nature of the disease and the amount of his property, the Court may decide whether he shall be treated in his home or placed in a mental home or even in a hospital.

Article 511

When the marriage of the child of an interdicted person is contemplated, any property settlements that may be made shall be subject to the approval of the Court which shall hear, in this respect, any submissions from the Attorney General.

Article 512

The interdiction shall cease when the grounds which gave rise to it have disappeared; nevertheless, the lifting of the interdiction shall only be effective if the forms laid down for the interdiction are observed.

The interdicted person shall only be allowed to recover his rights after the judgment lifting the interdiction.

CHAPTER III

CURATORSHIP

Article 513

Spend thrifts may be forbidden to engage in litigation, to compromise legal rights, to borrow, to receive any capital and to give a valid discharge therefor or to transfer or mortgage their property without the assistance of a curator appointed by the Court.

Article 514

The prohibition to perform legal acts without the assistance of a curator may be ordered at the instance of persons having a lawful interest to petition for interdiction; their petition shall be heard and decided upon in the same manner as an interdiction. Such prohibition shall only be lifted by following the same procedure and forms as for an interdiction.

Article 515

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

BOOK II

PROPERTY AND THE DIFFERENT KINDS OF OWNERSHIP

TITLE I

THE DIFFERENT KINDS OF PROPERTY

Article 516

All property shall be distinguished into movable or immovable.

CHAPTER I

IMMOVABLE PROPERTY

Article 517

Property is immovable either by its nature or by its destination or by reason of the purpose which it serves.

Article 518

Land and buildings are immovable by nature.

Article 519

Windmills or water-mills affixed upon pillars and forming part of the building, are also immovable by their nature.

Article 520

1. Similarly, crops still attached to their roots and fruit which has not yet been gathered are immovable.

2. As soon as the grains are severed and the fruit separated, they become movable even though not yet gathered.

3. If only part of the crop is severed, that part only becomes movable.

Article 521

Copse and forest trees regularly felled do not become movable except when cut.

Article 522

Livestock, which the owner of land delivers to a farmer or a tenant on a share-basis for the purpose of cultivating the land, whether the value of such livestock has been taken into account or not, shall be held to be immovable for as long as it remains bound to the land by virtue of the contract.

Livestock leased to persons other than a farmer or a tenant on a share-basis is movable.

Article 523

Pipes which supply water to a house or other land are immovable and form part of the property to which they are attached.

Article 524

1. Movable objects, which the owner of property has provided for the use and exploitation of such property, shall be immovable by destination.

Thus, the following are immovable by destination, when they have been provided by the owner for the use and exploitation of the property;

Animals used for farming;

Agricultural implements;

Seeds given to farmers or profit sharing tenants;

Pigeons living in pigeon-houses;

Wild rabbits;

Beehives;

Fish in ponds;

Presses, boilers, stills, vats and casks;

Implements necessary for the exploitation of ironworks, paper-mills and other works;

Straw and manure.

Immovable by destination are all movable objects which the owner has attached to the property on a permanent basis.

2. Animals which are not essential for the exploitation of the property, or animals which are only used for reproduction or to provide manure are not immovable.

3. Immovable by destination shall also be;

The equipment and machinery necessary for the exploitation of the property, such as the equipment of a hotel or a restaurant;

A refrigerating unit or sanitary equipment which has been fixed in the structure, even though it can be removed without causing damage to such structure.

Article 525

1. The owner shall be held to have fixed to the property as permanent fixtures movable objects which are embedded in plaster or lime or cement, or which cannot be removed without breakage or deterioration or without breaking or damaging that part of the property to which they are fixed.

Mirrors fixed in a flat are held to have been permanently fixed when the wall on which they are fixed forms part of the the woodwork.

The same shall apply with regard to pictures and other ornaments.

As regards statues, they shall be immovable if placed in a recess expressly made to receive them, notwithstanding the fact that they can be removed without breakage or deterioration.

2. Provided that in the case of ornaments and other works of art which can be removed without causing damage, they shall be held to be immovable only if it can be clearly shown that the owner had intended them to be part of the structure of the building.

Article 526

Immovable by reason of the purpose to which they apply are:

A usufruct relating to immovable property;

Easements;

A claim to recover immovable property

CHAPTER II

MOVABLE PROPERTY

Article 527

Property is movable by nature or by reason of a provision of the law.

Article 528

Movable by their nature are things which can move from one place to another, either by their own accord, such as animals, or as a result of the use of extraneous force, such as inanimate things.

Article 529

Movable by reason of a provision in the law shall be the legal obligations and actions which relate to claims for sums due or to chattels or the shares of or interest in financial, commercial and industrial undertakings even though such undertakings own the immovable property which they control. Such shares or interests shall be deemed to be movable only with regard to each shareholder and for as long as the company remains in existence.

Movable by reason of a provision in the law shall also be bonds or life annuities, whether issued by a public authority or by an individual.

Article 530

An annuity established in perpetuity which represents the price of the sale of an immovable, or is a condition for the transfer, gratuitously or for value, of immovable property, shall be redeemable.

Nevertheless, the creditor shall be free to determine the terms and conditions of the redemption.

He may also stipulate that the annuity shall not be redeemable before a certain term, which in no circumstances shall exceed thirty years; any provision to the contrary shall be null.

Article 531

Ships, lighters, vessels, floating mills, floating docks, and boats, by reason

machinery not affixed upon pillars and not forming part of a a building, shall be movable: distraint, however, of some of these objects because of their importance may be subject to special forms as provided by law.

Article 532

Materials from the demolition of a building, or gathered for the erection of another, are movable until used by the workers in a structure.

Article 533

The word movable used on its own in statutory provisions, or in a private document, without any other additions or designation, shall not include cash, precious stones, debts due, books, medals, scientific instruments, professional or trade tools, clothes, horses, vehicles, arms, grains, wines, hay and other produce; neither shall it include anything which forms part of the stock in trade.

Article 534

The words movable furniture shall only include furniture for the use and decoration of flats, such as tapestry, bedding, chairs, mirrors, clocks, china and other suchlike objects.

Pictures and statues, which form part of the furniture of a flat shall also be included. Picture collections which could be displayed in picture galleries or exhibition rooms shall be excluded.

The same rule shall apply to china; only china that forms part of the decoration of a flat shall be included under the term 'movable furniture'.

Article 535

The terms movable property, furniture or movable effects shall generally include all objects that are defined as movable by the aforementioned rules.

The sale or the gift of a furnished house shall only include the movable furniture therein.

Article 536

The sale or the gift of a house with all that it contains shall not include cash, nor shall it include any debts, dues or other rights, the documents of title of which may have been kept in the house; all other movable effects shall be included.

CHAPTER III

PROPERTY IN RELATION TO ITS OWNERS

Article 537

1. Persons shall enjoy the free-right to dispose of the property which belongs to them, subject to the restrictions laid down by law.

Property which is not owned by private persons must be managed in the manner and according to the rules which apply to such property specially; and such property can only be alienated in the manner and in accordance with the rules peculiar thereto.

2. A clause restricting the right of disposal of immovable property or of a right attached to immovable property shall be valid. However, such a restriction shall be subject to two conditions: (a) that there is a serious reason for the imposition of such restriction; and (b) that it shall only be binding upon the transferee during his lifetime.

3. The Court shall be empowered to delete such a restriction if it is satisfied that it is just to do so.

Article 538

All roads, public highways and streets kept up by a public authority, rivers, streams and springs, the foreshore and banks, beaches which have been gained from the sea and which have been left permanently high and dry, ports, harbours, anchorages and generally all parts of Seychelles which are not capable of being private property, shall be held to be part of the public domain.

Article 539

All property which becomes vacant and without an owner, or the property of deceased persons who have left no heirs or whose inheritance is abandoned, shall belong to the Republic. (SI. 72/1976)

Article 540

1. Property described in [illegible] by way of [illegible] to the public domain [illegible] [illegible]

in the manner provided by such Act and other Instruments as are from time to time enacted.

2. Notwithstanding the provisions of paragraph 1 of this article, where a Government body, in the exercise of its lawful authority, purports to issue an order or licence dealing with any property where it may be a matter of interpretation of the examples cited in articles 538 and 541 of this Code whether it belongs to the public or the private domain, such order or licence shall have the effect of converting such property into public or private domain as intended by the said licence or order.

3. It shall be a complete answer for any person or body exercising any rights under a licence or order as provided by paragraph 2 of this article that he did so under the authority and in pursuance of the said licence or order, notwithstanding any doubt arising from the wording of any of the aforementioned articles of this Code.

Article 541

1. Gates, walls, moats, ramparts of battlefields and fortresses shall also belong to the public domain.

2. Land upon which fortifications and ramparts, have been erected shall also belong to the public domain, although these are no longer used for military purposes: it shall belong to the Republic if it has not been lawfully transferred or if the Republic has not lost its rights of ownership by the operation of the rules of prescription. (SI. 72/1976)

Article 542

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 543

Property shall be subject to rights of ownership or to a simple right of enjoyment or to a claim to the benefit of easements thereon.

A term of years (bail) which has been registered according to such laws as are enacted from time to time shall confer a real right of ownership in land limited in time. As such it may be mortgaged. The person entitled to a term of years shall have the [illegible] [illegible]. However, [illegible]

TITLE II

OWNERSHIP

Article 544

Ownership is the widest right to enjoy and dispose freely of things to the exclusion of others, provided that no use is made of them which is contrary to any laws or regulations.

Article 545

No one may be forced to part with his property except for a public purpose and in return for fair compensation. The purposes of acquisition and the manner of compensation shall be determined by such laws as may from time to time be enacted.

Article 546

The right of ownership of property, whether movable or immovable, shall give the right to everything that the property produces and to anything that accedes to it either naturally or artificially.

This right is called *right of accession.*

CHAPTER I

THE RIGHT OF ACCESSION WITH REGARD TO THE PRODUCE OF A THING

Article 547

Natural produce or earnings from land, income from capital, and the young of animals belong to the owner by right of accession.

Article 548

Produce of produce of a thing will belong to the owner, subject to his obligation to reimburse the costs of labour, seed and seeds paid by third parties. Reimbursement of such costs or seeds shall be ordered at the date of payment.

Article 549

A mere possessor acquires the natural produce only if he is in good faith. Otherwise, he is bound to restore the produce together with the property to the owner who claims it; if the said produce no longer exists in its natural state, its value is calculated at the date of payment.

Article 550

The possessor is in good faith when he possesses as owner by virtue of a title of ownership the defects of which are unknown to him.

He ceases to be in good faith from the moment that they become known to him.

CHAPTER II

THE RIGHTS OF ACCESSION UPON A THING WHICH BECOMES UNITED OR INCORPORATED WITH ANOTHER

Article 551

Anything that becomes united and incorporated with another thing shall belong to the owner in accordance with the rules established below.

SECTION I

The Rights of Accession in respect of Immovable Property

Article 552

1. Ownership of the soil carries with it the ownership of what is above and what is below it.

The owner may plant upon it any plants and may build any structures which he deems proper, with the exceptions established in the Title *Servitudes or Real Rights over Land other than Ownership*, subject also to any law relating to mines and to the security of Seychelles.

2. He may build on it any structure and may make any excavations which he may deem of advantage and may take from them all the products they yield, subject to public law.

3. These provisions shall not be construed to permit an owner to extract any minerals in, under or upon land or in rivers or streams, nor shall it be construed to allow an owner to search, prospect or acquire any rights whatsoever relating to petroleum existing in its natural condition in strata in or under any part of Seychelles. All such minerals and petroleum shall vest in the Republic. Matters dealt with in this article shall be subject to such laws as shall from time to time apply. (SI. 72/1976)

Article 553

All buildings, plantations and works on land or under the ground shall be presumed to have been made by the owner at his own cost and to belong to him unless there is evidence to the contrary; this rule shall not affect the rights of ownership that a third party may have acquired or may acquire by prescription, whether of a basement under a building in the ownership of another or of any other part of the building.

Article 554

The owner of land who has erected structures or planted in the soil or put up works upon it with materials which did not belong to him shall pay for the value of the materials calculated at the date of payment; he may also be ordered to pay damages if any damage has occurred : however, the owner of the materials has no right to remove them.

Article 555

When plants are planted, structures erected, and works carried out by a third party with materials belonging to such party, the owner of land, subject to paragraph 4 of this article, shall be empowered either to retain their ownership or to compel the third party to remove them.

2. If the owner of the property demands the removal of the structures, plants and works, such removal shall be at the expense of the third party without any right of compensation; the third party may further be ordered to pay damages for any damage sustained by the owner of land.

3. If the owner elects to preserve the structures, plants and works, he must reimburse the third party whichever is the lesser of the two sums, namely an amount equal to the value of the materials and labour as calculated at the date of such

reimbursement, after taking into account the present conditions of such structures, plants and works.

4. If plants were planted, structures erected and works carried out by a third party who has been evicted but not condemned, owing to his good faith, to the return of the produce, the owner may not demand the removal of such works, structures and plants, but he shall have the option to reimburse the third party by payment of either of the sums provided for by the previous paragraphs.

5. Where an owner, who is subject to a condition subsequent, has caused plants to be planted, structures erected and works carried out, he shall be presumed to have acted in good faith, unless he actually knew when such acts were performed that the event, which was the subject of the condition, had already occurred. This rule shall not apply to a usufructuary or a tenant unless specific permission to plant, erect or construct had been given by the owner.

Article 556

The deposits of earth and accretions, which gradually and imperceptibly, are added to land adjoining the river or a stream, are called alluvion.

Alluvion shall benefit the riparian owner.

Article 557

The same shall apply in the case of earth which is left dry after running water has imperceptibly taken it from one of the banks of a river to the other ; the owner of the dry bank benefits from the alluvion and the riparian owner of the opposite bank may not claim the land which he has lost. This right shall not be available with regard to sea beaches left dry by the retiring sea.

Article 558

There is no right of alluvion with regard to lakes and pools, the owner of which always retains the land covered by the water which it overflows, even if, as a result, the quantity of the water is reduced.

Conversely, the owner of a pool does not acquire any right of alluvion with respect of the banks of the pool where the water has ceased to flow.

Article 559

Where a river or stream suddenly breaks away and carries off [illegible]

a riparian field and carries it towards a field further down or to an opposite bank, the owner of the part which has been carried away may reclaim his property; but he must enter his claim within a year : after this period, such claim shall not be admitted unless the owner of the field which the part carried away has joined has not yet taken possession of it.

Article 560

Islands, islets, deposits of earth, which are formed on the bed of rivers or streams, shall belong to the Republic unless there is a contrary title or the title has been lost by prescription. (SI. 72/1976)

Article 561

Repealed.

Civil Code of Seychelles Act, Fourth Schedule.

Article 562

If a stream or river, by forming a new branch, cuts and surrounds the field of a riparian owner as a result of which an island is formed the owner retains the ownership of his field.

Article 563

If a river or a stream forms a new bed and abandons its old course, the riparian owners of the land in which the new bed lies shall be entitled, by way of compensation, to take the old bed that has been abandoned, each in proportion to the land of which he has been deprived.

Article 564

Pigeons, rabbits, fish, which move on to another pigeon-house, warren or pond, shall belong to the owner thereof, provided that they have not been led to such other dwelling by fraud or other artificial means.

SECTION II

The Rights of Accession in respect of Movable Property.

Article 565

The Right of Accession when it relates to movable things which belong to two different owners, shall be made wholly subject to the principles of the laws of nature.

The following rules shall serve as illustrations of such principles and as a guide to the Judge to enable him to decide any unforeseen cases according to the special circumstances affecting them.

Article 566

When two things which belong to different owners have been united in such a way as to form a unit, even if they are severable and one can exist without the other, the unit shall belong to the owner of the thing which forms the principal part of it on condition that each owner shall be bound to pay to the other owner the value of the other part calculated at the date of payment.

Article 567

The principal part is presumed to be the part with which the other has been united only for the use, adornment or completion of the former.

Article 568

Nevertheless, when the thing which has been united with another is of much greater value that the principal part, and when it has been used without the knowledge of the owner, such owner may demand that the united part shall be severed and returned to him even if this may result in some deterioration of the thing to which it is joined.

Article 569

If one of the two things that have been joined together to form a single whole could not be regarded as the accessory of the other, the part which is of more value shall be considered to be the principal part, if the separation can be made without considerable damage; but if the greater is both in value and size the

Article 570

If a craftsman or any person whatsoever has made use of any material which did not belong to him in order to make a thing new in kind, whether the material can revert to its former form or not, the owner thereof shall have the right to claim the new thing which has resulted on condition that he refunds the price of the skill used as calculated at the date of payment.

Article 571

If, however, the skill used was so great that it exceeds by far the value of the material used, the skill used shall be presumed to be the principal part and the craftsman shall have the right to retain the thing on condition that he shall refund to the owner the price of the material as calculated at the date of payment.

Article 572

When a person has partly used material which belongs to him and partly material which belongs to another in such a way as to make a thing of a new kind, the thing shall belong to both owners jointly although neither of the two materials used has completely perished, provided that they are joined in such manner that the two materials cannot be conveniently severed. The co-ownership of such a thing shall be for one of the parties in proportion to the value of material that belongs to him; as to the other party it shall be both in proportion to the value of the material that belongs to him and in proportion to the value of the skill used. The value of the skill shall be calculated on the date of the licitation as provided by article 575.

Article 573

When something has been made by the mixture of several materials belonging to different owners, none of which could be regarded as the principal material, and if the materials can be separated, the party who was unaware that the materials were to be mixed may demand that they be divided.

If the material can no longer be conveniently separated, the owners shall acquire the ownership jointly, in proportion to the quantity, quality and value of the materials that belong to each one of them.

Article 574

When the material which belonged to one of the owners was superior by far to

that of the other owner with regard to quantity and price, the owner of the superiro material in value may demand the thing which was the result of mixing on condition that he refunds the value of the owner's material as estimated at the date of payment.

Article 575

When the thing remains owned in common among the owners of the materials from which it is made up, it may be disposed of by licitation for the benefit of all.

Article 576

In all cases where an owner, whose material has been used without his knowledge to make a thing of a different kind, may demand the ownership of such thing, he has the option either to demand restitution of his material in the same kind, quantity, weight, measure and quality or to demand its estimated value at the date of restitution.

Article 577

Persons who have used materials which belong to others and have done so without the knowledge of the owners may also be condemned to pay damages if any damage has occurred, without prejudice to any other remedies that may be available.

TITLE III

USUFRUCT, USE AND HABITATION

CHAPTER I

USUFRUCT

Article 578

Usufruct is the right to enjoy property which belongs to another in the same manner as the owner himself, but subject to the obligation to preserve its substance.

Article 579

A usufruct is created by law or by the will of the parties.

Article 580

A usufruct can be created to take effect immediately or on a certain date or conditionally.

Article 581

It can be created upon all kinds of property, movable as well as immovable.

SECTION I

The Rights of the Usufructuary

Article 582

The usufructuary has the right to enjoy all kinds of fruits, whether natural produce or products or income which can be produced by the property which is subject to the usufruct.

Article 583

Natural produce are those that are spontaneously produced by the soil. The produce and the young of animals are also natural produce.

The products of land are those which are obtained by cultivation.

Article 584

Income includes rent from houses, interest on sums due, and arrears of rent, income or dividends.

The rent of agricultural tenancies is also regarded as income.

Article 585

Natural produce and products attached to branches or in root at the moment when the usufruct begins belong to the usufructuary.

Those which are in the same condition at the termination of the usufruct belong to the owner without any compensation from either side for ploughing and sowing, but also without any prejudice to the part of the produce which may have been acquired by a farmer on a share basis if there was one at the beginning or at the termination of the usufruct.

Article 586

Income is presumed to be acquired from day to day. It shall belong to the usufructuary for the duration of his usufruct. This rule shall apply to the rent from agricultural tenancies as well as to the rent from houses and to any other income.

Article 587

If the usufruct includes things which cannot be used without being consumed such as money, grain or wine, the usufructuary shall be entitled to use them but on condition that he must return at the termination of the usufruct either things of the same quantity and quality or their value estimated at the date of such return.

Article 588

The usufruct of a life annuity shall also entitle the usufructuary, for the duration of his usufruct, to receive any arrears without being obliged to make any restitution.

Article 589

If the usufruct includes things which, although not immediately consumed, deteriorate gradually by use, such as clothing or linen or movable furniture, the usufructuary shall be entitled to use them for the purpose of which they are intended and he shall be obliged to return them at the termination of the usufruct in such condition as they may be, provided that they have not been damaged though his fraud or negligence.

Article 590

If the usufruct includes copses regularly felled, the usufructuary shall be bound to observe the order and size of cuttings in accordance with the plan or the long practice of the owner; no indemnity, however, shall be paid to the usufructuary or his heirs for any ordinary cuttings of copses or straddles or forest trees which the usufructuary had not carried out when he had the right of enjoyment.

The trees which may be removed from a nursery without causing any damage to it, are included in the usufruct, on condition that the usufructuary acts in accordance with the local practice with regard to their replacement.

Article 591

The usufructuary shall also have the benefit, provided always that he observes the seasons and the well established practice of the former owners, of such parts of a wood of full-grown trees which have been felled regularly, whether these cuttings take plce at regular intervals, within a particular area of land or whether they related to a certain quantity of trees chosen indiscriminately from the whole area of the estate.

Article 592

In all other cases, the usufructuary shall not interfere with forest trees : he may only use, for the purpose of making the repairs to which he is bound, any trees which have been accidentally uprooted or broken; he may even, for this purpose, cause any trees to be felled if necessary, provided that he satisfies the owner of the need to do so.

Article 593

He may take from the forests props for the vines; he may also take any annual or regular produce which is still hanging from the trees; all of which may be done following local practice or the practice of the owners.

Article 594

Fruits trees which are dying, including those accidentally uprooted or broken, shall belong to the usufructuary on condition that he replaces them by other trees.

Article 595

1 The usufructuary may enjoy his right on his own account or grant an agricultural tenancy to another or even sell or assign his right gratuitously. If he grants a tenancy he shall be bound, insofar as its periods of renewal and duration are concerned, by the rules in paragraph 2.

2 Tenancies exceeding nine years shall be binding upon the owner and his heirs for the time which remains to run out of the first period of nine years, if that period has not elapsed, or out of the second period, and so on, so that the tenant shall only be entitled to complete the time of a current tenancy of nine years. Tenancies of nine years or less granted less than three years before the expiry of the usufruct in the case of agricultural land, and less than two years in the case of a house, shall be void.

Article 596

The usufructuary shall benefit from any increase caused by alluvion to the size of the land over which he has a usufruct.

Article 597

He shall enjoy the right arising from easements, rights of way, and generally all the rights which an owner may enjoy, and he shall enjoy them in the same manner as the owner himself.

Article 598

He shall also enjoy, in the same manner as the owner, the mines and quarries which are in operation at the beginning of the usufruct; nevetheless, if these resources could not have been exploited without a permit, the usufructuary shall not be allowed to enjoy them without having first obtained such a permit, as provided by the laws in force from time to time.

There shall be no right to mines and quarries which have not yet been exploited, nor shall there be rights either to turf-pits if the exploitation has not yet started, or to treasure trove found in the course of the usufruct.

Article 599

The owner may not, by his act, or in any way whatsoever, interfere with the rights of the usufructuary.

On his part, the usufructuary may not demand, at the termination of the usufruct, any indemnity for the improvements that he claims to have made, even though the value of the property has increased.

He or his heirs may, however, remove the mirrors, pictures and ornaments which he may have had installed, provided that he restores the premises to their former condition.

SECTION II

The Duties of the Usufructuary

Article 600

1. The usufructuary must use things in such conditions as they are but may not

begin their enjoyment until he has had drawn up an inventory of the movable and the immovable property which are subject to the usufruct in the presence of the owner or after due notice has been served upon him.

2. The faulure of the owner to demand the drawing-up of an inventory shall not deprive him of the right to demand one after the beginning of the usufruct and to use all legal means at his disposal to establish what property forms part of the usufruct.

Article 601

The usufructuary must give security that he will show, with regard to the enjoyment of the property, reasonable care, unless he is released from such duty by the act that created the usufruct; however, the father and mother who have the usufruct of the property of their children as of right or the seller or the donor who has reserved the usufruct shall not be bound to give security.

Article 602

If the usufructuary is unable to provide security, the immovable property shall be let or placed in legal deposit.

Money included in the usufruct shall be invested;

Any produce shall be sold and the proceeds thereof shall be likewise invested;

The interest from such sums and the rent received from letting the property shall belong, in this case, to the usufructuary.

Article 603

In the absence of security on the part of the usufructuary, the owner may demand that any movable property which is damaged by use be sold so that the price can be invested, as in the case of produce; in that case the usufructuary shall enjoy the interest therefrom for the duration of his usufruct; however, the usufructuary may request and the Court may grant such request, according to the circumstances, that part of the movable property necessary for his use be left to him on his sworn recognizance and on condition that he returns it at the termination of the usufruct.

Article 604

A delay in providing security shall not deprive the usufructuary of any fruits to

which he may be entitled; these are due to him from the moment that the usufruct begins.

Article 605

1. The usufructuary shall only be bound to keep the property in good repair.

Any structural repairs shall be left to the owner, unless they were caused by the failure to keep the property in good repair since the beginning of the usufruct; in that case the usufructuary shall also be liable for their cost.

2. If the owner fails to carry out the structural repairs for which he is liable and which are essential to maintain the property in the condition in which it was at the beginning of the usufruct, the usufructuary may carry them out on the owner's account and recover the cost. However, it may be agreed, as part of the terms of the usufruct, that the liability for structural repairs falls upon the usufructuary.

Article 606

Structural repairs are the repairs of the main walls and vaults, of entire floors, the renovation of beams and the restoration of the entire roof.

The repairs of entire dykes, retaining wall and fences.

All other repairs are maintenance repairs.

Article 607

Neither the owner nor the usufructuary shall be bound to rebuild what has perished by decay or what has been destroyed by inevitable accident.

Article 608

The usufructuary shall be liable, for the duration of the usufruct, for all the annual dues of the property, such as contributions and other charges which, by practice, are considered to be a charge upon income from land.

Article 609

With regard to any charges imposed upon the property in the course of the usufruct, the usufructuary and the owner shall contribute as follows:

The owner shall be bound to pay them and the usufructuary shall pay the interest

If the charges are paid by the usufructuary, they shall be refunded to him at the termination of the usufruct.

Article 610

The legacy given by a testator of a life annuity or maintenance grant shall be paid by the residuary legatee of the usufructuary in its entirety, and by the legatee by universal title of the usufruct to the extent of his right of enjoyment but neither of them shall have any right to claim a refund.

Article 611

The person entitled to a usufruct of specific property shall not be bound by the debts arising from a mortgage of the property: if he is forced to pay them, he shall be entitled to recover them from the owner, subject to the provisions of article 1020 of the Title *Gifts inter vivos and Wills.*

Article 612

The person entitled to a usufruct either as a residuary legatee or a legatee by universal title shall be bound to contribute with the owner to the discharge of the debts as follows:

The value of the property, subject to the usufruct, is calculated; the proportion of each contribution in then fixed according to such value.

If the usufructuary advances the sum which the property must contribute, the capital shall be refunded to him without interest at the termination of the usufruct. If the usufructuary does not advance that sum, the owner may elect either to pay that sum, in which case the usufructuary shall pay him the interest thereon during the continuance of the usufruct, or to cause such property, subject to the usufruct, to be sold to the extent that is required for the discharge of the debt.

Article 613

The usufructuary shall only be bound to pay the cost of any legal proceedings which related to his enjoyment and to satisfy any orders to pay arising therefrom.

Article 614

If during the continuance of the usufruct a third party encroaches upon the property or otherwise interferes with the rights of the owner, the usufructuary shall

be bound to report him to the owner: if he fails to do so, he shall be liable for any damage which may result to the owner therefrom as if the usufructuary himself had caused the loss.

Article 615

If the usufruct relates to an animal, which dies without any fault on the part of the usufructuary, he shall not be bound to replace it by another or to pay its value.

Article 616

If the herd or flock, over which a usufruct has been created, perishes entirely through accident or disease, and without the fault of the usufructuary, he shall only be bound towards the owner to account for the skins, or their value, calculated at the date of payment.

If the herd or flock does not entirely perish, the usufructuary shall be bound to replace the animals with any young born to such herd or flock.

SECTION III

The Termination of the Usufruct

Article 617

The usufruct shall be terminated –

By death of the usufructuary;

By the expiration of the period of time for which it was granted;

By the merger or union in the same person of the two capacities of usufructuary and owner;

By non-user during a period of twenty-years;

By the total loss of the thing subject to the usufruct.

Article 618

The usufruct may also be terminated by the abuse, on the part of the usufructuary, of his right of enjoyment, either by committing waste on the property or by allowing it to fall into disrepair.

The creditors of the usufructuary may intervene in any legal proceedings to secure their rights; they may offer to repair any damage done and provide security for the future.

The Court may, according to the gravity of the circumstances, either declare the usufruct totally extinguished or order the assumption by the owner of the enjoyment of the property subject to the usufruct, on condition that he undertakes the obligation to pay annually to the usufructuary or his assignees a fixed sum until such time as the usufruct would have been terminated.

2. The Court shall have wide discretion to deal with property which is subject to a usufruct and which is subject to abuse by a usufructuary.

Article 619

A usufruct which has not been granted to a private person shall not extend beyond a period of thirty years.

Article 620

The usufruct granted until a third party reaches a certain age shall continue for that period, even if that party dies before that time.

Article 621

The sale of property subject to a usufruct shall have no effect upon the rights of the usufructuary; he shall continue to enjoy his usufruct unless he has formally renounced it.

Article 622

The creditors of a usufructuary are entitled to demand the annulment of any waiver of the rights of the usufructuary, if such waiver is to their detriment. It shall not be necessary to prove that the usufructuary was in bad faith in making the waiver.

Article 623

If only part of property subject to a usufruct is destroyed, the usufruct continues in respect of what remains.

Article 624

1. If the usufruct only relates to a building and that building is destroyed by fire or other accident or if it collapses by decay the usufructuary shall not have the right to the enjoyment either of the soil or of the materials.

2. The usufructuary shall be liable to the owner if the fire or accident or collapse are due to his negligence.

3. If the usufruct is created upon property, of which the building forms part, the usufructuary shall have the right to the enjoyment of both the soil and the materials.

CHAPTER II

USE AND HABITATION

Article 625

The rights of use and habitation shall be created and lost in the same manner as the usufruct.

Article 626

As in the case of usufruct, it shall not be possible to exercise these rights without previously providing security and without drawing up statements and inventories.

Article 627

The person entitled to a use or a habitation must show, in the exercise of these rights, reasonable care.

Article 628

The rights of use and habitation are regulated by the title which establishes them and extend more or less according to the provisions thereof.

Article 629

If the title does not provide for the exercise of the rights, these are regulated as hereafter indicated.

Article 630

The person who has the use of the produce of a piece of land can only demand so much as may be sufficient for his needs and those of his family.

He may also demand enough for the needs of his children born since the grant of the use.

Article 631

The person entitled to a use may neither assign nor hire out his right to another.

Article 632

The person entitled to the habitation of a house may remain in it with his family although he was not married when that right was granted to him.

Article 633

The right of habitation is restricted to the extent of the needs of the person granted that right and of the members of his family.

Article 634

The right of habitation may neither be assigned nor hired out.

Article 635

If the person entitled to a use consumes all the produce of the property, or if he occupies the whole house, he shall be bound to pay the costs of cultivation, keep the property in good repair and pay any contributions in the same manner as the usufructuary.

If he only takes part of the produce or if he only occupies part of the house, he shall contribute in proportion to his enjoyment.

Article 636

The right to the use of woods and forests is regulated by special legislation.

TITLE IV

EASEMENTS, OR REAL RIGHTS OVER LAND, OTHER THAN OWNERSHIP

Article 637

An easement is a charge imposed over a tenement for the use and benefit of a tenement belonging to another owner.

Article 638

An easement does not establish any superiority of one tenement over another.

Article 639

An easement arises either from the natural position of land or from obligations imposed by law or from agreements amongst owners.

CHAPTER I

EASEMENTS WHICH ARISE FROM THE POSITION OF LAND

Article 640

Land on a lower level is bound to receive from land on a higher level waters which flow down naturally and without human intervention.

The owner of the lower level shall not erect a dam which prevents an overflow. The owner of the higher level shall do nothing to increase the burden of the lower level.

Article 641

Every owner shall be entitled to the use and disposal of rain water falling upon his land. If the use to which the aforementioned water is put or the direction which is given to it results in a serious increase of the burden which the natural easement of running water established by article 640 imposes, the owner of the lower land shall be entitled to compensation.

The same rule shall apply to waters emanating from a spring upon land.

When, as a result of tests or underground work, an owner causes water to flow on his land, the owners of plots placed at a lower level are bound to receive it; however, they shall be entitled to be indemnified for the resulting damage.

Houses, yards, gardens, parks and enclosures adjoining residential property shall not be subject to any increase of the burden of the easement of running water in any of the cases enumerated in the previous paragraphs.

Disputes arising from the creation and exercise of the aforementioned easements and the settlement, if need be, of any indemnities due to the owners of land [illegible]

lower level shall be brought before the Court which shall take into account the interests of agriculture and industry as well as the respect due to the right of ownership.

If expertise is called for, the Court may appoint a single expert.

Article 642 - 643

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 644 - 645

Repealed.

Rivers and Streams Act, (Cap. 221,1971 Ed).

Article 646

Every owner may compel his neighbour to a demarcation of their adjoining plots of land. The demarcation shall be made at their joint expense.

Article 647

Every owner may enclose his land except as provided by article 682.

Article 648

The owner who wants to enclose his property shall lose his right of grazing and commonage in proportion to the land from which he has withdrawn.

CHAPTER II

EASEMENTS ESTABLISHED BY LAW

Easements established by law have for their object the public or local benefit or that of individuals.

Article 650

Those established for the public or local benefit relate to the building or repairing of roads and other public or local works.

Everything that concerns this type of easement is determined by laws or special regulations.

Article 651

The law shall bind owners to various obligations towards one another, independently of any agreement.

Article 652

A part of these obligations is laid down in the laws.

The rest relate to walls and partition ditches, to cases in which a retaining wall is necessary, to ancient lights over neighbouring property, to roof drains and to rights of way.

SECTION I

Partition Walls and Ditches

Article 653

In towns and in the country, every wall serving two separate buildings up to the roof line reached by the lower building or between yards and gardens and even between enclosures in a field, shall be presumed to be a party-wall unless there is a document of title or a mark proving the contrary.

Article 654

It is an indication that a wall is not a party-wall when the top of the wall is straight and vertical on the facing of one side, but inclined on the other.

Likewise, when there is only on one side a coping or mouldings or stone brackets fixed when the wall was built.

In these cases the wall is presumed to belong exclusively to the owner of the side on which there are the drains or the mouldings and stone brackets.

Article 655

The repairs and rebuilding of a party-wall shall be a charge upon all those entitled, and in proportion to the right of each person.

Article 656

However, every joint owner of a party-wall may avoid a contribution to the repairs and re-building by giving up his right to the party-wall, provided that such party-wall does not support a building which belongs to him.

Article 657

Every owner may build against a party-wall, and insert beams or joints within 54 millimetres of the whole thickness of the wall, without prejudice to the right of his neighbour to reduce, with a chisel, the length of the beam to a half-way point in the wall, in case he himself wants to insert beams in the same place, or to build a chimney against it.

Article 658

Every joint owner may raise a party-wall; but he shall alone defray the cost and that of the maintenance of the superstructure above the common part; he shall further pay alone the cost of maintenance of the common part made necessary by the superstructure and shall also refund to the adjoining owner all his expenses made necessary by it.

Article 659

If the party-wall is not in a condition to support the superstructure, the person who wants to build upon it shall re-build the entire wall at his expense and any additional thickness required shall take land on his side of the property.

Article 660

The neighbour who has not contributed to the superstructure may acquire party-rights by paying half the cost thereof, as well as one half the value of one half of the land used for the additional thickness, if any. The cost of the superstructure shall be calculated at the date of acquisition having regard to the present condition of the superstructure.

Article 661

Every owner adjoining a wall is entitled to make it a party-wall, whether the whole or a part of it, by paying the owner of the wall one half of its cost or one half of the cost of the part of the wall which he wants to make a party-wall, as well

as one half of the value of the ground on which the wall is built. The cost of the wall shall be calculated at the date of the acquisition of party-wall rights having regard to the present condition of the wall.

Article 662

A neighbour shall not insert into a party-wall any object nor shall he build or rest upon it any structure without the consent of the other, or if the latter refuses, without settling, with the help of experts, the means necessary to ensure that the new structure is not detrimental to the rights of the other.

Article 663

Every person may compel his neighbour in town and other built-up areas to contribute towards the construction and repairs of a fence separating their houses, yards and gardens situated in the said towns and areas: the height of the fence shall be fixed in accordance with the special by-laws or in accordance with constant and recognised practices; and in the the absence of practices and by-laws a boundary wall between neighbours, which may be built or re-built in the future, shall be at least three metres high, including the coping, in towns of fifty thousand inhabitants or more, and two metres fifty centimetres elsewhere.

Article 664

When different floors or flats of a building belong to different owners and if the title-deeds do not regulate the way in which repairs and re-building are to be carried out, they shall be done as follows:

The main walls and the roof shall be paid for by all the owners in proportion to the floor or flat of which each is the owner.

Each owner of a floor or flat shall pay for the repairs to the part of the building which belongs to him exclusively. He shall also pay his proportion of the cost of construction or repairs of the building, over which he has joint control with the other co-owners, or over which he has the benefit of an easement. If he pays the total cost of the construction or repairs he shall have a right to recover the proportion of the cost due to him. Provided that only the construction and repairs which are appropriate to the character and position of the building shall be so recoverable.

Any intervention the terms of which regulate the operation and maintenance

of the building at the time when a person acquires a floor or a flat shall be binding upon him, subject to this right to ask the Court for an amendment of any clause therein which is oppressive.

Article 665

When a party-wall or a house is rebuilt, the easements, both active and passive, shall continue with regard to the new wall, or the new house, but cannot become more onerous, provided the re-building is completed before rights over the new buildings can be acquired by prescription.

Article 666

Every wall which separates plots of land shall be presumed to be a party-wall unless only one plot is fenced or unless there is a document of title or prescription or demarcation to the contrary. With regard to ditches, if the elevation or the inclination of the soil is on one side only, it shall raise a presumption that it is not jointly owned.

The ditch shall be presumed to belong exclusively to the owner of the side towards which the inclination exists.

Article 667

A party-wall shall be kept in repair at joint cost; but a neighbour may avoid payment by renouncing his right of joint ownership.

This option shall not be available if a ditch serves habitually for drainage.

Article 668

The neighbour whose plot of land borders on to a ditch or a hedge which is not jointly owned may not compel the owner of that ditch or hedge to grant him party rights.

The joint owner of a party hedge may destroy it up to the extent of his property, but if he does so he shall be bound to build a wall up to the limit of the hedge.

The same rule shall apply to the joint owner of a party ditch which only serves for a boundary.

Article 669

The produce of the hedge shall belong to the joint owners at the rate of one half each for as long as the joint ownership lasts.

Article 670

The trees which are found in a party hedge shall also be jointly owned, as the hedge is so owned. Likewise, the trees planted upon the demarcation line of the two plots shall be presumed jointly owned. When they die or when they are cut or uprooted, these trees shall be shared, whether they have fallen naturally or their fall was induced or whether they have been cut down. Expenses incurred in gathering their fruits shall be borne by both parties.

Every owner shall be entitled to demand the uprooting of jointly owned trees.

Article 671

It shall be prohibited to have trees, shrubs and bushes near the demarcation line with neighbouring property, except at a distance established by special regulations in force or by constant and recognised paractices; in default of such regulations and practices, such plants shall not be nearer to the dividing line than two metres for plantations, the height of which exceeds two metres, and one half of a metre for others.

Trees, shrubs and bushes of every kind may be planted wall-like, in a row, on either side of a dividing wall; there is no obligation to observe any special distance between them but they must not pass beyond the crest of the wall.

If the wall is not a party one, the owner alone shall have the right to prop up his plants thereon.

Article 672

A neighbour may demand that the trees, shrubs and bushes planted at a lesser distance than that provided by law shall be uprooted or the height reduced, as in the preceding article, unless there is a document of title to the contrary or the plants were set up by a previous owner of the two plots of land or there is prescription of twenty years.

If the trees die or are cut or uprooted, the neighbour may only replace them if he observes the distances imposed by law.

Article 673

The owner whose property is invaded by branches of trees, shrubs and bushes belonging to a neighbour, may compel him to cut them. The fruit fallen naturally from such branches shall belong to such owner.

If the invading plants are roots, thorns and twigs, he shall have the right to cut them down himself up to the separating line.

The right to cut down roots, thorns and twigs or to cause branches, shrubs and bushes to be cut shall not be lost by prescription.

SECTION II

The Distance and Intermediary works required for certain Structures

Article 674

The person who causes a well or a cesspool to be dug near a wall, party-wall or not;

The person who wants to build a chimney or hearth, forge, oven or furnace;

To erect a stable;

Or to put up against that wall a store for salt or to keep corrosive substances,

shall be bound to respect the distances laid down in the regulations and any special practices connected with such things, or to install such structures as are prescribed by the same regulations and practices, in order to avoid any detriment to his neighbour.

SECTION III

The Right to Lights over Neighbouring Property

Article 675

A neighbour may not, without the consent of the other neighbour, cut into a party-wall any window or opening whatever, even if the open space is covered with fixed bars

Article 676

The owner of a wall which is not a party-wall, immediately adjoining another property, may cut into the wall openings or windows covered with wire mesh or fixed glass.

These windows must have an iron grating, of which the mesh must have a maximum opening of not more than ten centimetres, and a frame of fixed glass.

Article 677

These windows or openings may not be made at less than two metres sixty centimetres above the floor or soil of the room which it is intended to light, if it is on the ground floor, and at one metre ninety centimetres above the floor for other floors.

Article 678

A person shall not be entitled to a direct view or a window-view nor to balconies or other similar projections over the property of his neighbour, whether that property is enclosed or not, unless there is a distance of one metre ninety centimetres between the wall from which they hang and the said property; provided that the property or the part of the property over which the view extends is not already subject to a right of way for the advantage of the property that has the benefit which prevents the building of structures.

Article 679

A person shall not be entitled, subject to the above reservations, to have side views or oblique views over the same property unless there is a distance of sixty centimetres therefrom.

Article 680

The distances referred to in the two preceding articles shall be measured from the outside face of the wall on which the opening is made, and if there are balconies, or other similar projections, from their outer line to the line separating the two properties.

SECTION IV

Eaves and Drains

Article 681

Every owner must ensure that his roof directs the flow of rain water on to his own land, or upon the public highway; he must not allow it to flow on to his neighbour's property.

SECTION V

The Right of Way

Article 682

1. The owner whose property is enclosed on all sides, and has no access or inadequate access on to the public highway, either for the private or for the business use of his property, shall be entitled to claim from his neighbours a sufficient right of way to ensure the full use of such property, subject to his paying adequate compensation for any damage that he may cause.

2. However, where the owner has been deprived of access to a public road, street or path in pursuance of an order converting a public road into private property, the person who has been granted such property shall be required to provide a right of way to the owner without demanding any compensation.

Article 683

A passage shall generally be obtained from the side of the property from which the access to the public highway is nearest. However, account shall also be taken of the need to reduce any damage to the neighbouring property as far as possible.

Article 684

If the non-access arises from a sale or an exchange or a division of land or from any other contract, the passage may only be demanded from such land as has been the subject of such transaction. However, if a sufficient passage cannot be provided from such land, paragraph 1 of article 682 shall apply.

Article 685

1. The position and the form of the right of way on the ground of non-access are determined by twenty years' continuous use. If at any time before that period the dominant tenement obtains access in some other way, the owner of the servient tenement shall be entitled to reclaim the right of way on condition that he is prepared to return such a proportion of any compensation received under paragraph 1 of article 682 as is reasonable in the circumstances.

2. The action for compensation as provided in paragraph 1 of article 682 may be barred by prescription; but the right of way shall continue in spite of the loss of such action.

CHAPTER III

EASEMENTS CREATED BY THE ACT OF MAN

SECTION I

Various Kinds of Easements which can be created over Property

Article 686

An owner may create upon his property or in favour of his property such easements as he deems proper, provided however that the easements created neither bind persons nor are they in favour of persons but apply only to property and are for the benefit of property, and provided also that the incidents are not contrary to public policy.

The use and the extent of easements thus established are governed by the conditions contained by the document of title which created them, and in the absence of such document by the rules stated hereafter.

Article 687

Easements are created either for the use of buildings or for the use of land.

Those of the former kind are called *urban*, whether the buildings to which they apply are situated in the town or in the country.

Those of the latter kind are called *rural*.

Article 688

Easements are either continuous or discontinuous. Continuous are the easements the use of which continues or could continue without human intervention; such are water mains, drains, ancient lights and other easements of that kind.

Discontinuous are those which need human intervention for their use; such are rights of way, drawing water, grazing, and others of a similar kind.

Article 689

Easements are apparent or non-apparent.

Apparent are the easements which are visible from the outside such as a door, a window or an aqueduct.

Non-apparent are those which are not visible from the outside, as for example, the restriction to build on land, or not to build above a certain height.

SECTION II

The Creation of Easements

Article 690

Continuous and apparent easements are acquired by a document of title or by possession for twenty years.

Article 691

Non-apparent continuous easements and discontinuous easements, apparent or non-apparent, may not be created except by a document of title.

Possession, even from time immemorial, is not sufficient for their creation.

Article 692

Proof that continuous and apparent easements were set up by the previous owner shall be accepted as title.

Article 693

Easements set up by the previous owner shall only be accepted if two contiguous

plots, at present divided, were in the ownership of the same owner and if the incidents which gave rise to the easement were created by him.

Article 694

If the owner of two plots over which or in respect of which there is some visible indication of an easement disposes of one of these plots without any reference in the agreement to the easement, it shall continue to exist, whether active or passive, either in favour of or a burden upon the property transferred.

Article 695

The document of title creating the easement, insofar as the easements which cannot be acquired by prescription are concerned, may not be replaced except by a document of recognition of the easement emanating from the owner of the servient tenement.

Article 696

When a person creates an easement, he shall be deemed to provide everything necessary for its use.

Thus the easement of drawing water from the fountain of another necessarily carries with it the right of way.

SECTION III

The Rights of the Owner of the Dominant Tenement

Article 697

The owner of the dominant tenement shall be entitled to do all that is necessary for the use and preservation of the easement.

Article 698

The cost of such work shall burden the owner of the dominant tenement and not the owner of the servient tenement, unless the document creating the easement provides to the contrary.

Article 699

1. If the owner of the servient tenement is bound by the document of his title to assume the cost of the work necessary for the use and preservation of the easement, he may always discharge this duty by returning the servient tenement to the owner of the dominant tenement.

2. The consent of the owner of the dominant tenement shall not be required unless, in returning the servient tenement, its owner has failed to show reasonable care in his obligations towards him.

Article 700

If the dominant tenement is divided the easement shall subsist in respect of each portion, provided that the burden upon the servient tenement has not increased as a result.

Thus, for example, in the case of a right of way, all co-owners shall be bound to make use of it through the same passage.

Article 701

The owner of the servient tenement shall do nothing which may tend to impair the use of the easement or to render it more inconvenient

Thus, he may not change the condition of the premises nor remove the easement to a different place from that in which it was originally located.

However, if the original location has become more onerous to the owner of the servient tenement or if it prevents him from carrying out improvements upon it, he may offer to the owner of the dominant tenement a place of equal convenience for the use of his right; such an offer may not be refused.

Article 702

On his part, the person entitled to an easement must exercise it in accordance with the terms of his title and shall not make any changes either to the servient or to the dominant tenement which are likely to worsen the condition of the former

SECTION IV

The Extinction of Easements

Article 703

The easement is extinguished when the condition of things is such that the easement can no longer be enjoyed.

Article 704

They revive if things are restored in such a way that they can be used, unless sufficent time has already elapsed to raise the presumption that the easement has been extinguished as laid down in article 707.

Article 705

All easements are extinguished when the dominant tenement and the servient tenement are acquired by the same owner.

Article 706

An easement is extinguished by non-user over a period of twenty years.

Article 707

The period of twenty years begins to run, according to the kind of easement, either from the day when its enjoyment ceased in the case of discontinuous easements, or from the day when an act contrary to it was done in the case of continuous easements.

Article 708

The way in which an easement is enjoyed is subject to prescription as much as the easement itself and in the same manner.

Article 709

If the dominant tenement is held by a fiduciary on behalf of two or more persons, the enjoyment of the easement by the fiduciary or by any person acting under the authority of such fiduciary shall be a bar to prescription.

Article 710

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

BOOK III

VARIOUS WAYS OF ACQUISITION OF OWNERSHIP
GENERAL PROVISIONS

Article 711

The ownership of property is acquired and transferred by succession, by gift inter vivos or by will and by the effect of obligations.

Article 712

Ownership may also be acquired by accession or incorporation and by prescription.

Article 713

Ownerless property shall belong to the Republic. (SI. 72/1976)

Article 714

There are things which have no owner and the enjoyment of which is common to all.

Regulations of public order establish the manner in which such things shall be enjoyed.

Article 715

The rights of hunting and fishing shall also be regulated by special laws.

Article 716

Treasure trove shall belong to the person in whose land it is found; if found in the land of another, one half shall belong to the finder, and the other half to the owner of the land.

Treasure trove consists of anything hidden or buried to which no one can claim a title and which is discovered by pure chance.

Article 717

The rights to jetsam and flotsam of whatever kind and the rights to plants or grass which grows on the sea-shore are also regulated by special laws.

Likewise for lost property the owner of which does not come forward to claim it.

TITLE I

SUCCESSION

CHAPTER I

THE OPENING OF SUCCESSION AND THE SEISIN OF HEIRS

Article 718

A succession shall open upon the death of a person. The succession shall open in the place where the deceased had his domicil.

Article 719

Repealed.

Civil Code (Amendment) Act. (Cap. 54 1971 Ed.)

Article 720

If several persons respectively entitled to succeed each other perish in the same accident without it being possible to establish who died first, the presumption of survivorship is determined by the circumstances of fact. In the absence of any evidence as to the time of death it shall be presumed that they all died at the same time.

Article 721 - 722

Repealed

Civil Code of Seychelles Act (Book II, Title, Cap. 33).

Article 723

The law regulates the order of succession amongst legitimate heirs, natural children and the surviving spouse; in default of such persons the property passes to the Republic.

Article 724

1. If the deceased leaves no immovable property, the property, rights and actions of the deceased vest as of right in the legitimate heirs, the natural children and the surviving spouse subject to the obligation of discharging all the debts of the succession.

2. The Republic shall be granted possession by the Court according to the forms hereafter provided.

3. When there are no legitimate heirs, the other persons mentioned in paragraph 1 who are entitled to succeed shall do so as of right.

*4. If any part of the succession consists of immovable property, the property shall not vest as of right in any of his heirs but in an executor who shall act as fiduciary. In respect of such fiduciary the rules laid down in Chapter VI of Title I, and Chapter V Section VII of Tile II, of Book III of this Code shall have application.

CHAPTER II

THE QUALIFICATIONS REQUIRED TO INHERIT

Article 725

A person must be in existence at the time of the opening of the succession in order to be eligible to inherit.

Thus, the following are ineligible to inherit --

1st A person not yet conceived

2nd A person who is not viable when born.

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*See also Decree No. 1 of 1976 (Subsidiary Legislation under this Chapter)

Article 726

Repealed.

Civil Code (Amendment) Act. (Cap. 54 1971 Ed.)

Article 727

The following persons shall not succeed to an estate as unworthy to do so —

1st, A person convicted of murder or of an attempt on the life of the deceased;

2nd, A person who has made an accusation against the deceased of a defamatory nature about a capital offence;

3rd, The heir of full age who, having information about the unlawful homicde of the deceased, fails to report it to the authorities.

Article 728

The failure to report to the authorities shall not deprive the ascendants and descendants of the killer, nor his relatives by marriage of the same degree, nor his or her spouse, nor his brothers or sisters, nor his uncles and aunts or nephews and nieces, of their rights.

Article 729

The heir who is excluded from the succession by reason of his unworthiness shall be bound to return all the fruits and income which he has enjoyed since the opening of the succession.

Article 730

The children of an unworthy person who come to the succession in their own right and not through the aid of representation shall not be excluded by reason of the offence of their father; but the latter shall in no circumstance be entitled to the succession or to the usufruct which the law accords to the fathers and mothers with regard to the property of their child or

CHAPTER III

THE VARIOUS ORDERS OF SUCCESSION

SECTION I

General Provisions

Article 731

Succession shall devolve upon the children and other descendants of the deceased, his ascendants, his collateral relatives and upon the surviving spouse in accordance with the order and rules hereinafter established.

Article 732

The law, in regulating the order of succession, does not consider either the nature or the origin of the property.

Article 733

1. Every succession accruing to ascendants or collaterals, whether legitimate or natural, shall be divided into two equal parts; one for the relatives in the paternal line, the other for the relatives in the maternal line.

Relatives of the half-blood shall not be excluded by the relatives of the full blood except as provided in article 752. Relatives of the full blood shall take in both lines.

2. Subject to the provisions of article 753, property shall only accrue from one line to the other when there are neither ascendants nor collaterals in one of the two lines.

Article 734

After this first division is made, there shall be no further division amongst the various branches; but one half of the property accruing to each line shall belong to the heir or the heirs who are nearest to the deceased, subject to representation as hereinafter stated.

Article 735

The proximity of relationship shall be established by the number of generations [illegible]

Article 736

A sequence of degrees shall form a line: *direct line* is the sequence of degrees between persons who descend one from the other; *collateral line* is the sequence of degrees between persons who do not descend one from the other, but who can trace their descent to a common ancestor.

Two direct lines are distinguished, the direct descending line and the direct ascending line.

The former links the ancestor with his descendants; the latter links a person with his ascendants.

Article 737

In the direct line, there are as many degrees as there are generations between the persons; thus, the son is, in relation to his father, in the first degree; the grandson, in the second; and vice versa the father and the grandfather with regard to sons and grandsons.

Article 738

In the collateral line, the degrees rank by generations from one of the parents up to, but not including, the common ancestor and from the latter to the other parent.

Thus, two brothers are related in the second degree; the uncle and the nephew are related in the third degree; first cousins in the fourth degree, and so on.

SECTION II

Representation

Article 739

Representation is a legal fiction the effect of which is to put the representatives in the place, degree and rights of the person represented.

Article 740

Representation takes place without limit in the direct descending line.

It is admitted in all cases, whether the children of the deceased shall be

descendants of a predeceased child, or whether all the children of the deceased having died before him, their descendants find themselves in relation to one another in equal or unequal degrees.

Article 741

Representation shall not take place for the benefit of ascendants; the nearest in each of the two lines always excludes the more remote.

Article 742

In the collateral line, representation is admitted in favour of the children and the descendants of brothers and sisters of the deceased, whether they come to the succession concurrently with the uncles or aunts or whether, all the brothers and sisters of the deceased having died before, the succession devolves upon their descendants in equal or unequal degrees.

Article 743

In all the cases in which representation is admitted, division takes place *per stirpes:* if the same stock has produced several branches, the subdivision is made also *per stirpes* within each branch and the members of the same branch share amongst themselves equally.

Article 744

Living persons cannot be represented; only dead persons can.

A person who has renounced the succession of another person may still represent that person.

The law does not distinguish, for the purposes of representation, between legitimate and natural descent.

SECTION III

Succession Devolving upon Descendants

Article 745

Children or their descendants succeed to their father and mother, grandfathers and grandmothers or other ascendants without distinction of sex or primogeniture, even if they are born of different marriages.

They take in equal shares, and per head, if they are all of the first degree and inherit in their own right; they take *per stirpes* when all or some of them inherit by representation.

SECTION IV

Succession Devolving upon Ascendants

Article 746

If the deceased has not left any issue, neither brother nor sister, nor any of their descendants, the succession shall be divided into halves between the ascendants of the paternal line and the ascendants of the maternal line.

The ascendant who is nearest in degree shall take the half accruing to his line to the exclusion of the others.

Ascendants of the same degree inherit per *capita*

Article 747

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 748

When the father and mother of a person who died without leaving issue survive, and if the deceased has left brothers and sisters or their descendants, the succession shall be divided in two equal portions of which one only accrues to the father and mother who shall take equal shares.

The other half shall belong to the brothers, sisters and their descendants, as explained in Section V of this Chapter.

Article 749

In the case of a deceased person without issue who leaves brothers, sisters, or their descendants, if the father or mother has predeceased him, the portion which would have accrued to him in accordance with the preceding article is added on to the half reverted to the brothers, sisters or their representatives, as explained in Section V of this Chapter.

SECTION V

Collateral Succession

Article 750

If the father and mother of a person have predeceased a person who dies without ssue, his brothers, sisters or their descendatns shall be called to the succession to the exclusion of ascendants and other collaterals.

They succeed either in their own right or by representation, as provided in Section II of this Chapter.

Article 751

If the father and mother of a deceased person without issue have survived him, his brothers and sisters, or their representatives, shall only inherit one half of the succession. If the father or the mother alone has survived, they shall inherit the three quarters.

Article 752

The division of the half or the three quarters accrued to the brothers or sisters in terms of the preceding article shall be on the basis of equal shares if they are all born of the same marriage; if they are born of different marriages the division shall be one half between the two lines, paternal and maternal, of the deceased; those of the full blood shall share in both lines and those of the half-blood each in his line only; if brothers and sisters exist from one side only, they shall succeed to the whole to the exclusion of all other relatives of the other line.

Article 753

In the absence of brothers and sisters or their descendants, and in the absence of ascendants in one of the lines, the succession shall devolve as a whole upon the ascendents of the other line; in the absence of ascendents in either line the succession shall devolve on the basis of half and half upon the nearest relative of each line.

Collaterals of the same degree shall share per capita.

Article 754

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 755

The relatives beyond the twelfth degree shall not inherit.

In the absence of relatives of one line capable of inheriting the relatives of the other line shall take the whole.

Articles 750 to 755 shall also apply to the collateral succession of natural children.

CHAPTER IV

IRREGULAR SUCCESSION

SECTION 1

The Rights of Natural Children to the Property of their Father and Mother, and the Succession of Natural Children who have died without Issue

Article 756

Natural descent shall only give rise to rights of succession to the extent that a natural child has been legally recognised, or whose descent has been proved otherwise than simply by an affiliation order.

Article 757

The natural child shall have, in general, and in respect of his father and mother and other ascendants as well as his brothers and sisters and other collaterals, the same rights as the legitimate child.

Article 758

Conversely, the father and mother and other ascendants of the natural child, as well as his brothers and sisters and other collaterals, shall succeed if the child had been legitimate.

Article 759

Natural children whose father or mother at the time of their conception was married to another person, shall not exclude the latter from his or her rights to the succession of the deceased, as laid down in articles 765 and 766 below:

Provided, in that case, that the surviving spouse shall be entitled to all the personal chattels of the deceased and his share in the remainder of the succession shall be reduced to one half. The same rule shall apply if the deceased spouse has left, instead of natural children, a natural father and mother, or one of them.

The distribution of the succession shall be made in accordance with the order of succession applicable on the day of the death, disregarding any waivers.

Article 760

Natural children, whose father or mother, at the time of their conception, was married to another person, shall be entitled to succeed together with any legitimate children of that marriage; in that case, however, the share of each such natural child shall be one half of what it would have been if all the children of the deceased had been legitimate.

The part of the share of each such natural child, which does not accrue to him by reason of the foregoing provisions of this article, shall accrue to the legitimate children of the marriage which is affected by the adultery; it shall be divided amongst the legitimate children of that marriage in proportion to their hereditary parts.

Article 761

If the surviving spouse, or the children of his or her marriage, demand that in any distribution of property they be preferred in the award of certain specific items of the succession, the natural children referred to in the two preceding articles shall not be entitled to refuse it. Provided that such surviving spouse or his or her children are prepared to make a cash adjustment if necessary. The same choice of items of the succession shall extend to the home which the claimant or claimants were using for carnal residence.

The surviving spouse may waive his right when he comes to the succession as a result of article 767.

Article 762

In the cases of articles 759 and 760, the father or the mother may exclude natural children from any personal participation in the eventual liquidation or division procedure, by making, before death, a sufficient settlement of property upon them with the express stipulation that this is a settlement by anticipation of their rights of succession.

Article 763

The settlement shall take the form of a gift. It shall consist of a transfer of property to, and an acceptance thereof by, the donee or his legal representative.

Such settlement, until acceptance, may be revoked or modified by the donor, subject to the same form. If the donee does not want or is unable to receive the income from the property, it shall be used for his account and in his name.

The settlement becomes effective at the opening of the succession, unless it has been previously accepted by the donee.

Article 763 - 1

If, at the opening of the succession, the valuation having been effected as in the case of the return, it is established that the value of the property settled is in excess of the donee's rights of succession, or if, conversely, that value is less than what the donee is entitled to, the property shall be reduced or supplemented, as the case may be; but in any case, the other heirs, or the natural child, shall not make any claim with regard to any income collected before the death, whether that income collected was in excess of or below the proper figure.

If a supplement is payable it shall be provided in the form of cash or in kind, at the discretion of the other heirs.

Article 764

If a representative has acted for the natural child, in respect of the settlement by anticipation, he shall be bound towards such child by all the obligations of an agent.

Article 765

If, at the opening of the succession, there is neither surviving spouse nor issue of the latter, or if the spouse or the issue or both renounce their rights, the natural

of the representative shall cease and the settlement shall be treated as advancement of the future succession.

SECTION II

The Rights of the Surviving Spouse

Article 766

When the deceased spouse leaves no descendants, ascendants or, in the collateral line, any heirs within the third degree inclusively of relationship, or any descendants of nephews and nieces, his succession shall devolve upon the surviving spouse. Provided that in this case article 759, in respect of the rights of the surviving spouse when there are natural children, as provided by that article, shall have application.

Article 767

1. In case the deceased spouse leaves any descendants or ascendants or in the collateral line, any heirs within the third degree inclusively of relationship, or any descendants of nephews or nieces, the surviving spouse shall be entitled to all the personal chattels of the deceased as defined by law, and to one half share of the remainder of the succession. Provided that nothing in this article shall be deemed to affect in any way the provisions of the law relating to dispositions by gift *inter vivos* or by will.

2. For the purposes of this article –

"personal chattels" means —

(a) motor cars and accessories (not used for business purposes),

(b) motor boats, yachts and dinghies (not used for business purposes) with their equipment;

(c) garden tools and effects;

(d) domestic animals,

(e) plate and plated articles,

(f) household linen, curtains, carpets and rugs,

(g) china, glass, wines, watches, clocks and ornaments;

(h) pictues and prints;

(i) books;

(j) furniture;

(k) refrigerators, freezers, cookers, washing machines, spin driers, air-conditioners, fans, sewing machines, lamps, and other household electrical appliances;

(l) radios, television sets, record payers, tape recorders, video recorders or reproducers, hi-fi and stereo sets, music centres and other similar electrical items;

(m) typewriters, cameras and photographic equipment, optical, musical and scientific instruments and apparatus;

(n) wines, liquors and consumable stores;

(o) other articles of houschold or personal use;

(p) jewellery;

(q) clothing; or

(r) where the estate includes money not exceeding R.10,000, that money:

Provided that "personal chattels" does not include - -

(i) anything used at the date of death of the deceased spouse for business purposes;

(ii) money, except money under subparagraph (r); or

(iii) securities for money. (2/14/1981)

3. The President may by regulations amend the definition of personal chattels in paragraph 7. (2/14/1981)

Article 758

Repealed

Civil Code of Seychelles Act, Fourth Schedule, Cap. 33.

SECTION III

The Rights of the Republic (S.I. 72/1976.

Article 769

In the absence of heirs, the succession escheats to the Republic. The Curator of Vacant Estates shall be sent into possession. If one year has elapsed from the date of the vesting order without any claim being made by an heir, such vacant estate shall be deemed to be held by the Curator on behalf of the Republic.

The claims of by heirs or third parties against the Curator, as well as the rights of the Republic to acquire by prescription, shall be subject to the rules of prescription established by this Code.

Article 770 - 773

Repealed.

Succession and Wills Act. (Cap. 81 1971 Ed.)

CHAPTER V

THE ACCEPTANCE AND REPUDIATION OF SUCCESSION

SECTION I

Acceptance

Article 774

1. Where a succession consists of movable property only, it may be accepted purely and simply or subject to the benefit of inventory. Where the succession includes both movable and immovable property it shall not be necessary to accept it, and an executor shall be appointed as provided by this Code. However, if the succession consists of movable property only, the heirs and legatees may, by agreement, elect to appoint an executor, in which case the distribution shall proceed as if the succession included immovables as well as movables; however, the Court may also appoint an executor on the application of any interested party.

2. Where succession consists of immovable property only or both movable and

immovable property shall devolve upon an executor who shall act as a fiduciary, as laid down in article 724 of this Code.

Article 775

No one shall be bound to accept a succession of movable property.

Article 776

A succession of movable property devolving upon minors or interdicted persons shall only be validly accepted if in accordance with the provisions of the Title *Minority, Guardianship and Emancipation.*

Article 777

The effect of acceptance goes back to the day of the opening of the succession.

Article 778

Acceptance may be express or implied: it is express when a person assumes the title or capacity of heir in an authentic or private document; it is implied when the heir does an act which necessarily assumes his intention to accept and which he would not be entitled to do, except in his capacity as heir.

Article 779

Acts of pure preservation or supervision and provisional administration shall not be acts of acceptance of an inheritance, if done by a person who has not assumed either the title or the capacity of an heir.

Article 780

The gift, sale or assignment of rights of succession to movable property, made by one of the co-heirs, either to a stranger or to all his co-heirs or to some of them, shall amount to an acceptance of the succession on his part.

The same shall be the effect of —

1st, A renunciation, even if gratuitous, made by one of the heirs for the benefit of one or several of his co-heirs;

2nd, The renunciation which he makes for value for the benefit of all his co-heirs without discretion.

Article 781

When a succession of movable property devolves upon a person who dies without repudiating it, or without having expressly or impliedly accepted it, his heirs may accept or repudiate it on his account.

Article 782

If the heirs are not in agreement as to whether to accept or repudiate the succession, it shall be accepted subject to the benefit of inventory.

Article 783

A person of full age shall only repudiate his acceptance, express or implied, of a succession, if such acceptance resulted from a fraud committed upon him; he shall not disclaim on the ground of lesion, except in the case in which the succession is taken away or reduced by more than one half as a result of the discovery of an unknown will at the moment of the acceptance.

SECTION II

The Renunciation of Succession to Movable Property

Article 784

1. A renunciation of a succession shall not be presumed; it may only be made at the Registry of the Supreme Court upon a special register kept for that purpose.

2. The renunciation may be made by an agent but in that case express reference to such renunciation must be made in the power of attorney; otherwise a renunciation by an agent shall be null.

Article 785

The heir who renounces shall be deemed never to have been heir.

Article 786

The share of the person who renounces accrues to his co-heirs; if he is the only heir, the succession devolves on the next degree.

Article 787

A person shall not inherit by representation from an heir who has renounced the succession; if the person who renounces is the only heir of his degree, or if all his co-heirs also renounce, the children shall succeed in their own right *per capita*.

Article 788

The creditors of the person who renounces to the detriment of their rights, may be authorised by the Court to accept the succession on behalf of their debtor and in his stead and place.

In that case, the renunciation shall only be annulled in favour of the creditors, and to the extent of their claims : it shall not be annulled for the benefit of the heir who has renounced.

Article 789

1. The right to accept or repudiate a succession shall be barred by the lapse of a period of twenty years as laid down in article 2262 and shall be subject to all the provisions of the Title Prescription.

2. The time shall run concurrently for the heirs of all degrees.

Article 790

So long as the right to accept has not been acquired by prescription against the heirs who have renounced, they shall be entitled to accept the succession, if it has not yet been accepted by other heirs; this, however, without prejudice to the rights which third parties may have acquired over the property of the inheritance, either through prescription or through validly executed transactions made with the Curator of the vacant estate.

Article 791

It shall not be permitted, even by an anteruptial marriage settlement, to renounce the right to the succession of a living person, nor to alienate any rights to which a person may have to that succession.

Article 792

Heirs who have taken or concealed any items of the succession, shall be precluded from the right to renounce it, they shall remain heirs purely and simply notwithstanding their renunciation and may not claim any part of the items taken or concealed.

SECTION III

The Benefit of Inventory, its Effects and the Obligations of the Heirs entitled to it

Article 793

The declaration by an heir, that he agrees to assume the capacity of heir, subject to the benefit of inventory, shall be made at the Registry of the Supreme Court: It shall be entered into the register provided for acts of renunciation.

Article 794

The declaration shall only have effect if preceded or followed by an accurate and precise inventory of the property belonging to the succession, in accordance with the forms prescribed by law and within the time-limit hereafter established.

Article 795

The heir shall draw up the inventory within three months, starting from the day of the opening of the succession.

He shall have a further period of forty days to reflect upon his acceptance or renunciation, these to run as from the day of the expiry of the three months allowed for the inventory, or from the day of the closing of the inventory, if completed before the end of the three months.

Article 796

1. If, however, there are to be found in the succession items liable to perish, or items which are expensive to preserve, the heir may, in his capacity of a person able to inherit, and without any presumption of acceptance on his part being raised, request the Court to authorise him to proceed to the sale of such items.

2. That sale shall be made in accordance with the provisions of articles 1686, 1687 and 1688 of this Code relating to licitation.

Article 797

During the time-limit allowed for the drawing up of an inventory and for reflection the heir shall not be compelled to assume that capacity, nor can

judgment be obtained against him in that capacity, if he renounces, whether before or on the expiry of the time-limit; the costs which he reasonably incurs until that time shall fall upon the succession.

Article 798

After the expiry of the above time-limits, the heir, if proceedings have been initiated against him, may request a further time-limit which the Court dealing with the dispute shall grant or refuse according to the circumstances.

Article 799

The costs of proceedings, in the case of the preceding article, shall fall upon the succession, provided that the heir can establish either that he was not aware of the death or that the time-limit was insufficient because of the situation of the property or by reason of the ensuing disputes; if he fails to establish either of the two, the costs shall fall upon himself personally.

Article 800

The heir shall nevertheless, retain after the expiry of the time-limits allowed by article 795 and even after those allowed by the Court in pursuance of article 798, the capacity to draw up an inventory and to become heir with benefit of inventory if he has not otherwise done any act as heir, or if a final judgment has not been pronounced which condemns him in his capacity as heir purely and simply.

Article 801

The heir who has been guilty of concealment, or who has knowingly and in bad faith omitted to include in the inventory any items of the succession, shall lose the benefit of inventory.

Article 802

The effect of the benefit of inventory shall be to give the heir the advantage

1st: Of not becoming liable for the debts of the succession, except to the extent of the value of the property that he has received, and even of being discharged from the payment of the debts by giving up all the property of the succession to the creditors and legatees.

2nd: Of keeping his personal property separate from that of the succession

and of retaining the right to claim agains the succession the payment of debts owed to him.

Article 803

The heir with benefit of inventory shall administer the property of the succession and shall be bound to account for his administration to the creditors and legatees.

His personal property may only be seized after notice has been served upon him to present his account, and if he has failed in respect of this obligation.

When the account has been audited, his property may only be seized to the extent of the balance found due by him.

Article 804

He shall be responsible for the negligence in respect of the administration with which he is entrusted.

Article 805

He shall only be allowed to sell movable property belonging to the inheritance as provided by articles 1686, 1687, and 1688 of this Code relating to licitation.

Article 806

Repealed.

Civil Code of Seychelles Act, Fourth Schedule Cap. 33.

Article 807

He shall be bound, if the creditors and other interested parties demand it, to provide good and sufficient security up to the value of the movable property included in the inventory.

Failure to provide that security shall entail the sale of the movable property not yet sold, and the proceeds thereof shall be deposited so that they may be used for the discharge of the debts of the succession.

Article 808

If there are creditors who have given notice of their claims the heir with benefit of inventory shall only pay in the order and manner ordered by the Court.

If there are no such creditors, he shall pay the creditors and legatees as they come forward.

Article 809

Creditors who have not given notice of their claims, and who come forward after the account has been audited and after payment of the balance due, shall only be entitled to recover against the legatees.

In both cases, the right to recover is subject to prescription of five years starting from the day when the account was audited and the balance paid.

Article 810

The costs of the seals, if any were put on, of the inventory, and of the account shall fall upon the succession.

SECTION IV

Vacant Successions

Article 811

If after the expiry of the time-limit for drawing up the inventory and for reflection, no one claims the succession, and if there are no known heirs, or if the known heirs have renounced their rght, the succession shall be presumed vacant.

Article 812

1. The Court shall nominate a Curator at the request of an interested party or on the application of the Attorney-General.

2. The rights and duties of the Curator and the administration of vacant estates shall be regulated by the Curatelle Act, Cap. 55 or other laws enacted from time to time.

Article 813

The Curator of a vacant estate shall be bound, first of all, to establish the condition of the estate in an inventory; he shall exercise and enforce any rights, he shall answer any claims brought against the estate, he shall administer the estate, subject to depositing with the Official Receiver for the purpose of preserving the

same, any sums credited to the estate as well as any moneys representing the proceeds of the sale of movable or immovable property, and he shall also be subject to rendering accounts to any person having a lawful interest thereto.

Article 814

The provisions of Section III of this Chapter, relating to the form of inventory, the manner of its administration and the accounts to be rendered on the part of the heir entitled to the succession, shall equally apply to the Curator of Vacant Estates; provided that they are not contrary to the Curatelle Act Cap. 55 as indicated in article 812 of this Code.

CHAPTER VI

CO-OWNERSHIP AND RETURNS

SECTION I

The Consequences of Co-ownership

Article 815

Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.

Article 816

Co-ownership inter vivos arises when two or more persons acquire or become entitled to property on their own account jointly, or when a party conveys property upon more than one person jointly. Co-ownership arises mortis causa when property devolves, whether on intestacy or by will, upon more than one person jointly.

Article 817

1. When property, whether movable or immovable, is transferred to two or more persons the right of co-ownership shall be converted into a claim to a like share in the proceeds of sale of any such property.

2. Paragraph 1 of this article regulates the exercise of the right of co-ownership. It does not affect the rights of co-ownership itself.

Article 818

If the property subject to co-ownership is immovable, the rights of the co-owners shall be held on their behalf by a fiduciary through whom only they may act.

Article 819

In the case of immovable property held in co-ownership, unless all the co-owners agree to postpone the sale, such property shall be sold. If the co-owners do not agree to a private sale, or if one of them is subject to an incapacity such as minority or interdiction or is absent from Seychelles and is not represented therein by a duly appointed agent, the property shall be sold at a public auction. In this respect, articles 1686, 1687 and 1688 of this Code relating to licitation shall have application.

Nevertheless, even if one or more of the co-owners is subject to an incapcity as aforesaid, or is absent from Seychelles, the property may be sold otherwise than by a public auction with the permission of the Court.

Article 820

A fiduciary, who may be a third party or one of the co-owners, shall be appointed by agreement of all the co-owners. If by reason of disagreement or absence or for any other cause all the co-owners are unable to agree upon a choice of a fiduciary, he shall be appointed by the Court.* The Court may also appoint a fiduciary on the application of an interested party.

Article 821

1. In the case of immovable property held in co-ownership, if the fiduciary or a co-owner decides to proceed to licitation, the court may, upon the application of any interested party, order the postponement of the sale for a fixed period, which may subsequently be renewed. In that case, the Court shall instruct the fiduciary or the executor, as the case may be, who shall be bound by such instructions.

The Court may make such order on two alternative grounds –

1st That greater hardship would be caused by refusing to grant the order staying the proceedings in licitation than by granting it;

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*See Time for Filing Act of 1982 – Schedule – Legislation under the Ordinance

2nd That the property may be conveniently and profitably divided in kind amongst those entitled. In that case the Court, in order to effect such partition, shall decide the manner of partition and the allocation of the divided property amongst the persons entitled.

2. In respect of this article, the procedure laid down in the Immovable Property (Judicial Sales) Act, Cap. 94, or any law amending or replacing it, shall be applicable.

Article 822

If the property subject to co-ownership is movable, it shall not be necessary for a fiduciary to be appointed. The co-owners may, however, if they so wish, agree upon the appointment of a fiduciary, who may be either one of them or a third party. If by reason of disagreement or absence or for any other cause all the co-owners are unable to agree upon the appointment of a fiduciary, he shall be appointed by the Court on application of any co-owner. The Court may also appoint a fiduciary on the application of an interested party.

When a fiduciary has been appointed under this article, he shall hold the rights of all the co-owners who may only act through him.

Article 823

1. A fiduciary who is not appointed by the Court shall be appointed by a duly authenticated notarial document which shall contain the terms of his appointment. If the co-owners so decide, they may appoint more than one fiduciary but no more than three in all. They shall act jointly or severally as the notarial document provides. If there is no provision all fiduciaries shall be deemed to act jointly. In the absence of a provision in the notarial document, fiduciaries may appoint others to replace those who are no longer in a position to act.

2. When this Code refers to a fiduciary, that term shall also include a legal person where such person has been so appointed.

SECTION II

The Fiduciary Fund

Article 824

Irrespective of whether movable property is held in co-ownership or not, the co-owners thereof may entrust the property to a fiduciary to be held by

him for some particular purpose or purposes. In such case, the property held by the fiduciary is called a *fiduciary fund*. It shall also require for its validity an authenticated notarial document which shall set out precisely the terms which shall bind the fiduciary. If the articles of this Chapter of this Code make no special provision, the rules of agency, as laid down in articles 2003 to 2010 of this Code, shall have application. More than one but not more than three fiduciaries either by name or by title may be appointed under this article.

The transfer of the ownership of movable property to such fund shall not affect the possession of such property as provided by the rules relating to possession of movables contained in this Code.

SECTION III

The Functions and Powers of the Fiduciary

Article 825

The functions of the fiduciary shall be to hold, manage and administer the property, honestly, diligently and in a business-like manner as if he were the sole owner of the property. He shall be bound to follow such instructions, directions and guidelines as are given to him in the document of appointment by the unanimous agreement, duly authenticated, of all the co-owners or by the Court. He shall have full powers to sell the property as directed by all the co-owners, and if he receives no such directions, to sell in accordance with the provisions contained in articles 819, 1686 and 1687 of this Code and also in accordance with the Immovable Property (Judicial Sales) Act, Cap. 94 as amended from time to time.

Article 826

Where a fiduciary wishes to proceed to the sale of property, he shall communicate to all those entitled a formal notice of the intended sale. The sale shall not take place until six months after such notice has been issued. However, the Court, upon application by a party may, on reasonable grounds, grant permission to sell the property earlier or later than the period of six months or without notice.

Article 827

A fiduciary shall be under a duty to render fair and regular account of his management to each time as his functions are terminated. He shall be liable to

any damage or loss sustained by the property. However, he may discharge such liability by showing that he has not deviated from the standard of reasonable care. He may also discharge that liability by showing that he has delegated his management to a competent business firm, bank or other reputable financial institution, or by taking out insurance cover up to the full extent of the assets included in his administration. Any agreement or stipulation limiting or excluding the duties or liabilities referred to in this article shall be null.

A fiduciary shall be entitled to his reasonable expenses and any fees which may have been agreed upon or allowed by the Court.

Article 828

If the consent of a person to be appointed fiduciary has not been obtained, or if he dies or is imprisoned for a crime or becomes insolvent or subject to some incapacity or resigns or refuses to act prior to entering into his functions, or if any of the aforementioned circumstances occur after he has assumed the office of fiduciary, the co-owners may agree to appoint another. Failing such agreement the Court, at the request of an interested party, shall make such appointment as it considers fit and proper.

Article 829

The Court shall have wide powers, at the instance of an interested party or the Attorney-General, to make such orders relating to the appointment or dismissal of a fiduciary or to his management as it thinks fit, notwithstanding any term to the contrary in the instrument of appointment of such fiduciary.

Article 830

Where a fiduciary has given a discharge in respect of any asset, debt or obligation, or sold or otherwise disposed of property or any interest therein or part thereof or done any other act in relation to the property which he holds as fiduciary, in accordance with the terms of the instrument of appointment or with any order of the Court or with the provisions of the law, such discharge, sale, disposal or act shall have the same effect, in all respects, as if it had been given, made or done by all the co-owners whatever their status or capacity.

He shall not be personally liable in respect of any act done or obligation incurred in the proper exercise of his functions.

Article 831

A fiduciary shall be entitled to full indemnity from the co-owners for acts properly done. Such co-owners shall be jointly and severally liable to the fiduciary for any loss which he incurs in the proper discharge of his duties: Provided that an heir or legatee shall not be liable to indemnify the fiduciary in respect of any such loss to a greater extent than the value of any benefit or benefits the heir or legatee may have received under the succession.

Article 832

A person or body acting as fiduciary shall not be personally liable to tax or succession duties in regard to the properties or other assets which he holds in that capacity. Neither shall such properties or assets be seized by any creditor of the fiduciary in satisfaction of any claim that he may have against such fiduciary. Except that the tax or succession duty exemption, as provided by this article, shall not be available to a fiduciary who has not deposited with the revenue authorities a written declaration under oath listing the persons beneficially entitled to any property that the fiduciary holds and the proportion of each person's interest.

Article 833

When an executor is appointed by will or upon intestacy, the provisions of Chapter V Section VIII of Title II of Book III of this Code relating to the appointment of executors shall also be applicable in addition to the provisions of this Chapter.

Article 834

In the case of the sale of a share by a co-owner to a third party, the other co-owners or any of them shall be entitled, within a period of ten years, to buy that share back by offering to such third party the value of the share at the time of such offer and the payment of all costs and dues of the transfer.

Article 835

In the case of a partition, the inequality of lots in kind may be made up by a payment either by way of annual payment or in cash in order to equalise the lots.

Article 836 - 842

Repealed.

Civil Code of Seychelles Act, Fourth Schedule, Cap. 33.

SECTION IV

Returns

Article 843

1. Every heir, even an heir with benefit of inventory, legitimate or natural, coming to the succession, shall return to his co-heirs all that he has received from the deceased by gift inter vivos, directly or indirectly; he shall only retain the gifts made to him by the deceased if they were made in express terms over and above the donee's share as heir or without the obligation of return.

2. The legacies made to an heir shall be presumed to have been made over and above the heir's share, unless the testator has expressed a contrary intention, in which case the legatee shall only claim his legacy, subject to a reduction equal to the value of the gift. A return in the terms of this paragraph shall be made only in the case of particular legacies. It shall not only apply to universal legacies.

Article 844

The gifts made over and above the donee's share, or without an obligation of return, shall not be retained, nor shall any legacies be claimed by the heir, except to the extent of the disposable portion; the excess shall be subject to a reduction.

Article 845

The heir who renounces the succession may, nevertheless, retain a gift inter vivos, or claim a legacy made to him, to the extent of the disposable portion.

Article 846

The donee, who was not heir presumptive when the gift was made, but who, at the opening of the succession, had become entitled to inherit, shall likewise return the gift unless the donor has dispensed with this obligation.

Article 847

The gifts and legacies made to the son of the person who has become entitled to inherit at the opening of the succession shall be deemed to have been made without obligation to return.

The father coming to the succession of the donor shall not be compelled to return them.

Article 848

Similarly, the son coming, in his own right, to the succession of the donor shall not be compelled to return the gift made to his father, even if he has accepted the succession of the latter: but if the son only comes by representation, he shall return all that has been given to his father, even in the case in which he has repudiated his succession.

Article 849

The gifts and legacies made to a spouse of a person entitled to inherit shall be deemed to have been made without obligation to return.

If gifts and legacies are made jointly to the two spouses of whom only one is entitled to inherit, he shall return one half; if the gifts are made to the spouse entitled to inherit, he shall return the whole.

Article 850

The return shall only be made to the succession of the donor.

Article 851

The return shall be due in respect of what has been used to set up in life or business one of the co-heirs and for the payment of his debts.

Article 852

The costs of food, maintenance, education, apprenticeship, the ordinary cost of fitting one out, those relting to the wedding or to usual gifts, shall not be returned.

Article 853

The same shall apply to the profits which the heir may have derived from the contracts which he made with the deceased, if these contracts conferred no indirect advantage when they were made.

Article 854

Similarly, no return shall take place in respect of partnerships entered into without fraud between the deceased and one of his heirs, if the terms had been settled by an authentic document.

Article 855

Property which perished by an inevitable accident and without the fault of the donee shall not be subject to a return.

However, if that property has been replaced through the payment of an indemnity received by reason of the loss, the donee shall return it to the extent that the indemnity has been used for its replacement.

If the indemnity was not used for that purpose, it shall itself be subject to a return.

Article 856

The profits and interests from things subject to a return shall only be due as from the day of the opening of the succession.

Article 857

A return shall only be due by a co-heir to his co-heir; it is not due to legatee nor to the creditors of the succession.

Article 858

The return shall be effected subject to a reduction equal to the gift. It shall not be demanded in kind unless the contrary has been stipulated in the document setting up the gift.

In cases of such stipulation, any transfers and any real rights upon the gift created by the donee shall be extinguished by the effect of the return, unless the donor had given his consent to these transactions.

Article 859

The heir shall also be at liberty to return in kind the property given, if it still belongs to him, on condition that that property is free from any encumbrances or occupation which were not in existence when the gift was made.

Article 860

A return shall be due of the value of the property given at the time of such return, but in the condition in which the gift was made.

If the property has been altered before the return is called, account shall be

taken of its value at the time of such alienation, and if other property replaced the property alienated, of the value of such other property when the return is called.

The whole, subject to a contrary stipulation in the document setting up the gift.

If, as a result of such stipulation, the value of the property subject to a return is smaller than the value of the property estimated in accordance with the rules of valuation provided by article 922 below, that difference shall be deemed to be an indirect advantage granted to the donee over and above his share.

Article 861

When the return is made in kind and the condition of the things returned has improved by an act of the donee, this shall be taken into account to the extent of the increase in value at the time of the return or of the alienation.

The necessary expenses incurred by the donee for the preservation of the property, even if they did not improve it, shall also be taken into account.

Article 862

The co-heir who returns the property in kind may retain possession of the property given until the actual refund of the sums owed to him for expenses and improvements.

Article 863

The donee, on his side, shall, in the case of a return in kind, take into account the dilapidations and deteriorations which have reduced the value of the property given and which are due to his act or fault.

Article 864

A gift made by way of advance to an heir entitled to a reserve, who accepts the succession, shall be deducted from his share of the reserve, and if need be, from the disposable portion, unless there is agreement to the contrary in the document setting up the gift.

The excess shall be subject to a reduction.

The gift made by way of advance to an heir entitled to a reserve, who renounces the succession, shall be treated as a gift over and above that heir's share.

Article 865

A gift made over and above a share shall be deducted from the disposable portion. The excess shall be subject to reduction.

Article 866

Gifts made to a person entitled to succeed, or to such persons jointly, which exceed this disposable portion may be retained as a whole by the donees, whatever the excess, subject to the compensation of the co-heirs in money.

Article 867

When the legacies given to a person entitled to succeed, or to such persons jointly, relate to an item of property or several items making up a set, the valueof which exceeds the disposable portion, the legatee or legatees may, whatever the excess, claim the whole of the gift subject to the compensation of the co-heirs in money. The same rule shall apply if the gift relates to movables which were jointly used by the deceased and the legatee.

Article 868

When the reduction is not demanded in kind, the donee or legatee shall be debtor in a sum equivalent to the excess of the gift which is to be reduced. This sum is estimated in accordance with the value of the objects of the gifts or legacies when the return is due, but in the condition in which they were when the gift was made.

It shall be payable when the return is due to be made, unless the co-heirs otherwise agree. However, when the gift has as its object an item of property which may be subject to preferential allocation, the Court may grant time for payment, having regard to present interests, if they were not taken into account by the donor. The grant of such time shall in no circumstances defer payment of the sum beyond ten years from the opening of the succession. But in that case, if the economic circumstances increase or reduce the value of the property by more than a quarter since the return was called, the sums remaining outstanding shall be increased or be reduced in the same proportion; subject to any agreement of the parties that the original sum outstanding shall remain fixed.

In the absence of agreement to the contrary, the sum shall bear interest at the current rate established by law. The advantages resulting from the grant of time or the method of payment accepted shall not amount to a gift.

In the case of a sale of the whole of an item of property given or bequeathed, the sums outstanding shall become immediately payable; in the case of part sales, the proceeds thereof shall be paid to the co-heirs and deducted from the sums which are still outstanding.

Article 869

The return of a sum of money shall be equal to its amount. Nevertheless, if it has been used to acquire property, the return due shall be of the value of that property in accordance with the provisions of article 860.

SECTION V

Payment of Debts

Article 870

Co-heirs shall contribute to the payment of debts and charges of the succession, each in proportion to his share. If an executor is in charge of the succession he shall pay all the debts of the succession and distribute to each person his portion minus his share of the deductions made.

Article 871

A legatee under universal title shall also contribute in proportion to what he takes; but the particular legatee shall not be liable for the debts and charges except, however, for money secured by mortgage upon the property bequeathed.

Article 872

When immovable property belonging to a succession is subject to annuities secured by a mortgage, the executor shall ensure the payment of such annuities as part of the administration of the estate.

If the sale of the property is postponed, and the parties do not agree as to how the annuities are to be secured, the Court shall be requested to give instructions as provided under article 821 of this Code.

Article 873

If the succession consists of movables and no executor is appointed, the heirs shall be personally liable for the debts and charges of the succession, [illegible]

their right to recover the appropriate share from either the co-heirs or the residuary legatees or legatees by universal title.

Article 874 - 876

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 877

Execution against the deceased shall be levied against the executor, or if there is no executor, against the heirs personally. Execution shall not be levied against the executor or the heirs before eight days have elapsed after due notification.

Article 878

Where an executor does not act, the creditors may in all cases demand against any other creditor the separation of the movable property of the deceased from that of the heir.

Article 879

This right shall not be exercised, however, if there is novation of the claim against the deceased through the acceptance of the heir as debtor.

Article 880

That right is subject to prescription, in relation to movable property, after five years.

Article 881

The creditors of the heirs shall not demand the separation of the movable property against the creditors of the succession.

Article 882

The creditors of a co-partitioner of movable property may, for the purposes of preventing any fraud in the partition to the detriment of their rights, object to the partition being made in their absence; they may intervene at their expense, but they shall not be entitled to re-open a partition of movables which has been completed unless it took place in their absence and in spite of any objection they may have lodged.

SECTION VI

Articles 883 - 886

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

SECTION VII

Rescission in matters of Partition of Movables

Article 887

A partition of movables may be rescinded for duress or fraud or lesion.

The simple omission of an item of the succession shall not give rise to an action for recission but only to an action for a supplement.

Article 888

The action for rescission shall be admitted against any transaction the object of which is to partition movable property amongst the co-heirs, even if it took the form of sale, exchange or compromise or some other form.

But after the partition, or after the arrangement in lieu thereof has been carried out, the action for rescission shall no longer be admissible against a compromise concluded in respect of the substantial difficulties settled by that compromise, even if these difficulties had not been the subject of legal proceedings.

Article 889

The action shall not lie against a sale of rights of succession made without fraud to one of the co-heirs at his risk and peril by the other co-heirs or by one of them.

Article 890

In order to ascertain whether there is lesion, of more than one half, the value of the property shall be calculated according to its condition at the time of the sale, as set out in article 1678 of the Code.

Article 891

The defendant in an action for rescission of a partition of movable property may request the Court to stay the proceedings, and thus prevent a new partition by offering and supplying to the plaintiff a supplement from his share in the succession, either in money or in kind.

Article 892

A co-heir who has alienated the whole or part of his share of movable property allocated to him shall not bring an action for rescission for fraud or duress if this alienation is subsequent to the discovery of the fraud or the discontinuance of the duress.

TITLE II

GIFTS INTER VIVOS AND WILLS

CHAPTER I

GENERAL PROVISIONS

Article 893

A person may not make a disposition of property gratuitously otherwise than by a gift inter vivos or by will, and in the forms hereinafter established.

Article 894

A gift inter vivos is an act whereby the donor irrevocably divests himself of the ownership of the thing in favour of a donee who accepts it.

Article 895

A will is an act whereby a testator makes a disposition of the whole or part of his property to take effect upon his death, with power to revoke.

Article 896

Substitutions shall be prohibited.

Any disposition of property whereby the donee, the grantee or the testator is

are bound to preserve the property and pass it on to a third party shall be null, even in respect of the grant to the donee, the appointed heir or the legatee; except as provided in Chapter VI of this Title.

Article 897

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 898

Any provision whereby a third party shall be entitled to receive the gift, inheritance or legacy in the case in which the donee, the appointed heir or the legatee do not receive it, shall not be regarded as a substitution and shall be valid.

Article 899

The same shall apply to the disposition inter vivos or by will whereby the usufruct is given to one person and the bare ownership to another.

Article 900

1. In every disposition inter vivos or by will, impossible conditions or conditions which are against the law or public policy shall be deemed unwritten.

2. Terms which tend to make property given by gift or will inalienable shall be null unless they can be justified by a serious and legitimate interest. Even in that case, the donee or the legatee may be judicially authorised to dispose of the property if that interest no longer exists, or if another, more important, interest makes disposal imperative. Any term whereby the grantor deprives the grantee of the gift or legacy if the latter requests the Court to cancel the term shall be null. The provisions of this paragraph shall be without prejudice to any gifts or legacies granted to legal persons or even to physical persons under a duty to set up a legal person.

CHAPTER II

THE CAPACITY TO GIVE OR TO RECEIVE BY GIFT INTER VIVOS OR BY WILL

Article 901

Only a person of sound mind may make a gift inter vivos or a will

Article 902

Everyone may make a gift or receive one either by gift inter vivos or by will, except persons who are declared by law to be incapable thereof.

Article 903

A minor under sixteen years shall not dispose of any property except in accordance with Chapter IX of this Title.

Article 904

A minor who has reached his sixteenth birthday and who has not been emancipated shall only be allowed to dispose of his property by will and to the extent of one half of the property which the law permits person of full age to dispose of.

Article 905

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

Article 906

1. To be capable to receiving a gift *inter vivos* it shall be sufficient to have been conceived at the time when the gift was made.

To be capable of receiving by will it shall be sufficient to have been conceived at the death of the testator. Nevertheless, the gift or will shall have no effect if the child was not born viable.

2. The rule laid down in paragraph 1 of this article shall be subject to the exceptions of articles 1048, 1049 and 1082-1083 of this Code.

3. If a gift *inter vivos* or by will is made in the form of a grant of property to a legal person, and if a condition subsequent is attached to the gift to the effect that, if a certain event occurs, the property shall pass to a third party who was not in existence when the gift was made, the condition subsequent shall cease to have effect after ninety-nine years. If the condition is realised, the third party shall be deemed to derive his title not from the original grantor but from the last person

Article 907

A minor, even if he attains the age of sixteen years, shall not dispose of his property, even by will, in favour of his guardian.

A minor who has reached full age or who has been emancipated shall not be able to dispose either by a gift *inter vivos* or by will, in favour of a person who has been his guardian, if the final account of the guardianship is not already rendered and audited; except that the rule in the two aforementioned cases shall not apply to the ascendants who are or may have been the guardians of those minors.

Article 908

Natural children shall not receive anything by way of gift *inter vivos* or by will from their father or mother beyond what is granted to them by the aforementioned articles 759 and 760 if the grantor was married to another person at the time of their conception.

Nevertheless, the action for a reduction, shall only be brought by the spouse, or the issue of that marriage, as the case may be, but only after the opening of the succession.

Article 908 -1

The provisions of the preceding article shall also apply even if the descent of the natural children, referred to above, is not legally established, as long as the evidence provided by the grant itself shows that it was the reason for making it.

Article 908 - 2

In dispositions inter vivos or by will, the expressions "son", "grandson", "children" and "grandchildren" without other addition or designation, shall be understood to cover both legitimate and natural descent unless the contrary may be presumed by the grant or the circumstances.

Article 909

Doctors, surgeons, health officers or pharmacists who may have treated a person during the illness of which he died, shall not benefit from any dispositions *inter vivos* which were made in their favour during the course of the illness. Subject to the following exceptions —

1st, The special disposition by way of remuneration, having regard to the means of the grantor and the services rendered;

2nd, The general disposition, in the case of a family link up to the fourth degree inclusively, provided however that the deceased has no heirs in the direct line: unless the person in whose favour the disposition was made happens himself to be one of those heirs.

The same rules shall apply to ministers of religion.

Article 910

Disposition *inter vivos* or by will in favour of homes for the poor or in favour of charities or bodies of public utility shall generally be valid unless the law provides that certain bodies may only accept after previous authorisation.

Article 911

A disposition in favour of a person subject to some incapacity shall be null, whether disguised in the form of an onerous contract or effected through an intermediary.

The father and mother, the children and the descendants, as well as the spouse, of a person subject to an incapacity shall be deemed to be intermediaries.

Article 912

Repealed.

Civil Code (Amendment) Act, (Cap. 54, 1971 Ed.)

CHAPTER III

THE DISPOSABLE PORTION AND REDUCTION

SECTION I

The Portion of Disposable Property

Article 913

Gift *inter vivos* or by will shall not exceed one half of the property of the donor, if he leaves at death one child, one third, if he leaves two children, one fourth if

he leaves three or more children; there shall be no distinction between legitimate and natural children except as provided by article 915 - 1.

Nothing in this Article shall be construed as preventing a person from making a gift *inter vivos* or by will in the terms of article 1048 of this Code.

Article 914

In the preceding article the term 'children' shall include descendants of all degrees; nevertheless they shall only be taken into account in the place of the child whom they represent in the succession of the donor.

Article 915 - 1

When a natural child whose father or mother was married at the time of conception to another person, becomes entitled to the succession of his parent along with the legitimate children of that marriage, he shall be taken into account in the calculation of the disposable portion; but his part of the reserve shall only be equal to one half of what he would have receive if all the children, including the natural child, had been legitimate.

The fraction of his part of the reserve, which represents the reduction, shall accrue exclusively to the children of the marriage which has been affected by the adultery; it shall be divided in equal shares.

Article 915 - 2

1. Gifts inter vivos or will shall not exceed one half of the property if, in the absence of a child, the deceased leaves one or more ascendants in each of the paternal or maternal lines, and three-quarters if he leaves ascendants in one line only.

The property thus reserved in favour of ascendants shall accrue to them in the order in which the law entitles them to inherit; they shall alone be entitled to this reserve in all cases in which sharing with the collaterals would not give them the portion of the property fixed by the reserve.

2. When the natural child referred to in article 915-1 becomes also entitled to the succession of his parent or if he becomes so entitled along with other children as a result of a case which is not affected by the adultery, the disposable portion [illegible] affect any person other than the spouse protected shall be reduced under article 915

Article 915-3

If a natural child is in need and his share is reduced through the application of articles 759 and 760, he may waive his share in favour of the heirs in return for maintenance.

The heirs may, however, avoid the payment of maintenance by granting to the child part of the estate equal to the value of his share under articles 759 and 760.

Article 916

In the absence of any ascendants and desendants, gifts *inter vivos* or by will may exhaust the entire property.

Article 917

If the disposition inter vivos or by will relates to a usufruct or to a life annuity the value of which exceeds the disposable portion, the heirs in whose favour the law establishes a reserve shall have the option either to execute that disposition or to give up the ownership of the disposable portion.

Article 918

The value of full ownershp of the property alienated, whether subject to a life annuity or absolutely or subject to a usufruct in favour of one of the persons entitled to take under the succession in the direct line, shall be set against the disposable portion; the excess, if any, shall be returned to the estate. This calculation and return shall not be demanded by other persons entitled to take under the succession in the direct line who have agreed to the alienation, and in no circumstances by those entitled in the collateral line.

Article 919

1. The disposable portion may be given in its entirety or in part, either by a gift *inter vivos* or by will, to the children or other persons entitled to succeed to the donor without being subject to return by the donee or legatee coming to the succession, provided that, with regard to the gifts, the disposition was made with the express intention to set the gift aside for the donee in addition to his share.

2. The declaration that the gift or the legacy is over and above the donee's share or disposable from it may be made in the act containing the disposition or subsequently in the form of dispositions *inter vivos* or by will.

SECTION II

The Reduction of Gifts and Legacies

Article 920

Dispositions either *inter vivos* or by will which exceed the disposable portion shall be liable to be reduced to the size of that portion at the opening of the succession.

Article 921

The reduction of dispositions *inter vivos* shall only be demanded by those in whose favour the law has provided the reserve, by their heirs or assigns; donees, legatees and creditors of the deceased shall not demand it nor shall they benefit from it.

Article 922

The reduction shall be made by taking into account the total asset value of all the property existing at the death of the donor or the testator.

After a deduction of the debts, the assets given by way of a gift inter vivos according to their condition when the gift was made and their value at the opening of the succession are added together. If the property has been alienated, its value at the time of the alienation and, if there is subrogation, the value of the converted property is taken into account when the succession opens.

The disposable portion of which the deceased was entitled to dispose shall be calculated on the basis of all these assets having regard to the class of heirs whom the deceased has left.

Article 923

Gifts *inter vivos* shall only be affected by a reduction if the value of all the property included in the testamentary dispositions is insufficient, if the gifts inter vivos must be reduced, the process of reduction shall start from the last gift following a backward order to the earliest gift.

Article 924

The heir entitled to a reserve who receives gifts inter vivos and who renounces his

portion, and who accepts the succession, shall contribute to the reduction in value as stated in article 866; if his right to the reserve is so affected, he shall take less.

He may claim all the items bequeathed if the part subject to the reduction does not exceed his share of the reserve.

Article 925

When the value of gifts *inter vivos* exceeds or is equal to the disposable portion all the testamentary dispositions shall lapse.

Article 926

When the testamentary dispositions exceeds either the disposable portion or the part of that portion which would remain after deducting the vlue of the gifts *inter vivos*, the reduction shall be made *pro rata* without distinguishing between universal and particular legacies.

Article 927

Nevertheless, in all cases in which the testator has expressly declared that a particular legacy shall take priority over the others that priority shall be observed; and the legacy to which it applies shall only be reduced to the extent that the value of the other legacies does not come up to the legal reserve.

Article 928

The donee shall restore the income from any item which exceeds the disposable portion, counting from the day of the death of the donor, if the demand for a reduction is made within the year; if not, as from the day of the demand.

Article 929

Real rights created upon the property by the donee shall be extinguished by the effect of the reduction. Nevertheless, these rights shall survive if the donor has agreed to them in the document of their creation or by a subsequent document. The donee, in that case, shall be answerable for the consequent reduction in the value of that property.

Article 930

1. The action for reduction or vindication may be brought by the heirs or their

third parties holding immovable property forming part of the gifts and alienated by the donees in the same manner and order as against the donees themselves, provided that the property of the donees has previously been seized. That action shall be brought following the order of the dates of the alienations, begining with the most recent one.

2. If the donor has agreed to the alienation with the conent of all the heirs entitled to the reserve who are born and alive at the time of such alienation, the action may no longer be brought against third parties holding the property.

CHAPTER IV

GIFTS INTER VIVOS

SECTION I

The Form of Gifts *inter vivos*

Article 931

1. All documents creating a gift *inter vivos* shall be drawn up by notaries in the ordinary form of contracts; they shall keep the original, under penalty of nullity. This rule is of public policy and may not be excluded by the agreement of the parties.

2. A gift may also be made by delivery, in which case no document need be drawn up. Proof of the intention to make a gift which has already been deliverred shall be subject to the general law of evidence.

3 The provisions of this Chapter shall not affect immovable property which has been registered under the Land Registration Act Cap. 107. Gifts of such property shall be subject to the provisions of the law relating to registration of land.

Article 932

A gift *inter vivos* shall not be binding upon the donor and shall have no effect until accepted in express terms.

The acceptance may be made in the lifetime of the donor by a subsequent authentic document an original copy of which shall be kept by the notary, but the gift shall only have effect with regard to the donor as from the day that he has notice of the document of acceptance.

Article 933

If the donee is of full age, the acceptance shall be made by him or in his name by the person holding his power of attorney conferring power to accept the gift made or general powers to accept gifts which may be made.

This power of attorney shall be effected by notarial deed in accordance with law; and a certified copy shall be annexed to the original document of the gift or to the original of the acceptance if made by a separate document.

Article 934

Repealed.

Status of Married Women Act Schedule I. Cap. 231.

Article 935

A gift made to a non-emancipated minor or to a interdicted person shall be accepted by his guardian in accordance with article 463 of the Title *Minority, Guardianship and Emancipation.*

Nevertheless, the father and mother of the non-emancipated minor, or the other ascendants, even during the lifetime of the father and mother, may accept on his behalf although they are not guardians of the minor.

Article 936

A deaf-mute who knows how to write may accept in person or through an authorised proxy.

If he does not know how to write the acceptance shall be made by a guardian appointed for that purpose in accordance with the rules laid down in the Title *Minority, Guardianship and Emancipation.*

Article 937

Gifts in favour of hospices for the poor or in favour of charities or bodies of public utility shall be accepted by the administrations of such authorities or bodies unless the law provides that the acceptance requires prior authorisation.

Article 938

A gift duly accepted shall be perfect by the mere consent of the parties, and the ownership of things given shall be transferred to the donee without any delivery being required.

Article 939

When the gift is of property capable of being mortgaged the documents containing the gift and the acceptance, as well as the notification of the acceptance if made by a separate document, shall be registered and transcribed at the Office of the Registrar-General.

When such property is subject to registration under the Land Registration Act Cap. 107, or any law amending or replacing that Act, the gift shall not have effect until duly registered thereunder.

Article 940

When a gift is made to minors, interdicted persons or to public bodies, the transcription shall be made at the instance of guardians or of administrators of such bodies.

Article 941

The failure to effect the transcription may be relied upon by all persons having a lawful interest, with the exception, however, of those responsible for causing the transcription to be done or their assigns, and the donor.

Article 942

Minors and interdicted persons shall not have a claim for restitution in the absence of acceptance or transcription of the gift; but in such a case they shall have a remedy against their guardians, without however being able to obtain restitution, even if the said guardians should be insolvent.

Article 943

A gift *inter vivos* shall only include the present property of the donor; if it includes future property it shall be null to that extent.

Article 944

A gift *inter vivos* may be subject to a condition the fulfilment of which depends entirely upon the will of the donor shall be null.

Article 945

It shall also be null if it is made subject to a condition that the donee should discharge debts or liabilities other than those existing at the time of the gift or inserted either in the document of the gift or in the estimate annexed to it.

Artice 946

When the donor reserves to himself the liberty to dispose of an item included in the gif, or of a fixed sum out of the property given and he dies without having made such a disposition, the said item or the said sum shall belong to the heirs of the donor, notwithstanding any provisions and stipulations to the contrary.

Article 947

The four preceding articles shall not apply to gifts referred to in Chapters VIII and IX of this Title.

Article 948

Every document of a gift of movable property shall only be valid for the items for which an estimate, signed by the donor and the donee or by those who accept on their behalf, is annexed to the original document of the gift.

Article 949

The donor shall be at liberty to reserve for his benefit or to dispose for the benefit of another of the enjoyment or of the usufruct of the movable or immovable property given.

Article 950

When a gift of movable property is made with a reservation of a usufruct the donee shall be bound at the expiry of the usufruct to take the items given which are found in kind in such condition as they happen to be; and he shall have a right of action against the donor or his heirs for any missing items up to the limit of their value as stated in the estimate.

Article 951

The donor may stipulate for the right to the return of the items given on the ground of the earlier death of the donee alone or on the ground of the earlier death of the donee and his descendants.

That right shall be stipulated for the benefit of the donor alone.

Article 952

The effect of the right of return shall be to cancel all transfers of the property given and to cause that property to revert to the donor free from all liabilities and mortgages.

SECTION II

Exceptions of the Rule of Irrevocability of Gifts *inter vivos*

Article 953

A gift *inter vivos* may only be revoked by reason of the failure to fulfil the conditions subject to which it was made, by reason of ingratitude, or by reason of the subsequent birth of children.

Article 954

In the case of a revocation by reason of the failure to fulfil the conditions, the property shall revert to the donor free from all encumbrances and mortgages created by the donee; and the donor shall have, against third party holders of immovable property given, all the rights which he would have had against the donee himself.

Article 955

A gift inter vivos shall not be revoked by reason of ingratitude except in the following cases.

1st If the donee has made an attempt on the life of the donor;

2nd If he has been guilty of cruelty towards him or of criminal acts or serious wrongs;

3rd If he has refused to maintain him.

Article 956

[illegible] shall not occur, except only [illegible] fulfil the conditions or [illegible] ingratitude.

Article 957

The demand to revoke by reason of ingratitude shall be subject to the general rule of prescription. Such prescripton shall run as from the day of the wrong of which the donor accuses the donee or as from the day on which the wrong comes to the donor's notice.

The revocation shall not be demanded by the donor against the heirs of the donee, nor by the heirs of the donor against the donee, unless, in latter case, the action had been brought by the donor or the donor died in the course of the five years since the wrong.

Article 958

The revocation by reason of ingratitude shall be without prejudice either to the transfers made by the donee or the mortgages and other real charges which the latter may have created upon the object of the gifts provided that these rights were granted or created prior to the inscription, in the margin of the transcription prescribed in article 939 of this Code, of the demand of revocation at the Office of the Registrar-General.

In case of revocation the donee shall be condemned to restore the value of the objects alienated, having regard to the time of the demand and the income therefrom as from the day of such demand.

Article 959

Gifts in favour of marriage shall not be recoverable by reason of ingratitutde.

Article 960

All gifts *inter vivos* made by persons who had not children or descendants living when the gift was made, whatever the value of these gifts, and whatever the reason for making them, even if they were mutual or made in consideration of services rendered, even those made in favour of marriage by persons other than the ascendants to the spouses or by the spouses to each other, shall be revoked *ipso jure* by the subsequent birth of a legitimate child of the donor, even if the child is born after the death of the donor, or by the legitimation of a natural child by a subsequent marriage, provided the child is born since the gift was made.

Article 961

This revocation shall have effect even if the child of the donor had been conceived when the gift was made.

Article 962

The gift shall likewise remain revoked, even if the donee had taken possession of the gift given and if it had not been taken away by the donor since the subsequent birth of the child; nevertheless the donee shall not be bound to restore the income he received, whatever its nature, until the day on which he is notified by a summons or other lawful notice of the birth of the child or of its legitimation by a subsequent marriage; and this, even if the demand to retake possession of the gift is subsequent to that notification.

Article 963

The property included in the gift so revoked *ipso facto* shall revert to the donor free from all encumbrances and mortgages created by the donee.

Article 964

Gifts so revoked shall not revive or recover their effects anew either by the death of the child of the donor or by any document of confirmation; and if the donor wants to give the same property to the same donee, whether before or after the death of the child whose birth revoked the gift, he may only do so by a new disposition.

Article 965

Any term or agreement whereby the donor waives his right to revoke the gift by reason of the subsequent birth of a child shall be deemed null and shall have no effect.

Article 966

The donee, his heirs or assigns or other holders of gifts shall not plead prescription to validate the gift revoked by reason of the subsequent birth of a child, except after possession of twenty years which shall only run from the day of the birth of the last child of the donor, even if born after the death of the donor; and this right is not subject to any interruptions of prescription imposed by law.

CHAPTER V

Dispositions by will

SECTION I

General Rules relating to the Forms of Wills

Article 967

Every person may dispose of his property by will, either by appointing an heir, or by granting legacies, or in any other appropriate form of declaration of intention.

Article 968

Two or more persons shall not make a will by the same document, either for the benefit of a third party or by way of reciprocal and mutual dispositions.

Article 969

A will may be a holograph or authentic or secret.

Article 970

A holograph will shall only be valid if it is wholly written, dated and signed by the hand of the testator; it shall be subject to no other form.

Article 971

1. An authentic will shall be received by a single notary. However, if the testator is unable, either from ignorance or physical incapacity, to sign his or her name, the presence of a second notary or of two witnesses able to sign their names shall be necessary both for the reading and for the signing of the will.

2. The testator shall be bound to make his mark on the will and the notary and witnesses or the two notaries, as the case may be, shall vouch that the mark is well and truly the mark of the testator affixed in their presence. If the testator is unable to make a mark, the aforementioned notary and witnesses or two notaries shall vouch for his physical incapacity.

Article 972

If a will is to be received in accordance with the provisions of article 971 the testator shall dictate it. The notary, or one of the notaries if two are present, shall write it himself, or he shall cause it to be written, by hand or typewriter. The will shall then be read back to the testator. Express mention shall be made in the will that the above forms were complied with.

Article 973

This will shall be signed by the testator in the presence of the notaries or of the witnesses and the notary; if the testator declares that he cannot or does not know how to sign, the declaration shall be expressly mentioned in the will as well as the cause which prevented him from signing.

Article 974

The will shall be signed by the notaries or by the witnesses and by the notary, as the case may be.

Article 975

Neither the legatees, under whatever title they may take, nor their relatives by blood or marriage up to the fourth degree inclusive, nor the clerks of notaries who draw up the will shall act as witnesses of an authentic will.

Article 976

If the testator wants to make a secret will, the paper on which the dispositions will be written, or the paper which will be used as cover, if any, shall be closed, stuck and sealed.

The testator shall deliver it thus closed, stuck and sealed to the notary and two witnesses, or he shall cause it to be closed, stuck and sealed in their presence and he shall declare that the contents of the paper consist of his will signed by him and written by him or by another, and he shall affirm, in the latter case, that he has personally checked the contents of the will before signing the declaration of willingness and the signature thereof.

which serves as cover, and it shall bear the date and the indication of the place where it was drawn up, as well as a mention of all the above forms; that memorandum shall be signed by the testator as well as by the notary and the witnesses.

All the above shall be done consecutively and without attending to other business.

If the testator, through an impediment subsequent to the signing of the will, cannot sign the memorandum of confirmation, mention shall be made of the statement to that effect and of the reason which he has given therefor.

Article 977

If the testator does not know how to sign, or if he was unable to do so when he caused his dispositions to be written, the procedure shall be the same as in the preceding article; in addition to this, mention shall be made in the memorandum of confirmation that the testator has declared that he does not know how to write, or that he was unable to do so when he caused his dispositions to be written.

Article 978

Persons who do not know how or are unable to read shall not make dispositions in the form of a secret will.

Article 979

If the testator is unable to speak but can write he may make a secret will on the express condition that the will is signed by him and written by him or another, that he shall deliver it to the notary and to the witnesses, and that at the top of the memorandum of confirmation he will write, in their presence that the paper which he is delivering is his will and he will sign it. Mention shall be made in the memorandum of confirmation that the testator has written and signed these words in the presence of the notary and the witnesses, and everything laid down in article 976 shall be further complied with insofar as it is not inconsistent with this article.

In all cases provided by this article a [illegible] invalidate the [illegible] will, in respect of which the lawful provisions [illegible] which will be [illegible] shall be valid [illegible] will [illegible] will.

Article 980

The witnesses summoned to be present when a will is drawn up shall be persons of full age, capable of signing, and not subject to any incapacity. They may be either sex, but husband and wife shall not be witnesses to the same will.

SECTION II

Particular Rules relating to the Forms of certain Wills

Article 981

Wills of army, navy and air force personnel, and of persons employed by the forces may be received either by a superior officer or an army doctor of a corresponding rank in the presence of two witnesses; or they may be received by two administrative clerks or officers; or by one of these clerks or officers in the presence of two witnesses; or, finally, in an isolated unit, by the officer commanding that unit assisted by two witnesses, if in that unit there is no superior officer or army doctor.

The will of the officer commanding an isolated unit may be received by the officer who is second in command according to service regulations.

The capacity to act as witness in the conditions provided by the present article shall extend to captured prisoners of war.

Article 982

The wills referred to in the preceding article may, further, if the testator is ill or wounded, be received in hospitals or first aid units, as defined by the regulations of the armed forces, by the doctor in charge, of whatever rank, assisted by an administrative officer.

In the absence of such administrative officer, the presence of two witnesses shall be necessary.

Article 983

In either case, the will shall be dated and signed, and shall state the place, year, month and day in which it was made.

Mention shall be made of the reason why the [illegible]

testator, a certified copy of the will shall be drawn up, which will replace the second original copy; that certified copy shall be signed by the witnesses and by the participating officers. Mention shall be made of the reasons which have prevented the drawing up of the second original copy.

As soon as communications are re-established, and within the shortest possible time-limit, the two original copies, or the original and the certified copy of the will, shall be dispatched, separately and by different messengers, under closed cover and sealed, to the headquarters for the purpose of being deposited with the notary indicated by the testator or, in the absence of such an indication, with the Registrar of the Supreme Court.

Article 984

A will made in the form laid down above shall be null six months after the testator comes to a place where he is at liberty to use the ordinary forms, unless he is once again placed, before the expiry of that period, in the same circumstances which permitted him to make the aforementioned will.

Article 985

Wills made in a place with which all communications have been interrupted on acount of the plague or other contagious disease may be made before a judicial or Government officer in the presence of two witnesses.

This provision shall apply to persons who are infected by these disease as well as to those who are in infected areas, even if they are not, in fact, ill.

Article 986

Wills made on an island on which there are no notaries may be received by a judicial or Government officer or by the manager or assistant manager of that island, provided that it is impossible or dangerous to communicate with a larger centre of population in which notarial offices are available. The impossibility or danger of communication shall be recorded on the will by the persons who receive it.

Article 987

[illegible]

is, or six months after he moves to a place with which there is no interruption of communications.

Article 988

In the course of a voyage by sea, whether the ship is in port or not, if the ship is abroad, the will may be received in the presence of two witnesses by the captain or the purser or another officer.

Likewise, in the course of a journey by air, the will may be received by a captain, pilot or other officer in the presence of two witnesses.

The will shall indicate the circumstances in which it has been received.

Article 989

On board a ship of the naval forces, a will shall be received in the manner laid down by the ship's regulations, in the absence of which the rules of the previous article shall be followed.

Article 990

In all cases the wills mentioned in the above articles shall be drawn in duplicate originals, unless this is impossible in the circumstances. In that case, mention of the reason why a single document only was drawn up shall be made therein.

Article 991

At the first port of call of a ship or aircraft where a Seychelles Consular Authority exists, one of the two originals of the will, if this requirement has been complied with, shall be delivered in a sealed cover to an officer in charge who shall transmit it through the proper channels to the Registrar of the Supreme Court.

Article 992

[illegible]

Article 994

Wills made on board a ship or an aircraft shall only be valid if the testator dies in the course of the journey, or within six months after the end of such journey. If the testator disembarks in a place where there are no means of making a will, his will shall remain valid until six months after he returns to a place where he is in a position to make an ordinary will.

Article 995

Dispositions inserted in a will, made in the course of a voyage by sea or air, for the benefit of officers or employees serving on the vessel or aircraft, shall be null except where such persons are related to the testator. This rule shall apply, even if the testator has made a holograph will.

Article 996

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 997

Wills included in the aforementioned articles of this Section shall be read back to the testator and shall be signed by those who receive them and by the witnesses.

Mention shall be made thereon that the will has been read back to the testator.

Article 998

If the testator declares that he is physically unable to sign or that he does not know how to do so, mention shall be made of that declaration as well as of the reasons which prevented him from signing.

In the cases in which two witnesses must be present, the will shall be signed by at least one of them, and mention shall be made of the reason why the other did not sign.

Article 999

[illegible]

Article 1000

Wills made abroad shall only be executed in respect of property situated in Seychelles if declared and registered at the Office of the Registrar-General.

Article 1001

The forms to which various types of will are subject, as provided in this Section and in the preceding Section shall be complied with under penalty of nullity.

SECTION III

The Appointment of Heirs and Legacies in General

Article 1002

Dispositions by will are universal or by universal title or by particular title.

Each of these dispositions, whether made under the designation of the appointment of heirs or under the designation of legacies, shall have effect in accordance with the rules hereafter established for universal legacies, for legacies by universal title and for particular legacies.

SECTION IV

Universal Legacies

Article 1003

A universal legacy is a disposition by will whereby the testator gives to one or several persons in the capacity of residuary legatees the whole of the property which he will leave at his death.

Article 1004 - 1006

Repealed.

Civil Code of Seychelles Act, Fourth Sch. Sub. Leg. 33.

Article 1007

[illegible]

report of the presentation and of the opening and of the condition of the will and he shall order that it is deposited with a notary appointed by him.

If the will is a secret one, the presentation, opening, description and deposit shall be made in the same manner; but the opening shall only take place in the presence of one of the two notaries and of the witnesses who signed the memorandum of confirmation, if they are available and may conveniently attend.

Article 1008

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 1009

1. Provided that the succession consists entirely of movable property, the residuary legatee who takes along with an heir for whom the law reserves a portion of the property shall be liable for all the debts and other charges of the succession of the testator in a personal capacity to the extent of his share, and he shall be bound to pay all the legacies, except in the case of reduction, as explained in articles 926 and 927.

2. If the succession consists of immovables only or of both movable and immovable property, neither the residuary legatee nor the heir shall have seisin of the succession, which shall devolve upon an executor who shall as fiduciary be responsible for executing the will as provided in Chapter VI of Title I, and Chapter V Section VII of Title II, of Book III of this Code.

SECTION V

Legacies by Universal Title

Article 1016

Legacies by universal title are those whereby the testator bequeaths an aliquot part of the property of which the law permits him to dispose, such as one half, one third or all the testator's property or all his immovable property, or all his movable property, or a fraction of the property of the immovable or movable property.

All other legacies shall be legacies by particular title.

Article 1011

When the succession consists of movable property only, legatees by universal title shall be seised of the right to the property bequeathed in the condition in which it is, together with all its necessary accessories, and with the right to obtain payment and to prosecute all claims resulting from the legacy without being obliged to obtain legal delivery.

If the succession consists of movable and immovable property or of immovables only, they shall not be seised of any property, but their rights shall be exercised against the executor, acting as fiduciary as provided in Chapter VI of Title I, and Chapter V Section VII of Title II, of Book III of this Code.

Article 1012

1. A legatee by universal title, as the residuary legatee, shall only be bound by the debts and other charges of the succession of the testator if the succession consists of movable property only. In that case, they shall be personally liable to the extent of their share.

If the succession consists of immovables only or of both movable and immovable property, the legatee by universal title shall not be liable for the debts and other charges, but his rights shall be enforceable against the executor, who acting as fiduciary shall be responsible for executing the will as provided in Chapter VI of Title I, and Chapter V Section VII of Title II, of Book III of this Code.

Article 1013

When the testator has only disposed of part of the disposable portion, and has done so by universal title, the legatee shall be bound to contribute, with the natural heirs, to the payment of the particular legacies. This obligation shall be discharged by him personally if the succession consists of movable property only; it shall be discharged by the executor if the succession included immovable property.

CHAPTER V

[illegible]

Article 1014

[illegible]

consists of movables only. If it includes immovables, his claim shall be for money to be exercised against the executor as fiduciary in respect of the succession that the latter holds, with a view to the distribution to those entitled under the will and by law.

The right or claim of the legatee shall be transmissible to his heirs and assigns.

Article 1015

The interest or income of the property bequeathed shall run for the benefit of the legatee as from the day of death, even if the legatee has not yet lodged his claim in court:

1st When the testator has expressly declared his wish to that effect in his will;

2nd When a life annuity or other periodic payment has been bequeathed by way of maintenance.

Article 1016

The costs incurred by a legatee which are incidental to his obtaining the property to which he is entitled under the will, including registration dues, if any, shall fall upon the legatee unless the will provides otherwise.

Article 1017

If the succession consists of movable property only, the heirs of the testator and those liable to pay a legacy shall be personally bound to pay it, each in proportion to what he takes of the succession.

If the succession includes immovables, the liability shall fall upon the executor of the will, as provided in Chapter VI of Title I, and Chapter V Section VI of Title II, of Book III of this Code.

Article 1018

If the property bequeathed is to be delivered in kind, it shall be delivered with its accessories and in the condition in which it is found at the death of the donor.

Article 1019

[illegible]

It shall be otherwise if improvements or new structures have been made upon the property subject to the legacy, or if a fence has been used to enlarge the property.

Article 1020

If prior to the will or thereafter the property bequeathed had been mortgaged to secure a debt of the succession, or even of a third party, or if it is subject to a usufruct, the person who is bound to pay the legacy shall not be compelled to do so free from these encumbrances, unless this has been expressly stated by the testator in a special disposition.

Article 1021

If the testator bequeaths property belonging to another the legacy shall be null, whether the testator knew or did not know that the property did not belong to him.

Article 1022

If the legacy relates to indeterminate goods the person bound to deliver them need not deliver goods of the best quality; but neither shall he deliver the worst.

Article 1023

A legacy granted in favour of a creditor shall not be deemed to be in discharge of his claim, nor shall a legacy to a domestic servant be deemed to be in discharge of wages due.

Article 1024

A particular legatee shall not be bound by the debts of the succession but he may be liable to a reduction, as has been stated above.

SECTION VII

Executors

Article 1025

The testator may appoint not more than three testamentary executors. Any executor appointed shall act as joint executor with regard to the rights of the estate unless otherwise provided by the testator and also with regard to the distribution of the estate between the heirs. The appointment of such executor shall be certified by the Court.

Article 1026

If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no will, the Court shall appoint such an executor, at the instance of any person or persons having a lawful interest. A legal person may be appointed to act as an executor. But a person who is subject to some legal incapacity may not be so appointed.

Article 1027

The duties of an executor shall be to make an inventory of the succession to pay the debts thereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will, as the case may be.

He shall be bound by any debts of the succession only to the extent of its assets shown in the inventory.

The manner of payment of debts and other rights and duties of the executor, insofar as they are not regulated by this Code, whether directly or by analogy to the rights and duties of successors to movable property, shall be settled by the Court.

Article 1028

The executor, in his capacity as fiduciary of the succession, shall also be bound by all the rules laid down in this Code under Chapter VI of Title I of Book III relating to the functions and administration of fiduciaries, insofar as they may be applicable.

Article 1029

Executors shall represent the succession in all legal proceedings, and shall act in any legal action the purpose of which is to declare the will null. At the end of their functions, they shall render account of their administration as provided for [illegible] in the Chapter referred to in article 1028.

Articles 1030 - 1031

[illegible]

Article 1032

The powers and duties of the executor shall not be transmissible to his heirs.

Article 1033

If two or more executors have accepted the appointment, one on his own may act in the absence of the other or on his failure to act; they shall also be jointly and severally liable for the execution of the will unless there is agreement to the contrary.

Article 1034

The costs incurred by the executor in the administration of the estate, and any other necessary expenses incurred, such as the affixing of seals, the drawing-up of the inventory and other costs relating to his functions, shall burden the succession.

SECTION VIII

Revocation and Nullity of Wills

Article 1035

A will shall only be revoked, wholly or in part, by a subsequent will or by a notarial document containing a declaration of a change of intention.

Article 1036

A subsequent will which does not expressly revoke an earlier will shall only annul the latter insofar as dispositions are incompatible with or contrary to the dispositions of the most recent will.

Article 1037

A revocation made in a subsequent will shall have full effect even though that will is ineffective owing to the incapacity of the person benefiting or owing to his refusal to accept the succession.

Article 1038

shall carry with it the revocation of the legacy to the extent of the transfer, even if the subsequent transfer is null and the property has reverted to the testator.

Article 1039

Every testamentary disposition shall be null if the person in whose favour it was made does not survive the testator.

Article 1040

Every testamentry disposition made subject to a condition depending upon an uncertain event and which, according to the intention of the testator, must only be executed if the event occurs or does not occur, shall be null if the appointed heir or legatee dies before the condition is satisfied.

Article 1041

The condition which, according to the intention of the testator, only postpones the execution of the disposition shall not prevent the appointed heir or the legatee from acquiring a right which is transmissible to his heirs.

Article 1042

The legacy shall be null if the property bequeathed has totally perished in the lifetime of the testator.

The same shall apply if it has perished since his death without any act or fault of the executor, even if the latter has been late in effecting delivery, provided that the property would have equally perished in the hands of the legatee.

Article 1043

A testamentary disposition shall be null if the appointed heir or the legatee repudiates it or if he is subject to some incapacity with regard to receiving under it.

Article 1044

The legacy is [illegible] if the property given in it [illegible] the share of the legatee who repudiates it [illegible] to the share of the other.

[illegible]

from one and the same disposition and the testator does not allocate a part of the property bequeathed to each of the co-legatees.

Article 1045

It shall also be deemed to have been bequeathed in common when a thing which cannot be divided without suffering some detriment is bequeathed by the same will to several persons, even by separate dispositions.

Article 1046

The same grounds which, following article 954 and the first two provisions of article 955, authorise the demand for revocation of a gift *inter vivos* shall be admitted in respect of the demand for revocation of testamentary dispositions.

Article 1047

The demand for revocation, in accordance with the preceding article, shall be subject to the general rules of prescription.

CHAPTER VI

DISPOSITIONS PERMITTED IN FAVOUR OF THE GRAND CHILDREN OF THE DONOR OR TESTATOR OR OF CHILDREN OF HIS BROTHERS AND SISTERS

Article 1048

1. The property of which fathers and mothers are at liberty to dispose may be given by them, as a whole or in part, to one or more of their children, whether by an act *inter vivos* or by will, subject to their obligation to pass that property on to the children born or to be born of the said donees in the first degree only.

2. It shall also be lawful for any person by an act *inter vivos* or by will to give, devise or bequeath to the legitimate child the whole or part of the non-disposable portion belonging to such legitimate child or to give, devise or bequeath to the said child the whole or part of the portion which could have accrued to such child upon intestacy as provided by Chapter IV Section 1, Title I of Book III of this Code [illegible] the non-disposable portion belonging to the said legitimate child [illegible] the non-disposable portion and [illegible] the said legitimate child [illegible]

deed or will shall take effect; and in case of a substitution so made, it shall be lawful for any person aforesaid by such deed or will to declare that such portion or any part thereof may not be seized for debts incurred by the said child or children, legitimate or natural as the case may be, prior to the time when the deed or will shall take effect.

Article 1049

1. If the deceased dies without leaving children, a disposition which he made by an act *inter vivos* or by will in favour of one or more or his brothers and sisters of the whole or part of the property of the succession which is not reserved by law, with the obligation to pass such property on to children born or to be born in the first degree only of the said donee brothers or sisters, shall be valid.

2. Children receiving property in accordance with the provisions of the preceding article and of paragraph 1 of this article shall be deemed to derive their title from their parents.

Article 1050

The dispositions permitted under the two preceding articles shall only be valid to the extent that gift over is for the benefit of all the children born or to be born of the person subject to such gift over without any exclusion or preference by age or sex.

Article 1051

If, in the aforementioned cases, the person subject to the gift over in favour of his children dies leaving children of the first degree and descendents of a child that has predeceased him, such descendants shall obtain, by representation, the share of the predeceased child.

Article 1052

If the child, brother or sister on whom property was given by an act *inter vivos* without the property being subject to a gift over, and who has made by will subject to a gift over, dies leaving children of the first degree, such gift over shall be void and the property shall belong to the said child, brother or sister, or to his heirs.

Article 1053

The rights of the remaindermen shall take effect when the enjoyment of the child, brother or sister subject to the gift over, for whatever reason, ceases; the anticipatory waiver of the enjoyment in favour of the remaindermen shall not prejudice the creditors who acquired their rights towards the person subject to the gifts over prior to the waiver.

Article 1054

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 1055

A person who makes the dispositions permitted by the preceding articles may, in the same document or by a subsequent document in authentic form, appoint a guardian charged with the execution of these dispositions: this guardian may only be exempted on one of the grounds laid down in Section VI of Chapter II of the Title *Minority, Guardianship and Emancipation.*

Article 1056

1. If there is no such guardian, he shall be appointed upon an application of the person subject to the gift over, or of his guardian if he is a minor, within a period of three months, the period to run from the day of the death of the donor or testator or from the day since his death on which the document containing the disposition becomes known.

2. The guardian shall, in all cases, be selected by the Court during term and by a Judge thereof during vacation.

Article 1057

The person subject to a gift over who has not complied with the preceding article shall forfeit the benefit of the disposition; and in that event, the right shall be [illegible] to the remainderman, either on the decease of the [illegible]

Article 1058

After the death of the person who made a disposition subject to a gift over, the procedure to be followed shall be in the ordinary form with an inventory of all the property and effects of which the succession consists, with the exception, however, of the case of a specific legacy. That inventory shall contain an accurate valuation of the movable property and effects.

Article 1059

It shall be made at the instance of the person subject to the gift over, and within a time-limit fixed in the Title *Succession*, in the presence of the guardian appointed for the execution. The costs shall burden the property which is subject to the disposition.

Article 1060

If the inventory was not made at the instance of the person subject to the gift over within the aforementioned time-limit, it shall be made in the following month at the instance of the guardian appointed for the execution in the presence of the person subject to the gift over or of his guardian.

Article 1061

If the two preceding articles have not been complied with, the same inventory shall be made at the instance of persons designated in article 1057 by summoning the person subject to the gift over or his guardian and the guardian appointed for the execution.

Article 1062

The person subject to the gift over shall be bound to proceed to the sale by auction, after giving public notice, of all the movable property and effects included in the disposition, with the exception nevertheless of those items of which mention is made in the two articles before.

Article 1063

[illegible]

Article 1064

Animals and agicultural implements serving to put the land into good use shall be deemed to be included in the gifts *inter vivos* or by will of the said land; and the person subject to the gift over shall only be bound to obtain a valuation and an estimate for the purpose of delivering equal value when the gift over takes effect.

Article 1065

The person subject to the gift over shall invest, within a time-limit of six months starting from the day of the closing of the inventory, the cash proceeds from the sale of such movable property and effects and the sums received from any assets.

This time-limit may be extended if necessary.

Article 1066

The person subject to the gift over shall also be bound to invest funds coming from assets which are recovered and from the receipt of annuities; and this within a maximum of three months after such funds are received.

Article 1067

This investment shall be made in accordance with the instructions of the person who made the disposition if he has specified the nature of the property in which the investment is to be made; if not, it shall be made in immovable property or by way of mortgages or privileges upon immovable property or in an investment fund managed by a bank or other reputable institution; but in the case of an investment fund, the prior authorisation of a Judge shall be required.

Article 1068

The investment required by the preceding article shall be made in the presence of and at the instance of the [illegible] appointed for the execution.

Article 1069

[illegible]

of the Registrar-General and, in respect of sums secured by a charge upon immovable property, by an inscription upon the property subject to it.

Article 1070

The failure to effect a transcription of the document containing the disposition may be pleaded by the creditor against third party purchasers, and even against minors or incapacitated persons of full age, subject to the right of such persons to sue the person subject to the gift over and the guardian for the execution; and the minor, or the incapacitated person of full age, shall not be entitled to restitution, of which he is deprived by reason of the failure to effect the transcription, even if the person subject to the gift over, or the guardian, turn out to be insolvent.

Article 1071

The failure to effect a transcription shall not be remedied or presumed as inoperative by the knowledge that the creditor, or any third party purchasers, may have had of the disposition through channels other than the transcription.

Article 1072

The donees, the legatees and even the lawful heirs of the person who made the disposition, and similarly their donees, legatees or heirs, shall not in any circumstances plead the failure of the transcription or inscription against the remaindermen.

Article 1073

The guardian appointed for the execution shall be personally liable if he has not, in all respects, complied with the aforementioned rules established for the purpose of identifying the property for the sale of movable property, for the investment of sums, for the transcription and inscription and, in general, if he has not taken all necessary steps so that the duty to pass the gift over is properly and faithfully discharged.

Article 1074

[illegible]

CHAPTER VII

PARTITION MADE BY A PERSON AMONG HIS HEIRS AND LEGATEES

Article 1075

Any person shall be entitled to make a distribution or partition of his property among his heirs and legatees.

Article 1076

These partitions may be made by an act *inter vivos* or by will, subject to the same forms, conditions and rules as for gifts *inter vivos* or by will.

A partition made by an act inter vivos shall only apply to present property.

Article 1077

If all the property which any person may leave on the day of his death has not been included in the partition, that part which was not so included shall be divided in accordance with the law.

Article 1078

If the partition is not made amongst all the children living at the time of the death and the descendants of those children who have pre-deceased, it shall be null only if that partition cannot be amended or supplemented. The amendment, if feasible, or otherwise a new partition, shall be made at the instance of the children or the descendants, whether they have received anything or not.

Article 1079

A partition made by a person may be validly [illegible]

Article 1080

The person who starts proceedings against the partition on any of the aforementioned grounds shall make an advance payment of the costs of the valuation and he shall incur them definitely, as well as the costs of the litigation, if his demand does not succeed.

CHAPTER VIII

GIFTS MADE BY AN ANTENUPTIAL MARRIAGE SETTLEMENT IN FAVOUR OF THE SPOUSES AND OF THE CHILDREN OF THE MARRIAGE

Article 1081

Every gift *inter vivos* of present property, even if made by an antenuptial marriage settlement, in favour of the spouses or one of them shall be subject to the general rules applicable to gifts *inter vivos*.

It shall not be made in favour of the children to be born, except in the cases specified in Chapter VI of this Title.

Article 1082

1. Fathers and mothers, or other ascendants, the collateral relatives of the spouses and even strangers may, by an antenuptial marriage settlement, dispose of the whole or part of the property which they may leave at the time of their death both in favour of the said spouses and in favour of the future children of their marriage in case the donor survives the donee-spouse.

2. Such a gift, whether made for the benefit of the spouses only or of one of them shall be deemed, in the said instances of the survival of the donor, to have been made in favour of the children and future descendants of that marriage.

3. Children receiving property in accordance with the provisions of this article shall be deemed to derive their title from their parents.

Article 1083

[illegible]

Article 1084

A gift by an antenuptial marriage settlement may be made by accumulation with regard to present and future property, as a whole or in part, on condition that a statement of the debts and liabilities of the donor at the time of the gift be appended to it; in that case, the donee shall be at liberty, when the donor dies, to claim the present property and waive the surplus of the property of the donor.

Article 1085

If the statement of the aforementioned article has not been appended to the document setting up the gift of present and future property, the donee shall be bound to accept or to repudiate that gift as a whole. In case of acceptance, he shall only claim the property which is found to exist at the death of the donor and he shall be liable to pay all the debts and liabilities of the succession.

Article 1086

A gift by an antenuptial marriage settlement in favour of the spouses and the future children of their marriage may also be made on condition that the donee shall pay without distinction, all the debts and liabilities of the succession of the donor, or subject to other conditions the fulfilment of which depends on the donor's will, whoever that donor may be: the donee shall be bound to fulfil these conditions unless he prefers to renounce the gift; and if the donor, by an antenuptial marriage settlement, has reserved for himself the liberty to dispose of an item included in the gift of his present property, or of a fixed sum to be paid out of the same property, the item or the sum, if he dies without having disposed of them, shall be deemed to be included in the gift and shall belong to the donee or to his heirs.

Article 1087

Gifts made by antenuptial marriage settlements shall not be vitiated or declared null on the ground that they have not been accepted.

Article 1088

A gift made in favour of a marriage shall [illegible] marriage [illegible] not take [illegible].

Article 1089

[illegible] made by one of the spouses to the other [illegible] 1087, 1088 and 1090 [illegible] [illegible] [illegible].

Article 1090

All gifts made to spouses by their antenuptial marriage settlement shall be subject, upon the opening of the succession of the donor, to a reduction to the extent of the portion of which the law permits him to dispose.

CHAPTER IX

DISPOSITIONS BETWEEN SPOUSES, EITHER BY AN ANTENUPTIAL MARRIAGE SETTLEMENT OR DURING MARRIAGE

Article 1091

The spouses may, by an antenuptial marriage settlement, make mutually or one to the other such gifts as they may deem proper, subject to the rules hereafter laid down.

Article 1092

No gift *inter vivos* of present property made between the spouses by an antenuptial marriage settlement shall be presumed to have been made subject to the survival of the donee unless this condition is expressly stated; and it shall be subject to all the rules and forms laid down for these types of gifts.

Article 1093

A gift of future property, or of present and future property, made between the spouses by an antenuptial marriage settlement, whether simple or mutual, shall be subject to the rules laid down in the preceding Chapter in respect of similar gifts made to them by third parties; except that it shall not be transferable to the issue of that marriage, in the case of the death of the donee-spouse prior to that of the donor-spouse.

Article 1094

A spouse may, during marriage, whether by an antenuptial marriage settlement or during marriage, by his last will and testament or declaration, make a gift to the other spouse of the [illegible] of which the law permits him to dispose. Every gift [illegible] shall be subject to the rules of this Code prohibiting gifts between husband and wife.

Article 1094 - 1

The children or descendants may, notwithstanding any stipulation of the donor to the contrary, demand in respect of the property subject to the usufruct that an inventory be drawn up of all the movables and of the condition of the immovables, that the sums be invested, and that bearer securities, at the option of the usufructuary, be converted into registered securities or be deposited with an authorised depositary.

Article 1095

A minor may not by an antenuptial marriage settlement make a gift to the other spouse, whether simple or mutual, except with the consent and assistance of either of his parents or of those members of his family whose consent is required for the validity of his marriage; and with this consent he may make a gift of everything which the law permits a spouse of fullage to give to the other spouse.

Article 1096

Every gift made between the spouses during marriage, even if described as *inter vivos*, shall always be revocable.

These gifts shall not be revoked by the subsequent birth of children.

Article 1097

1. If a spouse leaves natural children only, born during his marriage, he may dispose in favour of the other spouse of the full ownership of three quarters of his property or of the full ownership of one half and the usufruct of the other half or of the usufruct of the whole of the property.

2. If he leaves both natural children, as in the previous paragraph 1, and other children, whether issued from that marriage or not, he may dispose in favour of the other spouse of the full ownership of any property which he may give to strangers, or of the full ownership of one quarter of his property and of the usufruct of the other three quarters, or even of the usufruct only of the whole of his property.

3. The [illegible] children cannot [illegible] subject to the rights of the [illegible] of the [illegible] of the [illegible] of [illegible] of [illegible]

Article 1098

A man or woman who, having children of a previous marriage, contracts a subsequent marriage may only make a gift to the new spouse of a share of a legitimate child taking the smallest portion; such gifts shall in no circumstances exceed one fourth of the property.

Article 1099

Spouses shall not give to each other indirectly anything beyond what is permitted to them by the aforementioned dispositions.

Any gift disguised or made to an intermediary shall be null.

Article 1099-1

When a spouse acquires property with funds which were given to him for that purpose the gift shall consist of the funds and not of the property bought.

In that case, the rights of the donor or his heirs shall relate to money according to the present value of the property. If the property has been sold its value at the time of the sale or the value of another new property which has been bought with the proceeds shall be taken into account.

Article 1100

Gifts made by one of the spouses to the children or to one of the children of the other born of a previous marriage, and gifts made by the donor to the relatives of whom the other spouse is heir presumptive when the gift is made, shall be deemed to have been made to intermediaries, even if the latter does not survive his donee-relative.

Article 1102

A contract is *bilateral* when the contracting parties mutually bind themselves towards each other.

Article 1103

It is *unilateral* when one or several persons bind themselves towards one or several persons without any obligation arising on the part of the latter.

Article 1104

It is *commutative* when each of the parties binds himself to give or do something which is considered the equivalent of what is given to or done for him.

When the equivalence consists of a chance of a profit or loss for each of the parties, resulting from an uncertain event, the contract is *contingent*.

Article 1105

In a *gratuitous* contract one of the parties procures to the other an advantage entirely free of charge.

Article 1106

In an *onerous* contract each of the parties is bound to give or do something.

Article 1107

The contracts, whether they have a particular denomination or not, are all subject to the general principles laid down in this Title.

The special rules applicable to certain contracts shall be laid down in the Title relating to each one of them, and the special rules applicable to commercial contracts shall be established by the relevant legislation.

The rules of this Title shall be supplemented by the usages [illegible]

CHAPTER II

ESSENTIAL CONDITIONS FOR THE VALIDITY OF CONTRACTS

Article 1108

Four conditions are essential for the validity of an agreement —

The consent of the party who binds himself,

His capacity to enter into a contract,

A definite object which forms the subject-matter of the undertaking,

That it should not be against the law or against public policy.

SECTION I

CONSENT

Article 1109

1. The consent shall not be valid if it is given by a mistake, or extracted by duress or induced by fraud.

Article 1109 - 1

1. An offer or an acceptance shall only have effect if it is seriously intended in the sense that the parties intended to create legal relations. An offer may be made to the public at large.

2. An invitation to treat shall not be converted into a contract by acceptance.

3. The display of goods with a price attached shall only amount to an invitation to treat.

4. Where the offeror has reserved the right to revoke his offer at any time, an unreasonable revocation of an offer shall constitute a fault as defined in article 1382 of this Code.

Article 1109-2

1. A document shall be considered authentic when it has been received by the addressee. However, it shall be deemed never to have been received by the addressee if [illegible]

2. If there is a time-limit for the acceptance of the offer, that time- limit shall be binding upon the offeror.

3. Silence shall not be presumed to imply acceptance unless this is a necessary implication from the previous business relations of the parties, or from the practice of a particular trade.

4. In an auction sale the contract shall be accepted when the auctioneer signifies his acceptance by the fall of a hammer or in any other accepted manner.

5. In a self-service shop an offer shall be accepted when the cashier accepts the money tendered.

Article 1110

1. Mistake shall only be a ground of nullity of the contract if it relates to the very substance of the thing which is the object of the contract. It shall not be a ground of nullity if it relates to the person with whom it was intended to enter into a contract, unless the personal qualities of that person are a principal consideration in the agreement.

2. There is a mistake as to the substance if the parties would not have concluded the contract had they known of the true circumstances. However, the Court, in deciding whether a party made an operative mistake, shall be entitled to take into account whether the mistake was excusable in the circumstances.

3. The innocent party to a contract that has been rescinded for mistake may claim damages under article 1382 of this Code if he sustains any damage as a result of the rescission of the contract.

Article 1111

Duress used against a contracting party shall be a ground of nullity, even if used by a third party other than the person for whose benefit the contract was concluded, provided that that duress was the main reason why the victim of it had entered into the contract.

Article 1112

The [illegible]

With regard to this matter, the age and condition of a person shall be taken into account in the sense that the wrongdoer must take the victim as he finds him.

Article 1113

Duress shall be a ground of nullity of the contract not only when used upon the contracting party but also upon his or her spouse, his descendents or ascendants.

Article 1113 - 1

If the duress consists of a threat to do what a person is lawfully entitled to do the contract shall not be null, unless the promise obtained by the threat is irrelevant to that threat or unless the promise obtained is excessive having regard to the nature of the offer.

Article 1114

Fear inspired by respect towards the father, mother or other ascendant without any duress having been used shall not be sufficient to annul the contract.

Article 1115

A contract shall not be challenged on the ground of duress if it has been approved since the duress has come to end, whether expressly or tacitly or if the victim allows the time fixed by the law for its rescission to lapse.

Article 1116

Fraud shall be a cause of nullity of the agreement when the contrivances practised by one of the parties are such that it is evident that, without those contrivances, the other party would not have entered into the contract. It must be practised but need not emanate from the contracting party.

It shall not be presumed and it must be proved.

Article 1117

Article 1118

1. If the contract reveals that the promise of one party is, in fact, out of all proportion to the promise of the other, the party who has a grievance may demand its rescission; provided that the circumstances reveal that some unfair advantage has been taken by one of the contracting parties. The loss to the party entitled to the action for lesion shall only be taken into account if it continues when the action is brought.

2. The defendant to an action for lesion as in the preceding paragraph shall be entitled to refuse rescission if he is willing to make an adequate contribution to the other party in such manner as to restore a more equitable balance between the contracting parties.

3. The rules of paragraphs 1 and 2 of this article relate to the policy, and shall not be excluded by the agreement of the parties. They may, however, be excluded or restricted in specific cases laid down in this Code.

Article 1119

Generally a person may only bind himself or stipulate in his own name for his own account, except as provided hereafter.

Article 1120

Nevertheless, a person may undertake that another shall perform an obligation; but the person who has given the undertaking or has promised that a contract shall be ratified by another party, shall be liable for damages if that party refuses to do so. However, if that party ratifies the contract, it becomes retroactively effective as from the date of the original undertaking.

Article 1121

1. A person may stipulate for the benefit of a third party. Such stipulation shall not be revoked if the third party has declared that he wants to take advantage of it. Provided that that party has a lawful interest.

2. However, claims by third parties [illegible]

Article 1122

A person shall be deemed to stipulate for himself, his heirs and assigns, unless the contrary has been agreed upon or results from the nature of the contract.

SECTION II

The Capacity to make a Contract

Article 1123

Every one may enter into a contract unless he is subject to some legal incapacity.

Article 1124

The following persons shall be subject to an incapacity to enter into a contract to the extent defined by law —

Minors who are not emancipated;

Interdicted persons in the sense of articles 489 and 513 of this Code.

Article 1125

Minors and interdicted persons shall only plead their incapacity in the cases provided by law.

Persons capable of entering into a contract shall not plead the incapacity of those with whom they have contracted.

Article 1127

The simple use or the simple possession of a thing may be, as the thing itself, the object of the obligation.

Article 1128

Only things of commercial value may be the objects of contractual obligations.

Article 1129

An obligation must have as its object a thing which may at least be specified in kind.

The quantity of the thing may be uncertain provided it can be specified.

Article 1130

Future things may form the subject-matter of an obligation.

However, a person shall not renounce a succession which has not opened, nor shall he make any stipulation in respect of it, even with the consent of the person whose succession may be affected.

SECTION IV

Public Policy

Article 1131

An obligation which is against public policy shall have no legal effect.

Article 1132

An agreement shall be valid although the reason for making it is not stated.

Article 1133

CHAPTER III

THE EFFECT OF OBLIGATIONS

SECTION I

General Provisions

Article 1134

Agreements lawfully concluded shall have the force of law for those who have entered into them.

They shall not be revoked except by mutual consent or for causes which the law authorises.

They shall be performed in good faith.

Article 1135

Agreements shall be binding not only in respect of what is expressed therein but also in respect of all the consequences which fairness, practice or the law imply into the obligation in accordance with its nature.

SECTION II

The Obligation to give

Article 1136

The obligation to give shall imply the duty to deliver the thing and to preserve it until delivery, under penalty of damages payable to the creditor.

Article 1137

The obligation to take care and preserve the thing, whether the agreement has as its object the advantage of one of the parties or their joint advantage, shall bind the person who is in charge of it to attend to it with reasonable care.

This obligation shall be more or less extensive, depending upon the kind of contracts the effect of which in this respect shall be explained under the appropriate Titles.

Article 1138

The obligation to deliver the thing shall be complete [illegible]

It shall confer the ownership upon the creditor and shall carry with it the risk as from the moment when delivery was due, even if the delivery has not yet been effected, unless the debtor has been served with notice to deliver; in that case, the thing shall remain at the risk of the latter.

Article 1139

A debtor shall be placed under notice of default by a summons or other equivalent legal act or by a term of the agreement providing that the debtor shall be in default without the need of a summons and at the mere expiry of the period for delivery.

Article 1140

The effects of the obligation to give or to deliver immovable property shall be regulated under the Title *Sale* and the Title *Privileges and Mortgages*.

Article 1141

If a thing which a person is bound to give or deliver to two persons consecutively is purely movable, of the two, the person who was actually given possession shall be preferred and shall remain owner, even if his title is subsequent in time, provided, however, that his possession is in good faith.

SECTION III

The Obligation to perform or not to perform

Article 1142

Every obligation to do or to refrain from doing something shall give rise to damages if the debtor fails to perform it.

Article 1143

Nevertheless, the creditor shall be entitled to demand that whatever was done in violation of the undertaking be destroyed, and he may obtain authority to destroy it at the expense of the debtor without prejudice to a claim for damages, if any.

Article 1144

In addition, the creditor may be authorised to perform the undertaking himself or have it performed at the expense of the debtor.

Article 1145

If the obligation consists of refraining from doing something, the person who violates it shall be liable for damages by the mere fact of the violation.

SECTION IV

Damages arising from the Failure to perform the Obligation

Article 1146

Damages are only due when the debtor is under notice to fulfil his obligation; provided, nevertheless, that the thing which the debtor had bound himself to give or to do could only be given or done within a fixed time which he has allowed to elapse.

Article 1147

The debtor shall be ordered to pay damages, if any, either by reason of his failure to perform the obligation or by reason of his delay in the performance, provided that he is unable to prove that his failure to perform is due to a cause which cannot be imputed to him and that in this respect he was not in bad faith.

Article 1148

1. Damages shall not be due when, as a result of an act of God or an inevitable accident, the debtor was prevented from giving or doing what he has undertaken or he did what he had been forbidden to do. If performance of the contract has only partly become impossible by an act of God or by an inevitable accident and if the defendant is also at fault, the liability of the defendant shall be reduced in proportion to his share of the responsibility.

2. If the literal performance of a contract is possible but, owing to a complete change of circumstances which could not have been anticipated when the agreement was concluded and which is outside the control of the parties, it no longer fulfils the common design of the parties, the contract shall be [illegible]

contracts for the sale of specific goods which perish, whether or not the risk passed to the buyer before the date of perishing, or to any charterparty except a time charterparty or a charterparty by way of demise, or to any contract for the carriage of goods which, according to commercial practice, is normally covered by insurance.

Article 1149

1. The damages which are due to the creditor cover in general the loss that he has sustained and the profit of which he has been deprived, except as provided hereafter.

2. Damages shall also be recoverable for any injury to or loss of rights of personality. These include rights which cannot be measured in money such as pain and suffering, and aesthetic loss and the loss of any of the amenities of life.

3. The damages payable under paragraphs 1 and 2 of this article, and as provided in the following articles, shall apply as appropriate to the breach of contract and the commission of a delict.

4. In the case of delicts, the award of damages may take the form of a lump sum or a periodic payment. In the latter case, the Court may order that the rate of the payments should be pegged to some recognised index, such as the cost of living index or other index appropriate to the activity of the victim.

Article 1150

1. The debtor shall only be liable for damages with regard to damage which could have been reasonably foreseen or which was in the contemplation of the parties when the contract was made, provided that the damage was not due to any fraud on his part.

2. A stipulation which tends to exonerate in advance the debtor of his liability for fraud or negligence shall be null. This rule shall not apply to insurance contracts. However, the parties may agree to shift the burden of proof of any fraud or negligence from one party to the other.

Article 1151

[illegible]

which he has been deprived shall only cover the immediate and direct consequences of the failure to perform.

Article 1152

When the agreement provides that failure to perform the contract shall make the debtor liable to a certain sum by way of damages, no larger or lesser sum may be awarded to the other party. This provision shall not apply if the failure to perform is due to fraud or gross negligence. In any case, the Court may reduce the sum agreed upon if it is manifestly excessive in the particular circumstances of the contract.

Article 1153

With regard to the obligations which merely involve the payment of a certain sum, the damages arising from delayed performance shall only amount to the payment of interest fixed by law or by commercial practice; however, if the parties have their own rate of interest, that agreement shall be binding.

These damages shall be recoverable without any proof of loss by the creditor. They are due from the day of the demand, except in cases in which they become due by operation of the law.

However, the creditor who sustains special damage caused by a debtor in bad faith and not merely by reason of delay, may obtain damages in addition to those for delayed performance.

Article 1154

Interest accrued from capital may produce interest either by starting proceedings or by a special agreement of the parties, provided that, in the case of proceedings, the interest has been due for a whole year at least.

Article 1155

Nevertheless, income rent from such as farm-lease or means of payment [illegible] shall produce interest from the day of the [illegible]

[illegible]

SECTION V

The Interpretation of Contracts

Article 1156

In the interpretation of contracts, the common intention of the contracting parties shall be sought rather than the literal meaning of the words.

However, in the absence of clear evidence, the Court shall be entitled to assume that the parties have used the words in the sense in which they are reasonably understood.

Article 1157

When a term can bear two meanings, the meaning which may render it effective shall be preferred rather than the meaning which would render it without effect.

Article 1158

Terms capable of two meanings shall be taken in the sense which is more appropriate to the subject-matter of the contract.

Article 1159

Ambiguous terms shall be interpreted by reference to the practice of the place where the contract is made.

Article 1160

Usual clauses shall be implied in the contract even if they are not expressly stated.

Article 1161

All the terms of the contract shall be used to interpret one another by giving to each the meaning which derives from the whole.

Article 1162

In case of doubt, the contract is to be interpreted against the person who has the benefit of the term and in favour of the person who is bound by the obligation.

Article 1163

Article 1164

When in a contract an example has been used to explain an obligation, it shall not be assumed that the parties thereby intended to restrict the extent of the obligation and to exclude cases which would normally be covered.

SECTION VI

The Effect of Obligations towards Third Parties

Article 1165

1. Contracts shall only have effect as between the contracting parties; they shall not bind third parties and they shall not benefit them except as provided by article 1121.

2. However, an assignment of a debt shall have the effect of permitting the creditor to recover the debt at his option either from the debtor or from the assignee of that debtor. If the creditor grants a release to the debtor, the debt shall only be enforceable against the assignee.

3. If a party consents in advance that the other may assign his claim or debt to a third party, the assignment shall have effect as from the moment of notification and acceptance of such assignment. If all the elements of the contract result from a document which bears the formula "To the Order" or other equivalent, the indorsement of the document shall place the person who receives it in the position of the person who made the indorsement. Where the contract takes the form of a bill of exchange, the provisions of the Bills of Exchange Act, Cap. 15, or any law amending or replacing it, shall have application.

Article 1166

Nevertheless, creditors may exercise all the rights and actions of their debtor, with the exception of those which are exclusively attached to the person.

Article 1167

A creditor may, in his own name, take proceedings relating to any immovable property belonging to the debtor which must have the effect of preserving the rights.

The proceedings [illegible]

CHAPTER IV

DIFFERENT KINDS OF OBLIGATIONS

SECTION I

Conditional Obligations

1. The Condition in general and its Various Types.

Article 1168

The obligation is conditional when it is made to depend upon a future and uncertain event, either by suspending its effect until the event occurs *(condition precedent)* or by cancelling it when the event does or does not occur *(condition subsequent)*.

Article 1169

A condition is contingent when it depends upon a chance which is beyond the control either of the creditor or the debtor.

Article 1170

A *condition at will* is a condition which causes the performance of a contract to depend upon an event which is in the power of one or other of the contracting parties to fulfil or to prevent.

Article 1171

A *competent condition* is a condition which depends for its fulfilment upon both the will of one of the contracting parties and the will of a third party.

Article 1172

A condition prescribing an impossibility or something which is against public policy or prohibited by law shall be considered as [illegible]

Article 1173

[illegible]

Article 1174

An obligation shall be null if it is agreed upon subject to a condition at will on the part of the person who binds himself.

Article 1175

A condition shall be fulfilled in the manner in which the partners appear to have wanted and agreed that it should.

Article 1176

When the obligation is agreed upon subject to the condition that an event will occur within a fixed period, that condition shall be deemed to have failed if the time has expired without the event having occurred. If no fixed period has been agreed upon, the condition may always be fulfilled; and it shall only be deemed to have failed when it is certain that the event will not occur.

Article 1177

When the obligation is undertaken subject to a condition that an event will not occur within a fixed time, that condition shall be fulfilled when the time has expired without the event having occurred; it shall also be fulfilled if before the expiry of the time it becomes certain that the event will not occur; and if there is no fixed period, it shall only be fulfilled when it becomes certain that the event will not occur.

Article 1178

The condition is deemed to have been fulfilled when the debtor bound by this condition prevents its fulfilment.

Article 1179

The condition, once fulfilled, shall have a retroactive effect back to the day when the obligation was made. If the creditor is dead before the fulfilment of the condition, his rights pass on to his heir.

Article 1180

The creditor may, before the condition is fulfilled, exercise provisional acts for the preservation of his right.

2. The Condition Precedent

Article 1181

The obligation which is subject to a condition precedent depends upon an event, future and uncertain, or upon an event which has in fact occurred but which is still unknown to the parties.

In the former case, the obligation may not be performed until after the event.

In the latter case, the obligation shall have effect as from the day when it was contracted.

Article 1182

When the obligation is undertaken subject to a condition precedent, the subject-matter of the agreement shall remain at the risk of the debtor who shall not be bound to deliver until the condition if fulfilled.

If the thing has entirely perished without any fault on the part of the debtor, the obligation shall be extinguished.

If the thing has deteriorated without any fault on the part of the debtor the creditor shall elect either to cancel the obligation or to demand the return of the thing in such condition as it may be, without any reduction of the price.

If the thing has deteriorated through the fault of the debtor, the creditor shall be entitled either to cancel the obligation or to demand delivery of the thing in such condition as it may be, plus damages.

3. The Condition Subsequent

Article 1183

A condition subsequent is the condition which, when fulfilled, revokes the obligation and restores the things to the same state as they would have been if the obligation had never existed.

Article 1184

1. A condition subsequent shall always be implied in bilateral contracts in case either of the parties does not perform his undertaking.

It may also be implied in some unilateral contracts, such as a loan or a pledge.

In that case, the contract shall not be rescinded by operation of law. The party towards whom the undertaking is not fulfilled may elect either to demand execution of the contract, if that is possible, or to apply for rescission and damages. If a contract is only partially performed, the Court may decide whether the contract shall be rescinded or whether it may be confirmed, subject to the payment of damages to the extent of the partial failure of performance. The Court shall be entitled to take into account any fraud or negligence of a contracting party.

Rescission must be obtained through proceedings but the defendant may be granted time according to the circumstances.

Rescission shall only be effected by operation of law if the parties have inserted a term in the contract providing for rescission. It shall operate only in favour of the party willing to perform.

2. The Court may, in relation to an action for rescission, make such orders as it thinks fit, both in relation to the rights and duties of the contracting parties and in relation to the rights of their heirs.

3. If, before the performance is due, a party to a contract by an act or omission absolutely refuses to perform such contract or renders the fulfilment thereof impossible, the other party shall be entitled to treat the contract as discharged.

SECTION 7

Time or Personal Obligations

Article 1185

A time or personal obligation differs from a conditional one in that it does not suspend performance but is merely debtor performance.

Article 1186

midnight of the day from which the time-limit runs to midnight of the day on which the time-limit expires.

2. However, the provisions of the foregoing paragraph do not preclude that an act which is to be performed before the expiry of a time-limit may be performed in accordance with a particular business practice on the day on which the time-limit expires only before the expiry of the normal office or business hours.

Article 1185-2

1. Where a time-limit is expressed in weeks, the day on which the time- limit expires shall be the day of the last week whose name corresponds to that of the day from which the time-limit runs.

2. Where a time-limit is expressed in months or in years, the day on which the time-limit expires shall be the day of the last month or of the last year whose date corresponds to that of the day from which the time-limit runs or, when there is no corresponding date, the last day of the last month.

3. Where a time-limit is expressed in months and days or fractions of months, whole months shall be counted first, and afterwards the days or fractions of months; for the purpose of calculating fractions of months, a month shall be deemed to consist of 30 days.

Article 1185-3

Saturdays, Sundays and official holidays shall count when calculating a time-limit. However, where the final day of a time-limit before the expiry of which an act shall be performed is a Saturday, a Sunday, an official holiday or a day which shall be considered as an official holiday, the time-limit shall be extended to include the first working-day thereafter.

Article 1186

What is only due in the future shall not be demanded before the expiry of the time, but what has been paid in advance shall not be recovered.

Article 1187

[illegible]

Article 1188

The debtor shall not claim the benefit of time if he becomes insolvent or bankrupt, or if, through his act, he reduces the security which he has given by the contract to his creditor.

SECTION III

Alternative Obligations

Article 1189

The debtor of an alternative obligation shall be released by the delivery of one of the two things included in the obligation.

Article 1190

The choice shall belong to the debtor unless it has been expressly granted to the creditor.

Article 1191

The debtor may be released by delivering one of the two things promised; but he shall not compel the creditor to receive a part of one thing and a part of the other.

Article 1192

An obligation is pure and simple, even if contracted in an alternative manner, if one of the two things promised could not be the subject-matter of the obligation.

Article 1193

An alternative obligation becomes pure and simple if one of the things promised perishes and can no longer be delivered, even if this has occurred through the fault of the debtor. The price of that thing shall not be offered in its stead.

If both of these things perish and the debtor is at fault as regards one of them, he shall pay the price of the thing that perished last.

Article 1194

An alternative obligation becomes pure and simple when all but one of the things promised are found to be unlawful.

If only one of the two things perished; then, if it is not due to the fault of the debtor, the creditor shall have the other; if the debtor is at fault, the creditor may demand either the thing left or the price of the thing that perished;

If both of these things perished; then, if the debtor is at fault in respect of both, or even in respect of one of them only, the creditor may demand the price of either at his option.

Article 1195

If both of these things perish without any fault on the part of the debtor and before he has been served with a notice to deliver, the obligation shall be extinguished in accordance with article 1302.

Article 1196

The same principles shall apply if the alternative obligation relates to more than two things.

SECTION IV

Joint and Several Obligations

1. The Joint and Several Liability of Creditors

Article 1197

1. The obligation is joint and several amongst several creditors when the contract expressly grants to each one of them the right to demand payment of the amount of the entire claim, and the payment made to one of them releases the debtor, even if the benefit of the obligation is amenable to sharing and to a division amongst the various creditors.

2. The rules relating to joint and several liability shall also apply to the liability of joint tortfeasors insofar as they are applicable.

Article 1198

The debtor shall have the option to pay to any one of the joint creditors, unless one of them has previously brought an action against him for the payment of the debt.

Nevertheless, the release granted by only one of the joint and several creditors shall only discharge the debtor to the extent of the share of that creditor.

Article 1199

An act which interrupts the prescription in respect of one of the joint and several creditors shall also have effect in respect of the other creditors.

2. The Joint and Serveral Liability of Debtors

Article 1200

There is joint and serveral liability of debtors when they are bound by the same obligation in such a manner as to make each one of them liable for the whole and when the payment made by one alone releases the others with regard to the creditor.

Article 1201

The obligation may be joint and several although the duties of one of the debtors relating to the payment of the same thing differ from those of the others; for instance, if the obligation of one is subject to a condition whereas the obligation of another is pure and simple, of if one is subject to time-limit which is not granted to the other.

Article 1202

Joint and several liability shall not be presumed; it must be expressly stated.

This rule shall not apply in the cases in which joint and several liability comes into effect by operation of law in accordance with a provision in the law.

Article 1203

The creditor of an obligation contracted jointly and severally may demand performance from any of the debtors that he may select without the latter being able to plead in [illegible] the benefit of division.

Article 1204

[illegible]

Article 1205

If the thing due perishes through the fault of one or more of the joint or several debtors or while one or more of them are under notice to perform, the other co-debtors shall not be discharged from the obligation to pay the price of the thing; but the latter shall not be liable to pay damages.

The creditor may obtain damages against the debtors through whose fault the thing perishes as well as against those who were under notice to perform.

Article 1206

Proceedings against one of the joint and several debtors shall interrupt prescription towards all.

Article 1207

The demand for payment of interest against one of the joint and several debtors shall cause the interest to run against all.

Article 1208

The joint and several co-debtor who has been sued by the creditor may plead all the defences which arise from the nature of the obligation and all those which are available to him personally as well as those which are common to all co-debtors.

He shall not plead any defences available personally to him against one or more of the other co-debtors.

Article 1209

When one of the debtors becomes the sole heir of the creditor, or when the creditor becomes the sole heir of one of the debtors, the confusion of [illegible] only extinguish the joint and several claim for the part and portion of the co-debtor or creditor.

Article 1210

[illegible]

Article 1211

The creditor who receives separately the part of one of the debtors without reserving in his receipt the joint and several liability or his rights in general shall only be deemed to have waived the joint and several liability with regard to that debtor.

The creditor shall not be deemed to release the debtor from his joint and several liability when he receives from him a sum equal to the share for which he is liable unless the receipt specifies that the release relates to his share.

The same shall apply to the simple claim made against one of the co-debtors for his part if the latter has not admitted the claim or if judgment has not been rendered against him.

Article 1212

The creditor who receives, separately and without reserve, the share of one of the co-debtors in the arrears or interest of the debt shall only lose his joint and several right for the arrears or interest accrued and not for those to be accrued, nor for the capital, unless the separate payment has continued for ten consecutive years.

Article 1213

The obligation contracted jointly and severally towards the creditor shall be divided by operation of law amongst the debtors who are only liable towards one another, each for his share and part.

Article 1214

The co-debtor of a joint and several debt who has paid in full shall only recover against the others the shares and portion of each.

If one of them is insolvent the loss which his insolvency may cause shall be shared proportionately among all the solvent debtors and the debtor who has paid in full.

Article 1215

insolvent shall be proportionately allocated amongst all the debtors, even those previouly released by the creditor from the joint and several liability.

Article 1216

If the venture for which the debt has been jointly and severally contracted was for the benefit of only one of those who bound themselves jointly and severally, he shall be liable for the whole debt towards the other co-debtors, who shall only be deemed in relation to him to be his sureties.

SECTION V

Divisible and Indivisible Obligations

Article 1217

An obligation is divisible or indivisible according to whether its object, be it something that can be delivered or an act which may be performed, is or is not amenable to division, whether physical or notional.

Article 1218

The obligation is indivisible, although the thing or the act which constitutes its subject-matter is divisible by nature, if the context of the obligation is such that it may not be partially performed.

Article 1219

Joint and several liability shall not render the obligation indivisible.

Effects of Indivisible Obligations

Article 1220

The obligation which is not susceptible of division shall be performed between [illegible]

Article 1221

The principle laid down in the preceding article shall be subject to the following exceptions, with regard to the heirs of the debtor —

1st, when the debt is secured by a mortgage;

2nd, When it consists of a specific thing;

3rd, When it relates to an alternative debt of things, at the option of the creditor, of which one is indivisible;

4th, When one of the heirs is alone responsible, according to the will, for the performance of the obligation;

5th, When the nature of the undertaking or the thing which constitutes the subject-matter or the purpose of the contract are such that it is clear that the intention of the contracting parties was that the debt should not be partially discharged.

In the first three cases, the heir who possesses the thing due or the property mortgaged for the debt may be sued for the whole as to the thing due or as to the mortgaged property, subject to his right to claim against his co-heirs. In the fourth case the heir who is alone responsible for the debt and in the fifth case, each heir, may also be sued for the whole; subject to his right to claim against his co-heirs.

2. The Effects of Indivisible Obligations

Article 1222

Each of those who have jointly contracted an indivisible debt shall be liable for the whole, even if the obligation had not been contracted jointly and severally

Article 1223

The same shall apply with regard to the heirs of a person who has contracted a similar obligation.

Article 1224

He cannot alone grant a release of the whole of the debt; he may not alone receive the price in lieu of the thing. If one of the heirs has alone discharged the debt or received the price of the thing, his co-heir may only demand the indivisible thing if he takes into account the share of the co-heir who has released the debt or received the price.

Article 1225

The heir of the debtor, sued for the whole of the obligation, may request a delay to enable him to join his co-heirs as co-defendants, unless the debt is of a kind that only the heir sued may discharge, and in that case judgement may be obtained against him alone, subject to his claim for an indemnity against his co-heirs.

SECTION VI

Obligation with Penal clauses

Article 1226

A penal clause is a clause whereby a person, to ensure the performance of a contract, binds himself to a penalty in case of failure to perform.

Article 1227

The nullity of the principal obligation shall carry with it the nullity of the penal clause.

The nullity of the latter shall not carry with it the nullity of the principal obligation.

Article 1228

The creditor, instead of demanding the execution of the penalty stipulated against the debtor who is under notice to perform the contract may sue for the execution of the principal obligation.

Article 1229

A penal clause may be stipulated for the failure to perform within the time agreed upon or for having performed the obligation otherwise than as agreed upon.

penalty unless the penalty has been stipulated for a simple delay in the performance.

A penal clause according to which the penalty is manifestly excessive may be reduced by the Court as provided by article 1152 of this Code.

Article 1230

Whether the original obligation contains a time-limit within which it must be executed or not, the penalty is only incurred when the person bound to deliver or to take or to do something is under notice to perform.

Article 1231

The penalty may be reduced by the Judge when the principal obligation has been partly performed.

Article 1232

When the original obligation contracted with a penal clause relates to an indivisible thing, the penalty shall be incurred by the violation by even one of the heirs of the debtor and it may be demanded either in full against the person who is guilty of the violation or against each one of the co-heirs for his share and portion, and if the penalty is secured by a mortgage, for the full amount, subject to their claims against the person who incurred the penalty.

Article 1233

When the original obligation contracted with a penalty is divisible, the penalty shall only be incurred by that heir of the debtor who violates the obligation and only for the share of the principal obligation for which he was liable, and no action shall be brought against those who performed their part of the obligation.

[illegible]

CHAPTER V

THE DISCHARGE OF OBLIGATIONS

Article 1234

Obligations shall be discharged:

By payment;

By a novation;

By a voluntary release;

By compensation;

By merger;

By the loss of the thing;

By nullity or rescission;

By the effect of a condition subsequent, which has been explained in the preceding Chapter;

By the death of the creditor or debtor in certain cases;

In special cases, applicable to particular contracts, which are explained under their respective heads;

And by prescription, which is the subject of a special Title.

SECTION I

Payment

1. Payment in General

Article 1235

Every payment presupposes a debt; the payment of a sum which is not due may be recovered.

There can be no recovery in respect of natural obligations which are voluntarily discharged.

Article 1236

A debt may be paid by any person who has an interest in the payment, such as a co-debtor or a surety.

The obligation may even be discharged by a third party who has no interest, provided that that party acts in the name of and for the discharge of the debtor or, if he acts in his own name, provided that he is not subrogated to the rights of the creditors.

Article 1237

The obligation to do something shall not be discharged by a third party against the will of the creditor when the latter has an interest that it should be discharged by the debtor himself, except as provided by article 1165 paragraph 2 of this Code.

Article 1238

A payment shall only be valid if the person who pays is the owner of the thing given in payment and is also capable of alienating it.

Nevertheless, the payment of an amount in money or other thing which is consumed by the use shall not be recovered against a creditor who has consumed it in good faith, although the payment has been made by a person who was not the owner or who was not capable of alienating it.

Article 1239

Payment shall be made to the creditor or to his proxy or to someone who is legally or judicially authorised to receive it.

Payment made to a person who has no authority to receive it on behalf of the creditor shall be valid if the latter ratifies it or benefits from it.

Article 1240

Payment made in good faith to a person who is in possession of the claim shall be valid, even if the possession is subsequently evicted.

Article 1241

Payment made to a creditor shall not be valid if the latter was subject to some incapacity in relation to the debtor unless the debtor proves that the payment has turned out to the benefit of the creditor.

Article 1242

or attachment exists; the latter may, according to their rights compel him to make another payment, subject only to his right to sue the creditor.

Article 1243

The creditor may not be compelled to receive a thing different from what is due to him, even if the thing tendered is of equal or greater value.

Article 1244

A debtor shall not compel a creditor to receive part payment of a debt, even if the debt is divisible.

The Court may, nevertheless, in consideration of the position of the debtor, and making use of this power with great moderation, grant a reasonable extension of time for payment and grant a stay of legal proceedings, provided nothing is done to change the position of the parties.

Article 1245

The debtor of a thing which is certain and specific shall be discharged by the delivery of the thing in the condition in which it is when delivery is made, provided that the deterioration sustained is not due to his act or fault nor to those of the persons for whom he is responsible and provided that he had not been served with notice to deliver before the deterioration occurred.

Article 1246

If the debt relates to goods which are only specified in kind the debtor shall not be bound, in order to obtain his discharge, to deliver goods of the best quality, neither shall he deliver, however, the worst.

Article 1247

1. [illegible] place [illegible] payment [illegible] place is not fixed, payment shall be carried out [illegible] time of payment; subject to [illegible] required.

2. [illegible]

Article 1247-1

1. Where the application of the provisions of article 1247 would require payment to be made at a place other than the creditor's habitual residence at the time when the liability arose and the discharge of the liability would be rendered substantially more onerous in consequence thereof, the debtor may refuse to pay at such place.

2. In the even of such refusal, the place of payment shall be the place of the creditor's habitual residence at the time when the liability arose, provided the debtor may defer payment at the place until the creditor shall have arranged for the payment to be received there by him or on his behalf. Nevertheless the creditor may designate another place in the State where the creditor had his habitual residence at the time when the liability arose at which, subject to paragraph 1 of the present article, payment shall be made by the debtor.

Article 1247-2

Where in accordance with the provisions of article 1247 or of article 1247-1 paragraph 2, payment is to be made at a place other than the creditor's habitual residence at the time when the liability arose, any increase in the expense or any financial loss resulting from the change in the place of payment shall be borne by the creditor.

Article 1247-3

Where the liability arises in the course of the creditor's professional or business activity, the 'place of business' where this activity is carried on shall, in the preceding articles, be substituted for the 'habitual residence' of the creditor.

Article 1248

The costs of the payment shall fall upon the debtor.

3. Payment with subrogation

Article 1249

The payment which entails only the subrogation of another in the rights of the creditor is governed by the rules of assignment of rights.

Article 1250

The subrogation is conventional:

1st When the creditor, by receiving his payment from a third party, subrogates him in repect of his rights, actions, privileges and mortgages against the debtor; this subrogation must be express and made at the same time as the payment;

2nd When the debtor borrows a sum intending to pay his debt and to subrogate the lender to the rights of the creditor. For this subrogation to be valid, it shall be necessary that the document of the loan and the receipt be drawn up by a notary; that in that document it be declared that the amount was borrowed for the purpose of making the payment, and that in the receipt it be declared that the payment was made from funds supplied by the new creditor for this purpose. The subrogation shall be effective irrespective of the will of the creditor.

Article 1251

The subrogation shall have effect by operation of law:

1st For the benefit of a person who, being himself a creditor, pays another creditor who ranks before him by reason of his privileges or mortgages;

2nd For the benefit of the buyer of immovable property who uses the purchase price to acquire from mortgagees their rights of mortgage over the property;

3rd For the benefit of a person who, being bound with or or behalf of others to pay the debt, has an interest in discharging it.

4th For the benefit of the heir subject to the benefit of inventory who has paid the debts of the succession out of his own funds.

Article 1252

The subrogation laid down by the preceding article shall be effective against the sureties against the debtor; it shall not do to the detriment of the creditor who has only been paid in part; in this case, he may exercise his rights to the extent of the debt still due, in preference to the person from whom he has received only a part payment of his debt.

3. The Appropriation of Payments

Article 1253

The debtor of several debts shall be entitled to declare, when he makes a payment, which he intends to discharge.

Article 1254

The debtor of a debt which bears interest or produces income may not, without the consent of the creditor, appropriate the payment which he makes for the discharge of the capital rather than of the income or interest: a payment made in discharge of capital and interest but which does not fully discharge the amount due shall first be appropriated for the interest.

Article 1255

When the debtor of various debts accepts a receipt showing that the creditor has appropriated the sum received for the discharge of one of these debts in particular, the debtor may not demand that that sum be appropriated for a different debts unless there is fraud or surprise on the part of the creditor.

Article 1256

When the receipt bears no indication whatever, the payment shall be appropriated for the debt upon which the accumulated interest which the debtor must discharge is highest amongst the debts which are also due; otherwise upon the debt due, even if it be less onerous than those which are not yet due.

If the debts are of the same nature, the appropriation is made for the oldest; all things being equal, it is made in proportion to each.

4. Tenders of Payment and Deposit

Article 1257

When the creditor refuses to accept payment, the debtor may make an offer of payment, upon the refusal of the creditor to accept it, he may pay that sum into court.

Article 1258

For the tenders to be valid it shall be necessary:

1st That they be made to a creditor having capacity to accept it, or to someone having authority to accept it for him;

2nd That they be made by a person having capacity to pay;

3rd That they cover the full amount due, arrears or interest due, the costs incurred, and a sum for the costs not yet incurred, subject to supplementation if necessary;

4th That the time-limit for payment has expired, if it has been stipulated in favour of the creditor;

5th That the condition, subject to which the debt has been contracted, be fulfilled;

6th that the tenders be made at the place agreed upon for the payment and that, if there is no special agreement as to the place of payment, they be made in accordance with articles 1247,1247-1, 1247-2, and 1247-3.

Article 1259

1. If the tender is not accepted, the debtor may make a payment into Court. It shall not be necessary for such payment to be authorised by the Court. Notice of such payment shall be given forthwith by the Registrar to the creditor in writing and the amount shall be paid out to the creditor on his application.

2. The creditor may accept such amount only in part satisfaction of his claim and may sue for the balance; and if the Court decides that the amount paid into Court was in full satisfaction of the plaint, the plaintiff shall pay to the defendant the costs of the suit incurred by him after such payment, unless the Court shall otherwise order, as from the time they were caused by the plaintiff's claim.

Article 1260

Article 1261

Money paid into Court may be withdrawn by the debtor so long as it is not accepted by the creditor; and if he withdraws it his co-debtors or his sureties shall not be released.

Article 1262

When the debtor has himself obtained final judgment which declares his tender and payment into Court to be proper and valid, he shall no longer, even with the consent of the creditor, withdraw the amount to the detriment of his co-debtors and of his sureties.

Article 1263

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 1264

If what is due is a specific thing which is delivered at the place where it is, the debtor shall serve the creditor with notice to remove it by a summons served on the creditor in person or at his residence or at the place agreed upon for the performance of the contract. If after this notice the creditor does not remove the thing, and if the debtor requires the use of the place upon which the thing is found, the latter may obtain from the Court authority to put it in deposit somewhere else.

6. Assignment of Assets

Article 1265

An assignment of assets is the surrender made by a debtor of all his assets to his creditors when he finds himself unable to pay his debts.

Article 1266

Article 1267

A voluntary assignment of assets is the assignment which the creditors voluntarily accept and which has no other effect than what results from the very terms of the contract made between them and the debtor.

Article 1268

A judicial assignment is a benefit which the law accords to an unfortunate debtor in good faith, who is permitted, in order to avoid being deprived of his liberty, to make a judicial surrender of all his assets to his creditors, notwithstanding any stipulation to the contrary.

Article 1269

A judicial assignment shall not confer ownership upon the creditors; it shall merely give them the right to cause the assets to be sold for their benefit and to receive the income therefrom until the sale.

Article 1270

Creditors shall not refuse a judicial assignment, except in the cases provided by law.

It shall not bar the execution of any decree of imprisonment for debt given by a Court where such decree has been made in respect of any vesting order under a petition for the assignment of assets. The Court may, nevertheless, in its discretion, order the release and discharge of the debtor immediately or after a time determined by it.

Such assignment shall only discharge the debtor to the extent of the value of the assets surrendered; and if these are insufficient he shall be bound to surrender all his assets, if any accrue to him, up to the total amount due.

2nd When a new debtor is substituted for the old, who is released by the creditor;

3rd When as a result of a new agreement, a new creditor is substituted for the old, in respect of whom the debtor is released.

Article 1272

Novation shall only have effect as between persons having capacity to enter into a contract.

Article 1273

Novation shall not be presumed; the intention to effect it must clearly result from the act.

Article 1274

Novation through the substitution of a debtor may be effected without the consent of the first debtor.

Article 1275

The assignment whereby a debtor assigns a debt to another who becomes bound towards the creditor shall not effect a novation if the creditor does not expressly declare that he intends to discharge his debtor who made the assignment.

Article 1276

The creditor who releases the debtor who made the assignment shall have no right of action against him, if the assignee becomes insolvent, unless the assignment contains an express reservation, or unless the assignee had already become bankrupt or insolvent when the assignment was made.

Article 1277

The [illegible] shall not be effected [illegible]

[illegible]

Article 1278

The privileges and mortgages which secured the earlier claim shall not secure the latter claim which replaces it unless the creditor has made an express reservation in respect of them.

Article 1279

1. When the novation is effected by the substitution of a new debtor, the original privileges and mortgages securing the claim shall not burden the property of the new debtor.

2. The privileges and mortgages securing the claim may be reserved, with the consent of the owners of the property subject to them, as a surety for the debt of the new debtor.

Article 1280

When the novation is effected between the creditor and one of joint and several debtors, the privileges and mortgages securing the earlier claim may only be reserved in respect of the property of the person who contracts the new debt.

Article 1281

Co-debors shall be released by a novation made between the creditor and one of joint and several debtors.

The novation effected in respect of the principal debtor shall release the sureties.

Nevertheless, if the creditor demands that in the former case the co- debors join in, or, in the latter case, that the sureties do so, the prior debt subsists if the co-debtors or the earlier sureties refuse to accept the new arrangement.

Article 1283

The voluntary surrender of the authentic and immediately enforceable document shall be presumed to constitute a release from the debt or payment, without prejudice to any proof to the contrary.

Article 1284

The surrender of the original of a document under private signature or of an authentic and executory document to one of the joint and several debtors shall have the same effect in favour of his co-debtors.

Article 1285

A contractual surrender or discharge in favour of joint and several co-debtors shall release all others, unless the creditor expressly reserves his right against the latter.

In the latter case, he shall only recover the debt subject to a deduction of the share of the debtor released.

Article 1286

The surrender of a thing given as a pledge shall not be sufficient to establish a presumption of release from the debt.

Article 1287

The contractual surrender or discharge granted to the principal debtor shall release the sureties;

If granted to the surety it shall not release the principal debtor;

If granted to one of the sureties it shall not release the other sureties.

Article 1288

SECTION IV

Set-Off

Article 1289

When two persons are debtors of each other, a set-off shall extinguish the two debts in the manner and cases hereafter laid down.

Article 1290

The set-off shall be effected by operation of law through the mere effect of the law, even without the knowledge of the debtors; the two debts shall be mutually extinguished at the moment when they both exist simultaneously, to the extent that the respective sums correspond.

Article 1291

The set-off shall only be effected in respect of two debts both of which are expressed in money or in a certain quantity of consumer goods of the same kind and both of which are immediately due.

Article 1292

A period of grace shall not prevent a set-off

Article 1293

A set-off shall have effect, whatever the origin of the debts, except in the following cases :

1st The claim of restitution of a thing the owner of which is unlawfully deprived;

2nd The claim of restitution of a deposit or a loan for use;

3rd A debt based on the payment of [illegible] attachment.

Article 1294

[illegible]

But the principal debtor shall not plead the set-off arising from the debt that the creditor owes to the surety.

Likewise, the joint and several debtor shall not plead the set-off arising from the debt which the creditor owes to his co-debtor.

Article 1295

A debtor who accepts purely and simply the assignment which a creditor has made of his rights to a third party shall not subsequently plead the set-off against the assignee which he could have pleaded to the assignor prior to the acceptance.

With regard to the assignment which is not accepted by the debtor, of which, however, he was notified, it shall only prevent the set-off of claims subsequent to such notification.

Article 1296

When the two debts are not payable at the same place, a set-off may be claimed only if accompanied by a payment of the costs of the remittance.

Article 1297

When there are several debts owed by the same person which may be the subject of a set-off, the rules of article 1256 relating to appropriation shall apply.

Article 1298

A set-off shall not occur to the detriment of the rights acquired by a third party. Thus, a person who, being a debtor, becomes a creditor following the attachment of his credit balance by a third party, shall not plead a set-off to the detriment of that party.

Article 1299

A person who [illegible] set-off of right [illegible]

SECTION V

Merger

Article 1300

When the qualities of creditor and debtor are united in the same person, there shall be merger by operation of law which extinguishes both claims.

Article 1301

The merger which occurs in the person of the principal debtor shall release his sureties ;

The merger in the person of the surety shall not extinguish the principal obligation;

The merger in the person of the creditor shall not release his joint and several co-debtors except to the extent of the debt which he owes.

SECTION VI

The Loss of the Thing due

Article 1302

When a certain and specific thing which was the subject-matter of the obligation perishes or has no longer any commercial value, or is lost in such a way that it cannot be found, the obligation shall be extinguished if the thing perishes or becomes lost through no fault of the debtor and prior to his being served with notice to deliver.

[illegible]

Article 1303

When the thing which perishes has no commercial value or is lost without any fault of the debtor, he shall be bound, if he is entitled to any rights or actions for indemnity in respect of such thing, to assign them to his creditor.

SECTION VII

The Action for Nullity or Rescission of Contracts

Article 1304

In all cases in which the exercise of an action for nullity or rescission of a contract is not limited to a shorter period by special legislation, that action shall be available for five years.

That period shall only run in the case of duress as from the day that the duress came to an end; in the case of mistake or fraud, as from the day when they were discovered.

The time shall only run, in respect of the transactions of a minor, as from the day of his attaining majority or his emancipation; in respect of the transaction of a person of full age under guardianship, as from the day he acquires knowledge of them and he is in a position to conclude them again validly. It shall only run against the heirs of a person subject to an incapacity as from the day of the death, unless it has already started running for some other reason.

Article 1305

A non-emancipated minor shall be entitled to rescission for simple lesion against all kinds of contracts.

Article 1306

A minor shall not be entitled to rescission for [illegible] when it arises from [illegible] fortuitous and unforeseen event.

Article 1307

[illegible]

Article 1308

A minor who is a merchant or a banker or a craftsman shall not be entitled to rescission in respect of contracts made in pursuance of his commercial or trade activities.

Article 1309

A minor shall not be entitled to the rescission of the terms in his antenuptial marriage settlement if these were agreed to with the consent and assistance of persons whose consent is required for the validity of his marriage.

Article 1310

1. He shall not escape liability arising from delicts or quasi-delicts.

2. However, if the minor has been placed in a position to commit a delict or a quasi-delict as a result of a contract which may be rescinded because of his incapacity, the person who has bound himself to that contract shall not be allowed to enforce, in effect, the contract by bringing an action in delict or quasi-delict.

Article 1311

A minor shall not rescind a contract which he had concluded during his minority if he has ratified it on attaining majority, whether that contract was null in form or only subject to rescission.

Article 1312

Where minors or persons of full age under guardianship are permitted by reason of their incapacity to rescind their contracts, the refund of what has been paid to them as a result of these contracts during the minority or interdiction may not be claimed unless it be proven that what has been paid turned out in their favour.

Article 1313

Persons of full age may only rescind contracts on the ground of lesion in accordance with the provisions of this Code.

Article 1314

Where the person bound by an obligation which can be rescinded [illegible]

of a succession, have been complied with, these persons shall be deemed, in respect of these transactions, to have entered into them as persons who have attained majority or as persons for whom the need for guardianship has not arisen.

CHAPTER VI

PROOF OF OBLIGATIONS AND OF PAYMENT

Article 1315

A person who demands the performance of an obligation shall be bound to prove it.

Conversely, a person who claims to have been released shall be bound to prove the payment or the performance which has extinguished his obligation.

Article 1316

The rules which regulate written evidence, oral evidence, presumptions, admissions by a party and oaths are laid down hereafter.

SECTION I

Written Evidence

1. Authentic Documents

Article 1317

An authentic document is a document received by a public official entitled to draw-up the same in the place in which the document is drafted and in accordance with the prescribed forms.

Article 1318

A document which is not authentic owing to the lack of power or capacity of the official or owing to a defect of form shall have effect as a private writing if signed by the parties.

Article 1319

Nevertheless, such document shall only have the effect of raising a legal presumption of proof which may be rebutted by evidence to the contrary. Evidence in rebuttal, whether incidental to legal proceedings or not, shall entitle the Court to suspend provisionally the execution of the document and to make such order in respect of it as it considers appropriate.

Article 1320

A document, whether authentic or under private signature, shall be accepted as proof between the parties even if expressed in terms of statements, provided that the statement is directly related to the transaction. Statements foreign to the transaction, shall only be accepted as writting providing initial proof.

**Article 1321*

1. Back-letters shall only take effect as between the contracting parties; they shall not be relied upon as regards third parties.

2. Where a third party has an interest in declaring null a contract affected by a back-letter, he may apply to the Court to set aside the ostensible transaction.

3. Back-letters purporting to show that the real consideration for the sale or exchange of immovable property or commercial property or office is greater than the consideration set down in the deed of sale or exchange, or that a gift inter vivos of immovable property, commercial property or office is in reality a sale, exchange, mortgage, transfer or charge, shall be deemed to be fraudulent and shall in law be of no force or avail whatsoever.

4. Any back-letter or other deed, other than a back-letter or deed as aforesaid, which purports to vary, amend or rescind any registered deed of or agreement for sale, transfer, exchange, mortgage, lease or charge or to show that any registered deed of or agreement for, or any part of any registered deed of or agreement for, sale, transfer, mortgage, lease or charge of or on any immovable property is simulated, shall be of no force or avail whatsoever unless and until the deed or agreement for sale, transfer, exchange, mortgage, lease or charge of or on the immovable property in question

Article 1322

2. Documents under Private Signature

1. A document under private signature which is acknowledged by a person against whom it is pleaded or which is legally presumed as acknowledged shall have the same effect as an authentic document in respect of the parties who have signed it, their heirs and assigns.

2. Paragraphs 3 and 4 of the preceding article relating to back-letters also apply to documents under private signature.

Article 1323

A person against whom a document under private signature is pleaded shall be bound to acknowledge or repudiate formally his handwriting or his signature.

His heirs or assigns may restrict themselves to declaring that they do not recognise either the handwriting or the signature of the principal.

Article 1324

When a party repudiates his handwriting or his signature, or when his heirs or assigns declare that they do not recognise either of them, the Court shall decide the issue after hearing evidence. In this respect, the law of evidence shall apply.

Article 1325

Documents under private signature which contain bilateral contracts shall only be valid if they were drawn up in as many originals as there are parties having a separate interest.

One original shall be sufficient for all the persons who have the same interest.

Every original shall mention the number of originals in which it was drawn up.

Any of them, failure to mention that there are two, three, etc., originals shall not be pleaded by a person who has performed on his part the agreement contained in the instrument.

Article 1326

[illegible]

shall be written in full, in the hand of a person who signs it; or at least it shall be necessary that apart from his signature he adds in his own hand the formula *"valid for"* or *"approved for"* followed by the amount in letters or the quantity of the thing. This requirement shall not apply to tradesmen and employees acting with the scope of their trade or employment.

2. The requirement of the formula as in paragraph 1 of this article shall not apply to promissory notes which are regulated by the Bills of Exchange Act, Cap 15, or any law amending or replacing that Act.

Article 1327

When there is a discrepancy shown between the amount in the main document and the sum in the formula, the obligation shall be presumed valid only for the lesser of the two sums, even if both the document and the formula are written entirely by the hand of the person who undertakes the obligation, unless it can be proved which of the two sums is mistaken.

Article 1328

The date of documents under private signature shall only have effect upon third parties as from when they are registered, or as from the death of the person who signed it, or as from the date on which their contents were confirmed in documents drawn up by public officials, such as minutes under seal or inventories.

Article 1329

Book entries of merchants shall not be proof of the supply of goods in respect of non-traders, subject to the provisions relating to oaths.

Article 1330

Books of merchants shall be proof against them, but the person who wants to rely upon the books may not have the entries split up so as to accept only the part of them that is favourable to him.

Article 1331

Judges shall not have any discretion to refer to the oath of one party or the other, or to reject it, when the claim or the exception is not proved by any evidence.

1st In all cases in which they formally state the receit of a payment.

2nd When they contain an express reference that the entry was made to supply a defect in the title of the person in whose favour an obligation is declared to exist.

Article 1332

The writing added by the creditor at the end, in the margin or on the back of a document which has always remained in his possession shall be proof, even if unsigned or undated, when it tends to establish the discharge of the debtor.

The same shall apply to the writing added by the creditor on the back or in the margin or at the end of the duplicate title or receipt, provided that such duplicate is in the hands of the debtor.

3. Tallies

Article 1333

Tallies the corresponding halves of which agree with each other shall be accepted as proof between persons who are in the habit of checking the supplies which they furnish or receive in retail trade.

4. Copies of Documents

Article 1334

Copies of documents, when the original exists, shall not be accepted as evidence of the contents of the originals, the production of which may, in all cases, be demanded.

Article 1335

When the original documents no longer exists, copies thereof shall be accepted as proof subject to the following distinctions:

1st [illegible]

2nd Copies which, without judicial authority or without the consent of the parties, and since the delivery of authentic and immediately enforceable or first authentic documents, were made from the original document by a notary who issued it or by one of his successors or by public officials who in their capacity act as depositaries of such original documents may, in the case of loss of the original, be accepted as proof if they are old.

They shall be considered as old if made not less than thirty years previously;

If they are less than thirty years they shall only serve as writing providing initial proof.

3rd When copies of an original document are not made by the notary who issued it or by one of his successors or by public officials who, in that capacity, are depositaries of originals, they shall only serve, whatever their age, as writing providing initial proof.

4th The copies of copies may, according to the circumstances, be considered of purely informative value.

Article 1336

The transcription of a document on the public registers shall only serve as writing providing initial proof; for this purpose it shall be necessary:

1st That it be certain that all the originals filed with the notary for the year in which the document appears to have been drawn up, are lost, or that it be proved that the loss of the original of that document was caused by a specific accident

2nd That an entry-book of the notary which is in proper order exists and that it contains that the document had been issued on the same date. Where these two circumstances correspond, evidence by witnesses shall be admissible and it shall be necessary that those who have knowledge of the document, if they are still alive, be heard.

Article 1337

What they may contain in excess of the original document, or what happens to be different, shall have no effect.

Nevertheless, if there were several identical acknowledgements, supported by possession, of which one dates back to thirty years, the creditor may be permitted to dispense with the production of the original document.

Article 1338

1. A document of confirmation or ratification of an obligation which is, by law, subject to an action for nullity or rescission shall only be valid if that document contains the substance of that obligation, a reference to the cause of the action for rescission and the intention to rectify the defect upon which that action is founded.

In the absence of a document of confirmation or ratification, it shall be sufficient if the obligation is performed voluntarily subsequent to the period during which the obligation was capable of being validly confirmed or ratified.

The confirmation, ratification, or voluntary performance in the form of, and during the period determined by, the law carries with it the waiver of the defences and denials which could be pleaded against that document, without prejudice, however, to the rights of third parties.

2. The respective rights of the parties as under paragraph 1 of this article shall not be affected by the fact that a bill of exchange is drawn or indorsed by a minor or a corporation.

Article 1339

A donor shall not rectify by any document of confirmation the defects of a gift inter vivos which is null in form; it must be made afresh according to the forms required by law.

Article 1340

The [illegible] of confirmation or voluntary performance by the heirs or successors of the author of the defect [illegible]

SECTION II

Oral Evidence

Article 1341

Any matter the value of which exceeds 5000 Rupees shall require a document drawn up by a notary or under private signature, even for a voluntary deposit, and no oral evidence shall be admissible against and beyond such document nor in respect of what is alleged to have been said prior to or at or since the time when such document was drawn up, even if the matter relates to a sum of less than 5000 Rupees.

The above is without prejudice to the rules prescribed in the laws relating to commerce.

Article 1342

The aforementioned rule shall also apply to the case in which the action contains, apart from a claim for the capital, also a claim for the interest, which added to the capital, exceeds the sum of 5000 Rupees.

Article 1343

A person who makes a claim which exceeds 5000 Rupees shall not be entitled to bring oral evidence, even if he reduces his original claim.

Article 1344

Oral evidence shall not be admissible even upon a claim of a sum of less than 5000 Rupees if that sum is declared to be the balance of, or to form part of, a more substantial claim which is not evidenced in writing.

Article 1345

If, in the same proceedings, a party has made several claims for which he has no written document and the claims joined together exceed the sum of 5000 Rupees, oral evidence shall not be admissible, even if the party alleges that the claims arise from different transactions or that the existence of such transactions was proved by admission, writing or otherwise to the judge or to the court.

Article 1346

[illegible]

Article 1347

The aforementioned rules shall not apply if there is writing providing initial proof.

This term describes every writing which emanates from a person against whom the claim is made, or from a person whom he represents, and which renders the facts alleged likely.

Article 1348

They shall also be inapplicable whenever it is not possible for the creditor to obtain written proof of an obligation undertaken towards him.

This second exception shall apply :

1st To the obligations that arise from quasi-contracts and delicts or quasi-delicts.

2nd To necessary deposits made in case of fire, ruin, riot, or wreck and to those made by travellers staying at an hotel or guest house, and all this in accordance with the standing of the persons and the circumstances of fact.

3rd To the obligation undertaken during unforeseen accidents when the persons were unable to enter into written transactions;

4th To the case in which a creditor has lost the document which served as written proof as a result of an accident which was inevitable and unforeseen and which was the consequence of an act of God.

1. Presumptions which apply by Operation of Law

Article 1350

A legal presumption of law is the presumption which a particular law applies to certain transactions or to a certain facts such as :

1st The transactions which by their very nature the law declares null and which are presumed to have been made in violation of its provisions;

2nd The case in which the law declares that ownership or release results from certain specific circumstances;

3rd The authority which the law attributes to a final judgment;

4th The weight which the law attaches to an admission of the party or to his oath.

Article 1351

1. The authority of a final judgment shall only be binding in respect of the subject-matter of the judgment. It is necessary that the demand relate to the same subject-matter; that it relate to the same class, that it be between the same parties and that it be brought by them or against them in the same capacities.

2. Paragraph 1 of this article shall also have effect in respect of proceedings to establish status, without prejudice, however, to the binding effect of uncontested declarations relating to civil status or to judgments which establish new status, such as a decree of divorce, or to the actions to establish descent, to the extent that only certain specified persons are entitled to bring certain types of proceedings.

3. Repealed. (3/7/1990)

Article 1352

A presumption of law shall exempt persons, in whose favour it is made, from the necessity of producing evidence.

The judge shall not [illegible]

2. Presumptions which do not apply by Operation of Law

Article 1353

Presumption which do not apply by operation of law are left to the knowledge and wisdom of the Judge, who shall only admit presumptions which are serious, precise and consistent and only in cases in which the law admits oral evidence.

SECTION IV

The Admission of the Party

Article 1354

An admission which is pleaded against a party is extra-judicial or judicial.

Article 1355

The allegation of an extra-judicial and purely oral admission shall have no effect if it relates to a claim in respect of which oral evidence is not admissible.

Article 1356

A judicial admission is the declaration which a party or his specially authorised proxy makes in the course of legal proceedings.

It shall be accepted against the persons who make it.

It may not be admitted only in part to the detriment of the person making it.

It may not be revoked unless it be proved that it results from a mistake of fact. It shall not be revoked on the ground of a mistake of law.

SECTION V

Section

Article 1357

2nd The oath which is tendered *ex officio* by the Judge to one or the other of the parties.

1. Decisive Oaths

Article 1358

A decisive oath may be tendered in respect of any kind of litigation.

Article 1359

It shall only be tendered in respect of a personal act to the party to whom it is tendered.

Article 1360

It may be tendered at all stages of the proceedings, even if there is no initial proof of the claim or of the defence in support of which it is demanded.

Article 1361

The person to whom the oath is tendered and who refuses to take it, or who does not consent to passing it on to his opponent, or the opponent to whom it is passed and who refuses to take it, shall fail in his claim or in his defence.

Article 1362

The oath shall not be passed on when the act envisaged is not that of the two parties but an act purely personal of the party to whom the oath was tendered.

Article 1363

When the oath tendered or passed on has been taken, the other party shall not be allowed to prove its falsity.

Article 1364

The party who has tendered or passed on the oath cannot withdraw it, if the other party declares that it is ready to take it.

Article 1365

[illegible]

Nevertheless, an oath tendered by one of joint and several creditors to the debtor shall only release him in respect of that creditor.

An oath tendered to the principal debtor shall also release the sureties.

An oath tendered to one of joint and several debtors shall benefit the co-debtors.

And an oath tendered to a surety shall benefit the principal debtor.

In the last two cases, the oath of a joint and several co-debtor or of the surety shall only benefit the other co-debtor or the principal debtor, if it is tendered upon the debt, and not upon the fact of the joint and several liability or of the suretyship.

2. Oaths tendered *ex officio*

Article 1366

A judge may tender the oath to one of the parties either in order to decide the case upon it or only in order to fix the amount of the liability.

Article 1367

A Judge may only tender the oath ex officio either upon the claim of a party or in defence of a party sued under the following two conditions. it shall be necessary :

1st That either the claim or the defence is not fully established;

2nd That it is not entirely devoid of evidence.

Outside these two cases, the Judge shall either admit or reject the claim purely and simply.

Article 1368

An oath tendered *ex officio* by the judge to one of the parties shall not be passed on to the other party.

Article 1369

An oath tendered *ex officio* by the judge to one of the parties can only be tendered by the judge to the [illegible] of the parties then ordered by any other [illegible].

[illegible]

TITLE IV

OBLIGATIONS ARISING WITHOUT AGREEMENT

Article 1370

1. Certain rights or duties arise without the intervention of an agreement, either on the part of the person who is bound by a duty or on the part of the person who is entitled to the performance of that duty.

They arise from legal acts or personal situations of fact which the law regulates.

Such are the rights and duties which arise from legal acts, independent of the will of the persons bound or entitled, as for instance, the rights and duties between neighbouring owners or those of guardians and other administrators who may not refuse the duties imposed upon them.

Rights and duties which arise from personal situations of fact are those which result from quasi-contracts, unjust enrichment, and delicts or quasi-delicts; they are the subject of this Title.

2. When a person has a cause of action which may be founded either in contract or in delict, he may elect which cause of action to pursue. However, if a law limits the liability in either of the two causes of action, the plaintiff shall be bound to pursue the cause of action, to which that law relates. A plaintiff shall not be allowed to pursue both causes of action consecutively.

CHAPTER I

QUASI-CONTRACTS AND OTHERS SITUATIONS OF OBLIGATIONS

SECTION I

Quasi-contracts

Article 1371

Article 1372

1. When a person voluntarily manages the business of another, whether the owner knows it or not, he shall undertake a tacit obligation to continue the management he has begun and to carry on until the owner is in a position to manage it himself; he shall also take charge of everything connected with the same business.

He shall be subject to all the obligations which would have arisen from an express power of attorney had the owner given him one.

2. The voluntary act, in the terms of the first paragraph of this article, need not be entirely for the benefit of the owner.

3. A person who voluntarily assumes a risk to save life or property shall be entitled to claim under this article; provided that he has acted reasonably in the circumstances.

Article 1373

He shall be bound to continue his management even if the owner dies before the termination of the business until the heir is able to assume control.

Article 1374

He shall be bound to show in regard to the management reasonable care.

Nevertheless, the circumstances which have led to his assumption of the control of the business may permit the Court to reduce the damages which may have arisen from the fault or the negligence of the manager.

Article 1375

The owner whose business has been properly managed shall fulfil the obligations which the manager has contracted for his benefit, indemnify him for all the personal obligations which he has assumed and reimburse him all the necessary and useful expenses incurred.

Article 1376

[illegible]

Article 1377

When a person, mistakenly believing himself to be a debtor, discharges a debt, he shall be entitled to recover the payment from the creditor.

Nevertheless, the right shall cease if the creditor has, following the payment, destroyed the documents on the strength of which he was entitled to receive the sum; but without prejudice to the right of the person who made the undue payment to recover from the real debtor.

Article 1378

The person who receives payment, if in bad faith, shall be bound to make restitution of the capital and interest or income accrued as from the day of payment.

Article 1379

If the property unduly received is immovable or a corporeal movable, the person who receives it shall be bound to make restitution in kind, if it is still in existence, or of its value if it has perished or deteriorated through his fault; he shall also be liable for its incidental loss if he recieves it in bad faith.

Article 1380

If the person who has received something in good faith has sold it, he shall only be bound to restore the proceeds of the sale.

Article 1381

The person whose property has been restored shall refund, even to a possessor in bad faith, all the necessary and recoverable expenses incurred for the preservation of the property.

what is due to him to the extent of the enrichment of the latter. Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict; provided also that detriment has not been caused by the fault of the person suffering it.

CHAPTER II

Delicts and Quasi-delicts

Article 1382

1. Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.

2. Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.

3. Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.

4. A person shall only be responsible for fault to the extent that he is capable of discernment; provided that he did not knowingly deprive himself of his power of discernment.

5. Liability for intentional or negligent harm concerns public policy and may never be excluded by agreement. However, a voluntary assumption of risk shall be implied from participation in a lawful game.

Article 1383

1. Every person is liable for the damage he causes not merely by his act, but also by his negligence or imprudence.

2. The driver of a motor vehicle which, by reason of its operation, causes damage to persons or property shall be presumed to be at fault and shall accordingly be liable therefor unless he can prove that the damage was entirely due to the negligence of the injured party or that of a third party or to a case of force majeure.

3. The provisions of this article and of article 1382 of this Code shall not apply to the civil law of defamation which shall be governed by English law.

Article 1384

1. A person is liable for the damage that he has caused by his own act but also for the damage caused by the act of persons for whom he is responsible or by things in his custody.

2. The father and mother, in so far as they have custody, shall be jointly and severally liable for the damage caused by their children residing with them, to the extent that is deemed reasonable having regard to the age and maturity of the child, the nature of the act or omission by which the damage was caused and other relevant circumstances.

3. Masters and employers shall be liable on their part for damage caused by their servants and employees acting within the scope of their employment. A deliberate act of a servant or employee contrary to the express instructions of the master or employer and which is not incidental to the service or employment of the servant or employee shall not render the master or employer liable.

4. Teachers and craftsmen shall be liable for the damage caused by their pupils and apprentices while under their supervision only to the extent applicable to parents under paragraph 2 of this article. The liability in the above cases shall exist unless the father and mother and the teachers and craftsmen prove that they were unable to prevent the act which has given rise to the liability.

Article 1385

The owner of an animal, or the person who uses it, while he has the use of it, is held for the damage that the animal has caused, or even that the animal has made [illegible] or escaped.

Article 1386

[illegible]

TITLE V

ANTENUPTIAL MARRIAGE SETTLEMENT AND MATRIMONIAL SYSTEMS

Articles 1387 - 1428

Repealed.

Status of Married Women Act. Schedule 1. Cap. 231.

Articles 1429 - 1430

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Articles 1431 - 1581

Repealed.

Status of Married Women Act. Schedule 1. Cap. 231.

TITLE VI

SALE

CHAPTER I

The Nature and Form of Sale

Article 1582

[illegible]

from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not yet been delivered or the price paid.

2. However, if the sale is of the value of no more than 10,000 Rupees and relates to goods and if the contract is issued in a standard form, the following rules shall apply whether the form of the agreement is that of a credit-sale, a conditional-sale or a hire-purchase contract, or of any other form the object of which is the transfer of goods for a price to be paid over a certain period :

1st The contract must be in duplicate form, one form to be given to the buyer.

2nd The cash price and the full credit price which the buyer is eventually bound to pay shall be stated.

3rd The true rate of interest charged and the full amount of the charges, obvious or hidden, must clearly be stated.

4th The contract shall only have binding effect 48 hours after the document has been signed by the buyer. Until that time has elapsed the buyer is entitled to avoid the contract.

5th No clause of the agreement shall be construed as having the effect of depriving the buyer of the goods while compelling him to pay the full price.

6th Failure to comply with any of the provisions of this article shall deprive the seller of his right to enforce the contract.

7th Any agreement between the parties to exclude the provisions of this article or of article 1623 shall be null.

[Inserted by Act 15 of 1992]

[Amended by Act 15 of 1992]

[Amended by Act 15 of 1992]

Article 1585

If goods are not sold in bulk but by weight, number or measure, the sale shall not be complete in the sense that the risk of the goods sold falls upon the seller, until they are weighed, counted or measured; but the buyer shall be entitled to demand delivery or damages, if any, in the case of failure to perform the contract.

Article 1586

Conversely, if the goods are sold in bulk, the contract shall complete, even if the goods are not yet weighed, counted or measured.

Article 1587

With regard to wine, oil, and other things which one normally tastes before buying, there shall be no sale until the buyer has tasted and approved them.

Article 1588

1. A sale made subject to a trial shall always be deemed to have been made under a condition subsequent.

2. The dispatch of unsolicited goods shall not constitute a sale until the goods are accepted. A person who receives such goods may give notice to the seller inviting him to collect at his expense the same within four weeks. If the seller fails to do so, the goods shall be deemed to be gift.

Article 1589

A promise to sell is equivalent to a sale if the two parties have mutually agreed upon the thing and the price.

However, the [illegible] promise to sell or the exercise of an option to purchase property subject to registration shall only have effect as between the parties or in respect of third persons from the date of registration.

Article 1590

[illegible]

Article 1591

The price of the sale shall be certain and fixed.

Article 1592

It may, however, be left to the decision of an umpire; if the latter refuses to act there shall be no sale.

Article 1593

The costs of any documents of title and other accessories to the sale shall fall upon the buyer.

CHAPTER II

THE CAPACITY TO BUY AND SELL

Article 1594

Persons who are not forbidden by law to buy or sell can do so.

Article 1595

Repealed.

The Status of Married Women Act, Schedule I, Cap. 231.

Article 1596

The following persons shall not buy either themselves or through [illegible] at an auction sale under penalty of nullity:

Guardians, in relation to property which they [illegible] under guardianship;

Agents, in relation to property which they are [illegible] to sell;

[illegible]

Article 1597

Judges, their deputies, officers of the Attorney-General's department, clerks or ushers of the Court, practising lawyers and notaries may not acquire legal rights and actions in respect of the subject matter or any of the grounds of litigation before the Court in which they perform their duties, under penalty of nullity and of the payment of costs and damages.

CHAPTER III

THINGS THAT MAY BE SOLD

Article 1598

Everything that has commercial value may be sold, provided that special laws do not forbid the sale.

Article 1599

1. The sale of the property of another shall be null.

2. However, notwithstanding any provision to the contrary in this Code, a person who, having bought goods, obtains with the consent of the seller possession thereof may transfer title to a third party who receive the same in good faith and without notice of any right of a previous seller in respect of the goods, provided that the seller originally obtained the goods with the consent of the owner.

Article 1600

The right of succession of a living person shall not be sold even with his consent.

Article 1601

If, at the moment of the sale the thing sold has totally perished the sale shall be null.

CHAPTER III-I

THE SALE OF A FUTURE BUILDING

Article 1601-1

The sale of a future building is a contract whereby the seller undertakes to build a building within a period determined by the contract. It may be a building sale forward or a sale of the future completion of a building.

Article 1601-2

The building sale forward is a contract where the seller undertakes to deliver a building when it is completed and the buyer undertakes to take delivery and pay the price at the time of such delivery. The ownership shall pass as of right when an authentic document establishes the completion of the building; it shall have effect retroactively to the date of the sale.

Article 1601-3

The sale of the future completion of a building is a contract whereby the seller transfers immediately to the buyer his rights to the soil as well as the ownership of any existing structures thereon. The future structures shall belong to the buyer stage by stage as they are built; the buyer shall be bound to pay the price in proportion to the progress of the work. The seller retains his right to be in charge of the works until they have been accepted.

Article 1601-4

The assignment by the buyer of his rights that he acquires from the sale of a *future building* for the effect of registering of rights thereon [illegible] a guarantee for the obligations of the buyer towards the seller.

[illegible] subject to the conditions of agency, the buyer [illegible] the effect of the assignment.

[illegible] of [illegible].

CHAPTER IV

The Obligations of the Seller

SECTION I

General Provisions

Article 1602

The seller shall be bound to explain clearly what he undertakes.

An obscure or ambiguous terms shall be interpreted against the seller.

In regard to the obligations of the seller the provisions of article 1625 shall have particular application.

Article 1603

There shall be two principal obligations, the obligation to deliver and the obligation of warranty of the thing sold.

SECTION II

The Delivery

Article 1604

Delivery is the transfer of the thing sold to the control and possession of the buyer.

Article 1605

The obligation to deliver immovable property on the part of the seller shall be [illegible] when he has given the keys, if it is a building, or when he passes the [illegible] of the property to the other party.

Article 1606

[illegible]

Or by the handing over the keys of the building in which it is found;

Or by the mere consent of the parties if the transfer cannot be made at the moment of the sale or if the buyer was already in control in another capacity.

Article 1607

The delivery of incorporeal things is effected either by the handing over of any document of title or by the use that the buyer makes of them with the consent of the seller.

Article 1608

The costs of delivery shall fall upon the seller and those of the removal upon the buyer, unless there is agreement to the contrary.

Article 1609

Delivery must be made at the place where the thing sold was at the time of the contract, unless there is agreement to the contrary.

Article 1610

If the seller fails to deliver within the mutually agreed time, the buyer may demand, at his option, either the cancellation of the contract or to be put in possession, provided the delay is due to the seller.

Article 1611

In all cases, the seller shall be condemned to pay damage if the buyer suffers any detriment as a result of the failure to deliver at the time agreed upon.

Article 1612

The seller shall not be bound to deliver the thing if the buyer has not paid the price, provided that the seller has not granted him time for payment.

Article 1613

[illegible]

Article 1614

The thing shall be delivered in the state in which it was at the time of the sale.

From that day all the profits of the thing shall belong to the buyer.

Article 1615

The obligation to deliver the thing includes its accessories and everything that was intended for its permanent use.

Article 1616

The seller shall be bound to deliver goods of the quality specified in the contract, subject to the conditions stated below.

Article 1617

If the sale of an immovable was made by reference to its contents at the rate of so much per some standard of measurement, the seller shall be bound to deliver to the buyer, if he demands it, the quantity specified in the contract;

But if this has become impossible or if the buyer does not demand it, the seller shall be bound to submit to a proportionate reduction of the price.

Article 1618

Conversely, if in the case of the preceding article the quantity is greater than that specified in the contract, the buyer may elect either to supplement the price or to withdraw from the contract, provided that the excess is greater than the quantity stated by one-twentieth.

Article 1619

In all other cases,

[illegible]

[illegible]

[illegible]

in favour of the seller for the excess, nor in favour of the buyer for a reduction of the price owing to the smaller quantity, except to the extent that the difference between the real quantity and that stated in the contract is of one twentieth more or less, having regard to the value of all the things sold, unless there is agreement to the contrary.

Article 1620

If there is an increase of the price, as stated in the preceding article, for any excess, the buyer may elect either to withdraw from the contract or to supplement the price with interest, if he has kept the immovable.

Article 1621

In all the cases in which the buyer is entitled to withdraw from the contract, the seller shall be bound to restore, apart from the price if he has received it, the costs incurred by that contract.

Article 1622

Proceedings for a supplement of the price on the part of the seller, and those for a reduction of the price or for the cancellation of the contract on the part of the buyer, shall be initiated within a year from the day of the contract after which the proceedings shall be barred.

Article 1623

If two properties are sold by the same contract and for a single price but with a statement of the measurements of each, and it turns out that one is smaller and the other larger, there shall be a set off to the extent of the value of the surplus of the one property and the action, whether for a supplement or a reduction of the price, shall be brought in accordance with the aforementioned rules.

Article 1624

[illegible]

SECTION III

Warranties

Article 1625

1. The waranty by which the seller is bound to the buyer has two objects: the first is to ensure the peaceful possession of the thing sold; the second, to protect the buyer against any hidden or latent defects of the thing sold. The Courts shall have power to order that any damage suffered as a result of a breach of warranty shall be recovered by the buyer.

2. The exclusion of any express or implied warranty imposed by law shall only protect the seller if the defect of or the encumbrance upon the property was of nature that he did not know or he ought not to have known as a person acting reasonably in the circumstances. If the seller is a trader habitually selling the kind of goods sold, he shall not be able to avoid liability by a claim that he did not know and ought not to have known of the defect. In that case, however, his liability shall be discharged if he refunds the price or replaces the goods.

3. Paragraph 2 of this article is a rule of public policy and cannot be excluded by agreement.

1. The Warranty against Eviction

Article 1626

Even if, at the time of the sale, no provision is made with regard to warranties, the seller shall be bound by law to warrant the buyer against eviction in relation to the whole or part of the property sold, and against any alleged encumbrances upon the property which were not disclosed when the sale was concluded.

Article 1627

The [illegible] by [illegible] agreement, subject to this legal obligation. They may [illegible] liability for [illegible] which the buyer should have noticed.

Article 1627

[illegible]

Article 1629

In the case of an exclusion of warranty, the seller shall be bound to restore the price if the buyer has been evicted, unless the latter knew at the time of the sale of the danger of eviction or unless he bought the property at his risk and peril.

Article 1630

When the warranties apply, or when nothing has been agreed upon in respect of the matter, the buyer who suffered eviction shall be entitled to demand from the seller:

1st The return of the price;

2nd The return of the value of the profits which he was obliged to restore to the owner of the property;

3rd The costs incurred by the buyer in enforcing his warranties and the costs arising from the original demand;

4th Finally, damages as well as the costs and notarial expenses for drawing up the contract.

Article 1631

If at the time of the eviction the thing sold has diminished in value or has considerably deteriorated either through the negligence of the buyer or through accidents caused by an act of God, the seller shall be no less bound to restore the entire price.

Article 1632

But if the buyer has derived benefit from the deterioration caused by his own fault he shall be entitled to retain from the price a sum equal to the profit.

Article 1633

If the whole or part of the property sold is claimed by a third party by virtue of a right existing at the time of the sale, and of which the purchaser was ignorant, and the property is lost in consequence of the exercise of such right, the purchaser shall have a right of action against the seller for the restitution of the price.

Article 1634

The seller shall be bound to reimburse the buyer, or to cause the person who has evicted the buyer to do so, for all the useful repairs and improvements which he had carried out upon the property.

Article 1635

If the seller sells the property of another in bad faith, he shall be bound to reimburse the buyer for all the expenses which he incurs on account of the property, even if they relate to decorations or amenities.

Article 1636

If the buyer is only evicted from part of the premises sold and that part is of such importance in relation to the whole that the buyer would not have bought the whole without the part which is taken away from him, he shall be entitled to rescind the sale.

Article 1637

If, in the case of eviction from part of the premises, the sale is not rescinded, the value of the part from which the buyer has been evicted shall be reimbursed to him in accordance with the valuation made at the time of the eviction and not in proportion to the total purchase price, whether the property sold has increased or diminished in value.

Article 1638

If the property sold is proved to be [illegible] which were apparent easements which had not been disclosed, and they are of such [illegible] that it is reasonable to presume that the buyer would not have bought [illegible] been informed, he may demand rescission of the sale, unless he prefers to be [illegible].

Article [illegible]

[illegible]

Article 1640

The warranty against eviction ceases when the buyer has allowed himself to be condemned to pay damages by a final decision or a decision against which it is no longer possible to appeal, without citing his seller, provided that the latter can prove that adequate grounds existed to reject the action.

2. The Warranty for Defects of the Property sold

Article 1641

The seller shall be bound by the warranty against latent defects of the property sold which render it unfit to use for the purpose for which it was intended or which reduce its use so substantially that the buyer would not have bought it or would have paid a lesser price had he known of them.

Article 1642

The seller shall not be liable for apparent defects which might reasonably have come to the notice of the buyer.

Article 1643

1. He shall be liable for latent defects, even if he had no reason to know of them, unless he has excluded liability for them.

2. However the preceding paragraph shall be subject to paragraphs 2 and 3 of article 1625.

Article 1644

In the cases of articles 1641 and 1643 the buyer may elect either to return the property to the seller in exchange for the price or to keep the property and recover part of the price [illegible] to be determined by valuation of experts.

Article 1645

[illegible]

Article 1646

If the seller could not reasonably have ben aware of the defects of the property, he shall only be bound to return the price and to reimburse the buyer the costs of the sale.

Article 1646-1

The seller of a future building shall be liable for a period of five years from the acceptance of the works for all the latent defects for which the architects, builders and other persons bound to the owner of the building by a contract for work are liable in accordance with articles 1772 and 2270 of this Code.

These warranties shall benefit any successive owners of the building.

The contract shall not be rescinded nor shall there be a reduction of the price if the seller undertakes to repair the defects.

Article 1647

If the defective thing perishes owing to its bad quality, the loss falls upon the seller who shall be bound towards the buyer to return the price and also bound to other compensation, as explained in the two preceding articles.

However, if the loss is due to an inevitable accident it shall fall upon the buyer.

Article 1648

Repealed.

Civil Code of Seychelles Act, Fourth Schedule, Cap. 33.

Article 1649

The action for latent defects shall not be available with regard to property sold in a judicial sale under which was a voluntary one in the sense that the seller was not bound to sell the property through a judicial procedure.

Article 1651

If nothing has been fixed in this respect at the time of the sale, the buyer shall pay at the place and time of delivery.

Article 1652

The buyer shall owe interest on the price of the sale until payment of the capital, in the following three cases:

If that is agreed at the time of the sale;

If the thing sold and delivered produces fruits or other income;

If the buyer is served with notice to pay;

In the last case, the interest shall only run from the day of the service of the notice to pay.

Article 1653

If the buyer is sued or has reasonable cause to fear that he may be sued, either on a mortgage or by way of vindication, he may suspend payment of the price until the seller has brought that likelihood to an end unless he prefers to give security or unless it had been agreed that, notwithstanding the possibility of proceedings, the buyer will pay.

Article 1654

1. If the buyer does not pay the price, the seller may demand rescission of the sale.

2. However, after the extinction of any privilege that the seller may have upon the property, his right to claim rescission cannot be resolved to the detriment of third parties having over the property to which the privilege applied rights derived from the purchaser, and he is deemed to the latter for preserving their said rights.

Article 1655

If this time-limit expires without the buyer having paid, the rescission of the contract shall be ordered.

Article 1656

If it is agreed at the time of the sale of an immovable that upon failure to pay the price within the agreed time the sale will be rescinded as of right, the buyer may nevertheless pay after the expiry of the time-limit provided that he has not been served with notice to perform the contract: after such notice, the Judge shall not grant him any further time-limit.

Article 1657

With regard to the sale of produce and other movable things, the rescission of the sale shall be effected as of right for the benefit of the seller and without the need to serve notice once the time agreed upon for collecting the goods has expired.

CHAPTER VI

NULLITY AND RESCISSION OF SALE

Article 1658

1. Apart from the grounds of nullity or rescission already explained in this Title, and those which are common to all contracts, the contract of sale may be rescinded by the exercise of the option to redeem and by reason of the insufficiency of the price.

2. However, where immovable property is acquired otherwise than under a sale by public competition before the Judge, the buyer thereof may bar the option to redeem by depositing at the registry his title. Such deposit shall be notified through a notice of the Supreme Court specially designated on that behalf by the Judge in Chambers to the creditors who have taken their inscriptions before the day of the transcription of the aforesaid title. The summons shall be served upon the said creditors at the election domicile chosen by them in their inscriptions. The declaration of residence shall have been made on behalf of the seller. The notification shall be served by a bailiff with a power of attorney from the Judge. The notice shall contain a statement of the price and conditions of the sale, the name, profession and residence of the buyer and the designation of the property as it appears in the inscriptions. The notice shall be served on the creditors at the domicile elected in their inscriptions within the month following the deposit of the title. The summons shall be served upon the said creditors at the election domicile chosen by them in their inscriptions. The declaration of residence shall have been made on behalf of the seller. The notification shall be served by a bailiff with a power of attorney from the Judge. The notice shall contain a statement of the price and conditions of the sale, the name, profession and residence of the buyer and the designation of the property as it appears in the inscriptions. The notice shall be served on the creditors at the domicile elected in their inscriptions within the month following the deposit of the title.

SECTION I

THE OPTION TO REDEEM

Article 1659

The option to redeem or to repurchase is a term whereby the seller reserves for himself the right to take back the thing sold upon returning the principal price and making a refund as provided in article 1673.

Article 1660

The option to redeem shall not be avilable beyond a period of five years.

If it extends beyond that period it shall be reduced to five years.

Article 1661

The period fixed is binding and cannot be prolonged by the Judge.

Article 1662

If the seller fails to exercise his option to repurchase within the prescribed period, the buyer shall remain irrevocably owner.

However, the buyer shall be bound to serve reasonable notice to the seller of the impending expiry of the option. Failure to do so shall extend the time of repurchase until the expiry of any subsequent reasonable notice.

Article 1663

The time runs against everyone, even against a minor, subject to a right of action against the person who failed to act.

Article 1664

The seller entitled to an option to redeem may bring his action against a subsequent buyer, even if the option to redeem was not inserted in the later contract.

Article 1665

Article 1666

He may demand that the creditors of his seller must first seize the property of the latter.

Article 1667

An option to redeem shall not be exercised in relation to property in co-ownership.

Article 1668 - 1672

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 1673

The seller who exercises the option to redeem shall refund not only the principal price but also the costs and notarial fees for drawing up the documents of sale, the costs of any necessary repair and those which have increased the value of the property to the extent of such increase. He shall not enter into possession until he has fulfilled all these obligations.

When the seller takes possession of his property as a result of the exercise of the option to redeem he takes it free from all encumbrances and mortgages with which the buyer may have burdened it on condition that that option has been properly registered at the Office of the Registrar-General before the inscription of the said encumbrances and mortgages. He shall be bound to execute the leases which were granted in good faith by the buyer.

[illegible]

[illegible]

Article 1674

[illegible]

the provisions of this article and articles 1675 and 1676, the rule of article 1118 of this Code shall have application.

Article 1675

In order to establish whether there is a lesion of more than one half, the value of the property shall be calculated according to its condition at the time of the sale.

In the case of a unilateral promise of a sale the lesion is estimated on the day of its fulfilment.

Article 1676

The rules of articles 1118 and 1674 shall not apply to contingent contracts unless it is clear that one of the contracting parties cannot expect to derive a reasonable benefit from the counterpromise.

Article 1677

To establish whether lesion occurred the Court shall take into account the condition and value of the property at the time of the sale.

Article 1678

The right to sue for rescission on the ground of lesion shall be barred after five years.

This time runs against minors, absentees and interdicted persons as well as against minors claiming under a person of full age. This time limit shall not be suspended while the time agreed upon for the exercise of the option to redeem is still running.

Article 1679

The Court shall not admit any evidence that a contract is prohibited by lesion unless the plaintiff is able to establish *prima facie* from the circumstances of the case by serious presumptions, legally established, that

Article 1680

The rescission [illegible]

The experts shall be appointed by the Court unless both parties have jointly agreed to appoint the three experts.

Article 1681

If the action for rescission succeeds the Court shall make an order as under article 1674.

If, in the meanwhile, the property has passed on to a third party, the right to a supplement shall be exercised against such party; subject to the right of the third party to recoup his loss against the buyer.

Article 1682

If the buyer prefers to keep the thing and pay a supplement as provided in article 1118, he shall also pay interest on the supplement as from the day when the action for rescission was brought.

If he prefers to return the thing and recover the price, he must also surrender the income of the thing as from the day when the action was brought.

If he has received no income he shall be entitled to interest on the price as from the day fixed for payment of the supplement.

Article 1683

Rescission shall not be available to the buyer.

Article 1684

It shall not be available for [illegible] which, according to the law, can only be [illegible]

CHAPTER VII

LICITATION

Article 1686

If a property owned in common by several persons cannot be divided conveniently or without loss;

Or if in a division of property by private agreement there are items which none of the co-owners is willing to take,

The sale shall be by auction and the price shall be divided amongst the co-owners.

Article 1687

Each co-owner shall be entitled to demand that the licitation should be by public auction.

A public auction is necessary when one of the co-owners is a minor, unless the Court has granted dispensation after a hearing as provided by law.

Article 1688

The procedure and the forms to be observed in sale by licitation are explained in the Title *Succession*, the rules of civil procedure and the Immovable Property (Judicial Sales) Act, Cap, 94, or such other laws as may from time to time be enacted.

Article 1690

1. With regard to third parties, the assignment shall only be effective when notice of it is given to the debtor.

Nevertheless, the assignment may also be effective as regards the assignee if the debtor accepts the assignment by a document in an authentic form.

2. Notwithstanding the provisions of paragraph 1 of this article, the rights resulting on behalf of any party from any assignment or transfer of any life insurance or of insurance against fire or any other casualty shall duly vest in such party after such assignment or transfer shall have been registered at the Office of the Registrar General.

Article 1691

If the debtor pays the assignor before being notified of the assignment by the assignor or the assignee he shall be validly discharged.

Article 1692

The sale of the assignment of a claim shall include the accessories of the claim, such as the security, the privilege and the mortgage.

Article 1693

A person who sells a claim or other incorporeal right shall guarantee its existence at the time of the assignment, though the sale may have been made without warranty.

Article 1694

[illegible] only be responsible for the solvency of the debtor if he binds himself [illegible] only to the extent of the price paid by the assignee.

Article 1695

[illegible]

Article 1696

A person who sells his rights of inheritance without specifying any objects in detail shall only guarantee his capacity to inherit.

Article 1697

If he has already received the fruits of any property or the amount of any claims belonging to that inheritance, or if he has sold certain items of the succession, he shall be bound to reimburse the buyer unless he has expressly excluded them for the sale.

Article 1698

The buyer shall, on his side, reimburse the seller for all that the latter has paid for the debts and charges of the succession and shall account for all sums received which were due to him from the succession, unless there is agreement to the contrary.

Article 1699

A person against whom a right subject to litigation has been assigned may be discharged by paying to the assignee the actual price of the assignment together with the costs and notarial fees, with interest, as from the day when the assignee has paid the price of the assignment made to him.

Article 1700

A right is deemed to be subject to litigation as soon as proceedings have started or a dispute as to its merits arises.

Article 1701

The provisions referred to in article 1699 shall not apply:

(a) [illegible]

(b) [illegible]

(c) [illegible]

TITLE VII

EXCHANGE

Article 1702

Exchange is a contract whereby each of two parties gives something to the other in return for something.

Article 1703

An exchange shall be concluded by the mere consent of the parties in the same manner as a sale.

Article 1704

If one of the parties to the exchange has already received the thing given to him in exchange and if he then proves that the other contracting party does not have the ownership of it, the former shall not be bound to deliver the thing which he has promised in exchange but only to return the thing he has received.

Article 1705

A party to an exchange who is evicted from the thing he has received shall be entitled either to sue for damages or to recover the thing which he has given.

Article 1706

Rescission on the ground of lesion shall not be available to the contract of exchange.

Article 1707

All other rules laid down for the contract of sale shall apply to exchange.

Article 1709

Hire of things is a contract whereby one of the parties binds himself to allow another to enjoy a thing during a certain time in return for a certain price which the latter undertakes to pay him.

Article 1710

Hire of work or services is a contract whereby one of the parties binds himself to do some work for the other in return for a price agreed between them.

Article 1711

These two kinds of hire are further distinguished into several special kinds:

A lease is the hire of a house, as a hire simply is the hire of movable property.

An agricultural lease is the hire of rural property;

A hire can also be the hire of work or services;

A lease of livestock is the hire of animals, the income from which is divided between the owner and the persons to whom he entrusts them.

Estimates or bargains or contracts at inclusive prices relating to the carrying out of work at a fixed price also constitute a hire when the material is provided by the person for whom the work is done.

These last three kinds are subject to special rules.

Article 1712

Leases of State property or property belonging to public institutions are subject to special regulations. (S.I. 12/1976)

SECTION I

Rules Common to Leases of Houses and Agricultural Leases

Article 1714

An agreement for a lease may be written or verbal. A lease must be executed in an authentic form.

The alienation of State land is subject to special legislation. (S.I. 72/1976)

Article 1715

If the agreement is concluded without writing and has not yet been executed, and if one of the parties denies its existence, oral evidence shall not be admissible, however small its price, and even if it is alleged that money has been given by way of earnest.

However, an oath may be administered to the person who denies the agreement.

Article 1716

If there is a dispute as to the rent in the case of an oral tenancy agreement the term of which has commenced, and if no receipt exists, the landlord shall be believed upon his oath unless the tenant elects to demand a valuation by experts; in that case the costs of the valuation shall fall upon the tenant if it exceeds the rent which he has declared.

Article 1717

The tenant shall be entitled to sublet and even to assign his lease to another unless this right is excluded by the agreement.

The sublessee may extend to the whole or only a part of the premises. It shall be settled by [illegible]

Article 1718

[illegible]

not reasonably be expected to know of the tenancy, the latter shall be entitled to demand a reduction of the price corresponding to the loss. An agreement for a lease for less than two years or from year to year shall be renewable until reasonable notice is given by either party.

2. A grant of a lease must be executed in an authentic form. That lease shall be registered in the register kept at the Office of the Registrar-General and, if so registered, shall convey a real right in land limited in time as provided in article 543 of this Code. Registration shall constitute notice to all third parties. A lease in an authentic form which has not been registered shall be construed as an agreement for a lease as provided in paragraph 1.

3. No lease shall extend beyond ninety-nine years. However, nothing in this Code shall affect the rght of the Republic to grant perpetual leases of State lands for purposes of land settlement in accordance with law. (S.I. 72/1976)

Article 1718 - 1

Leases of property of a minor exceeding nine years shall only bind the minor who has reached majority or his heirs for the time which remains to run out of the first period of nine years, if that period has not elapsed, or out of the second period and so on, so that the lessee shall only be entitled to a tenancy for the remainder of the period of nine years in which the minor reaches majority or dies.

Leases of property of a minor executed or renewed before the expiry of the existing lease in the case of agricultural property and in the case of houses, shall be without effect unless the term has commenced or is intended to commence before the minor's majority.

Article 1719

[illegible]

Article 1720

The owner shall be bound to deliver the thing in good repair in all respects.

During the continuance of the hire he shall carry out all the repairs which may become necessary except those which are the responsibility of the tenant.

Article 1721

The tenant is entitled to a warranty against any defects of the thing under hire which interfere with its use, even if the owner did not know of them when the hire was concluded.

If the tenant incurs any loss due to these faults or defects, he shall be indemnified.

Article 1722

If during the hire the thing is totally destroyed owing to an inevitable accident, the agreement is terminated as of right; if it is partly destroyed, the tenant may, according to the circumstances, either demand a reduction of the price or even the termination of the hire. In either case no compensation shall be payable.

Article 1723

The owner may not, during the hire, change the condition of the thing under hire.

Article 1724

If during the hire the thing is in need of urgent repairs which may not be postponed until the end, the tenant shall allow them to be carried out, however inconvenient it may be, and even if he be deprived while they are being carried out of part of the thing under hire. Moreover, if the repairs are extended beyond a reasonable time, the rent shall be reduced in proportion to the time and part of the thing under hire of which he has been deprived.

If the repairs are such nature that they render the premises unfit for the [illegible] and his family is inhabitable, he may demand the [illegible]

Article 1725

[illegible]

a claim of right upon the thing under hire; but the tenant may sue such parties in his own name.

Article 1726

Conversely, if a lessee or the agricultural tenant has been disturbed in his enjoyment as a result of proceedings concerning the ownership of the property, he shall be entitled to a proportional reduction of the rent provided that the disturbance and the interference have been brought to the notice of the landlord.

Article 1727

If persons who have committed acts of trespass claim to have rights over the property leased, or if the tenant himself is sued with a view to securing his total or partial eviction from that property, or with a view to submitting him to the exercise of an easement, he shall call the lessor in guarantee, and he may be put out of cause, if he demands it, by citing the landlord from whom he holds possession.

Article 1728

The tenant shall be bound by two principal obligations:

1st To use reasonable care in respect of the thing under hire and to use it in accordance with the purposes of the hire or, if these are not stated, in accordance with such purposes as may be presumed from the circumstances;

2nd To pay the price of the hire in accordance with the terms agreed upon.

Article 1729

If the tenant uses the thing under hire for some purpose other than the purpose for which it was intended or in a way which may cause damage to the owner, the latter may, according to the circumstances, call for the hire to be cancelled.

Article 1730

If, contrary to the conditions of the contract, the tenant lets the property to a third party or assigns his rights under the contract, the owner may, according to the circumstances, call for the hire to be cancelled.

Article 1731

If no inventory of the condition of the premises has been made, the tenant shall be presumed to have received them in good repair, suitable for the tenancy, and he shall return them in the same condition unless there is evidence to the contrary.

Article 1732

He shall be responsible for dilapidations or losses sustained during his enjoyment unless he proves that they were sustained without his fault.

Article 1733

He shall be answerable for fire unless he proves that the fire was due to an inevitable accident or an act of God, or that it was due to a defect of construction; or that the fire spread from a neighbouring house.

Article 1734

If there are several tenants, they shall be liable for fire in proportion to the rental value of the part of the premises which they occupy;

Unless they prove that the fire began on the premises of one of them, in which case he alone shall be liable;

Or unless some of them prove that the fire could not have started upon their premises, in which case they shall not be liable.

Article 1735

The tenant shall be liable for the dilapidations and losses caused by the acts of persons in his household or of his sub-tenants.

Article 1736

If the hire was concluded with or without writing, one of the parties shall only be able to prevent the renewal of the tacit relocation by [illegible] notice.

Article 1737

[illegible]

Article 1738

If at the expiry of a written hire agreement the tenant is allowed to remain in possession, a new term shall arise the incidents of which shall be subject to the article relating to hire without writing.

Article 1739

When a notice to quit has been served the tenant, even if he continued to enjoy the property, shall not be allowed to claim that the hire was tacitly renewed.

Article 1740

In the case of the two preceding articles, the security given for the hire shall not cover any obligations arising from the extension of time.

Article 1741

The contract of hire shall be terminated by the loss of the thing under hire and by the failure of the owner and the tenant respectively to fulfil their obligations.

Article 1742

The contract of hire shall not be terminated by the death of either the owner or the tenant.

Article 1743

If the lessor sells the property leased the buyer shall not evict the agricultural tenant or the lessee under a lease in an authentic form the term of which is certain, unless that right has been expressly reserved in the lease.

Article 1744

If it is agreed, at the time of the lease, that he on sale the buyer may evict the [illegible] or lessee, without any provision having been made [illegible] the lessor shall be obliged to indemnify the agricultural tenant [illegible] the damages [illegible].

Article 1745

[illegible]

accordance with the local practice, is allowed between the service of a notice to quit and the eviction.

Article 1746

If the lease is of agricultural land, the indemnity which the lessor shall pay to the tenant is one third of the rent payable during the whole of the remaining period of the lease.

Article 1747

The indemnity shall be fixed by experts if the property consists of factories, works or other buisness requiring important outlays.

Article 1748

The buyer who wants to avail himself of the right reserved by the lease to evict the agricultural tenant or lessee in case of a sale shall further be bound to give the lessee notice to quit within such reasonable time as is required for such notices according to the local practice.

He shall also be bound to give at least one year's notice to the agricultural tenant.

Article 1749

Agricultural tenants or lessees shall not be evicted unless the aforementioned damages are paid by the lessor or, if he fails to do so, by the buyer.

Article 1750

If the lease has not been made [illegible] and if the buyer shall not [illegible]

Article 1751

[illegible]

SECTION II

Special Rules applying to the Lease of Premises

Article 1752

The lessee who does not furnish the house with sufficient furniture may be evicted, unless he gives sufficient security to answer for the rent.

Article 1753

The sub-tenant shall only be bound towards the owner to the extent of the rent of his sub-lease which he may still owe at the time of the seizure; he shall not be allowed to plead any payments of rent made in advance.

Payments made by the sub-tenant in pursuance of a term of his contract or of a local practice shall not be deemed to have been made in advance.

Article 1754

Tenant's repairs, or those of minor importance which bind the tenant unless there is agreement to the contrary, are those considered as such by local practice; among others these repairs shall include repairs to fireplaces, chimney-backs, casings and mantelpieces;

The replastering of the lower part of the walls of flats and other residential premises up to the height of one metre.

Floor slabs and tiles of rooms, when only a few are broken;

Window panes, unless they are broken by hail stones or other extraordinary occurrences resulting from acts of God for which the tenant cannot be held responsible;

[illegible]

[illegible]

Article 1756

The cleaning of wells and cesspools shall fall upon the lessor unless there is agreement to the contrary.

Article 1757

The hire of movables for furnishing a whole house or the whole of a main building or a shop or all other kinds of flats shall be presumed to have been concluded for the usual period of a lease of a house, or main building, shop or other flat, according to the local practice.

Article 1758

The lease of a furnished flat shall be deemed to have been concluded on an annual basis when the rent is at so much per annum;

On a monthly basis when the rent is at so much per month;

On a daily basis when the rent is at so much per day;

If there is nothing to indicate that the lease is on an annual, monthly or daily basis, the tenancy shall be presumed to have been concluded according to the local practice.

Article 1759

If the lessee of a house or a flat remains in occupation after the expiry of a written lease without any objection on the part of the lessor, he shall be deemed to occupy on the same conditions for a term fixed by local practice, and shall no longer be able to quit or be evicted without notice given in accordance with the time-limit fixed by local practice.

Article 1760

[illegible]

Article 1761

[illegible]

Article 1762

If it be agreed in the lease that the lessor may occupy the house, he shall be bound to give notice to quit at times determined by local practice.

SECTION III

Special Rules for Agricultural Leases

Article 1763

A person who cultivates land on condition that the produce shall be shared with the lessor shall not sublet or assign his lease unless that right has been expressly agreed upon.

Article 1764

If the lessee disregards that rule, the owner shall be entitled to re-enter and the lessee shall be condemned to pay damages for failure to perform the lease.

Article 1765

If in an agricultural lease the size of the land has been described as smaller or greater than it really is, the tenant shall only be compelled to increase or diminish the price according to the rules laid down in the Title *Sale*.

Article 1766

If the lessee of agricultural property does not stock it with animals and essential implements for its exploitation, or if he gives up cultivating it or if he cultivates it carelessly, or if he uses the property leased for a different purpose from that intended, or, in general, if he does not observe the rules of the lease, as a result of which the lessor suffers [illegible], he may, according to the circumstances, cancel the lease.

[illegible] he shall be compelled to pay damages as may [illegible].

[illegible]

Article 1768

The lessee of agricultural property shall be bound, under penalty of paying all the costs and damages, to notify the owner of all encroachments which may be made upon the property.

This notice shall be given within the same time-limit as that laid down for the service of a writ according to the distance from the property.

Article 1769

If the lease is granted for a term of several years, and during its continuance the whole or at least one half of the crop has been lost owing to inevitable accidents, the lessee may demand a reduction of the price of the lease, unless he is compensated by the profits made from the crops of previous years.

If he is not so compensated, the reduction shall only be estimated at the termination of the lease, when he may claim compensation on the basis of his loss in comparison with the average crop over the whole term of his lease;

In the meanwhile, the Court may provisionally dispense the lessee with the payment of part of the price on the ground of the loss suffered.

Article 1770

If the tenancy is for one year only and the loss extends over the whole of the produce or at least over one half, the tenant shall be released from a proportionate part of the price of the tenancy.

He shall claim no reduction if the loss amounts to less than one half.

Article 1771

[illegible]

Article 1772

The lessee may be liable for inevitable accidents if this is expressly provided in the lease.

Article 1773

That term shall not include ordinary inevitable accidents such as hail stones, lightning, frost or the fall of fruits.

Neither shall it include extraordinary inevitable accidents, such as devastation caused by war or floods, to which the country is not ordinarily subject, unless the lessee has agreed to be liable for all inevitable accidents, foreseen or unforeseen.

Article 1774

A tenancy of agricultural land granted orally shall be deemed to have been made for a period which permits the lessee to gather all the produce of the land under the lease.

Thus the agricultural tenancy of a meadow or a vineyard, and of any other property the produce of which is gathered in its entirety in the course of a year, shall be deemed to have been granted for one year.

The lease of arable land, when it is divided into breaks or seasons, shall be deemed to have been granted for corresponding periods, provided that these do not exceed two years.

Article 1775

The lease of agricultural property, even if granted orally, shall be terminated as of right at the expiry of the time for which it is deemed to exist as provided in the preceding article.

Article 1776

At the expiry of a tacit [illegible] the lessee cannot be [illegible] as provided in article 1774.

Article 1777

[illegible]

conversely, the incoming tenant shall provide the outgoing tenant with suitable lodgings and other facilities for the consumption of fodder and for the harvesting which remains to be done.

In either case the local practice shall be complied with.

Article 1778

The outgoing tenant of agricultural land shall also leave the straw and manure of the year if he received them when he first entered into possession; and even if he had not so received them, the owner may retain them subject to his paying their value.

SECTION IV

Building Leases

Article 1778 - 1

A building lease is a lease whereby the lessee undertakes to build upon the land of the lessor and to preserve what he has built in good condition during the continuance of the lease.

The parties shall agree with regard to their respective rights of ownership upon the existing buildings and upon those to be built. In the absence of such an agreement, the lessor shall become at the termination of the lease owner of all the buildings, structures and other improvements thereon.

Article 1778 - 2

The rights and duties of the parties to a building lease shall be regulated by the contract. If no provison is made with regard to any matter, the rules relating to [illegible] laid down in this Code shall have application.

2nd The hire of carriers, by land, water and air, who undertake the carriage of passengers and goods;

3rd The hire of architects, contractors of work and technicians who undertake work upon a plan, an estimate or a tender at an inclusive price.

SECTION I

The Hire of Servants and Workmen

*Article 1780**

A person may only bind himself to render services for a certain time or for a specific venture.

Article 1781

The terms upon which a person binds himself to give services shall be settled between the parties. If there is any doubt as to the terms after the services have been rendered and this doubt cannot be resolved by any evidence, the parties shall be deemed to have agreed to reasonable terms having regard to the surrounding circumstances and local practice.

SECTION II

Carriers by Land, Water and Air

Article 1782

Carriers by land, water and air shall be subject, in respect to the safe-keeping of things entrusted to them, to the same obligations as those imposed by the law on innkeepers.

Article 1783

station, garage, warehouse, port or airport for the purpose of carriage by their vehicle, vessel or aircraft.

Article 1784

1. They shall be responsible for the loss or damage of things entrusted to them, unless they prove that such loss or damage occurred through an inevitable accident or an act of God.

2. They shall not exclude liability for loss or damage caused to persons or goods by their negligence.

3. The liability of carriers for certain types of carriage may be limited by the effect of international conventions or special legislation, in which case this article shall not be applicable.

Article 1785

Contractors of public vehicles on land or in water or in the air and carriers of public goods shall keep a record of the money, articles and parcels of which they are in charge.

Article 1786

Contractors and managers of public vehicles and carriers of public goods and the masters of barges, ships, and aircraft shall also be subject to special regulations which have the force of law as between them and the public.

SECTION III

Repairs and Work at a Fixed Price

Article 1787

[illegible]

Article 1788

[illegible]

Article 1789

When a workman only supplies his labour or his skill he shall only be liable for the destruction of the thing if he is negligent.

Article 1790

In the case of the preceding article, if without any fault on the part of the workman the thing perishes before delivery and before the employer was able to examine it, the workman shall not be entitled to remuneration unless the thing perished by reason of a defect in the materials.

Article 1791

If the thing consists of several pieces or if the thing is subject to measurement, the examination may be made in parts: it shall be deemed to cover all the parts paid for if the employer pays the workman progressively as the work is done.

Article 1792

The architects, contractors and other persons bound with the owner of the building by a contract for work shall be liable if the building perishes in part or in its entirety owing to a fault of construction or even owing to a defect of the soil within a period of five years.

Article 1793

When an architect or a contractor is in charge of the construction of a building for a lump sum in accordance with a specific plan settled with the owner of the soil, no increase whatever may be asked of such owner either on the ground of an increase of the cost of labour or of materials or for any changes or additions made to the plan unless the changes or additions were authorised in writing and the price fixed by agreement with the owner, or unless the cause of it was an express or implied condition of the contract. In the absence of such authorisation and proper stipulations the building shall be

Article 1794

[illegible]

Article 1795

A contract for work or services shall be terminated by the death of the workman, the architect or the contractor.

Article 1796

However, the owner shall be bound to pay to their heirs such proportion of the agreed price as corresponds to the value of the work done and that of the materials supplied, but only if such work or such materials can be of use to him.

Article 1797

The contractor shall be liable for the acts of the person that he employs.

Article 1798

Masons, carpenters and other workmen who were employed in the construction of a building or other work made in workshops shall have no right of acting against the person for whom the work was done, except to the extent of his debt to the contractor at the time when proceedings are started.

Article 1799

Masons, carpenters, locksmiths and other workmen who make contracts for a lump sum shall be bound by the rules laid down in this Section: they shall be regarded as contractors in respect of the work undertaken.

CHAPTER IV

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Article 1801

There are several kinds of leases of livestock:

The simple or ordinary lease of livestock,

The lease of livestock on the basis of half and half,

The lease of livestock granted to a tenant farmer or to a farmer on a share basis.

There is also a fourth kind of contract improperly described as lease of livestock.

Article 1802

Any kind of animal which can have young and which can benefit agriculture or commerce can be leased.

Article 1803

In the absence of any special agreement, these contracts are regulated by the principles stated hereafter.

SECTION II

The Simple Lease of Livestock

Article 1804

The simple lease of livestock is a contract whereby animals are delivered from one person to another to guard, feed and look after on condition that the lessee takes one half of the young animals born and also bears one half of the loss.

Article 1805

[illegible]

Article 1806

[illegible]

Article 1807

He shall only be liable for accidental loss if such loss was preceded by a fault on his part.

Article 1808

In case of a dispute, the lessee shall be bound to prove his allegation that the loss was accidental and the lessor shall be bound to prove that it was due to the fault of the lessee.

Article 1809

The lessee who can prove that the loss was accidental shall, nevertheless, be liable to account for the skins of the animals.

Article 1810

If the livestock totally perishes without the fault of the lessee, the loss falls on the lessor.

If it only perishes in part, the loss is borne by both in common on the basis of the difference between the original valuation and that at the end of the lease.

Article 1811

That parties shall not be allowed to agree:

[illegible] the lessee must bear the total loss of the livestock, even if it occurs by chance and without his fault,

[illegible] he will bear of the loss a greater part than he will of the gain,

[illegible] the lessor will be entitled, at the end of the lease, to something more than [illegible] would be delivered,

[illegible] shall be null.

[illegible]

Article 1812

The lessee shall not dispose of any animal of the herd, whether of the original stock or from the young, without the consent of the lessor who himself may not dipsoe of it without the consent of the lessee.

Article 1813

When the livestock is given to the tenant-farmer of another owner the latter must be notified of the lease; failing which he may seize the livestock and sell it in satisfaction of the debt of his farmer.

Article 1814

The lessee shall not be allowed to shear the cattle without notifying the lessor.

Article 1815

If the time of the expiry of the lease is not fixed by the agreement, it shall be deemed to have been made for three years

Article 1816

The lessor may demand the cancellation of the lease earlier if the lessee does not perform his obligations.

Article 1817

At the end of the lease, or upon its cancellation, the lessor shall be entitled to take animals of every kind, in a way which will permit him to take stock of animals similar to the animals he delivered, having regard to their number, species, weight and quality. The excess shall be shared.

If there are not enough animals to provide for a share, each party shall bear, depending on the case, half of the loss or half of the value of the animals missing according to the estimate.

In the absence of any other agreement, the lessee may not dispose of any animal without the consent of the lessor.

SECTION III

The Lease of Livestock on the basis of Half and Half

Article 1818

The lease of livestock on the basis of half and half is a partnership whereby each party provides one half of the animals and the whole is held in common for profit or for loss.

Article 1819

The lessee alone shall take the profit, as in the simple lease of livestock, from the milk, the manure and the work of the animals.

The lessor shall only be entitled to one half of the wool and of the young.

Any agreement to the contrary shall be null unless the lessor is the owner of the farm of which the lessee is a tenant-farmer or a farmer on a share basis.

Article 1820

All other rules of the simple lease of livestock shall apply to the lease on the basis of half and half.

SECTION IV

[illegible]

purpose is to serve as the basis of the settlement due to be made when the contract comes to an end.

Article 1823

All the profits shall belong to the farmer during the period of this lease unless there is agreement to the contrary.

Article 1824

In leases of livestock granted to farmers, the manure shall not be included in the personal profits of the lessee but shall belong to the farm for the benefit of which alone it must be used.

Article 1825

A loss, even a total loss caused accidentally, shall be borne by the farmer unless there is agreement to the contrary.

Article 1826

At the end of the lease, or when it is terminated, the lessee shall leave animals of each kind in such a manner as to make up a stock of animals similar to the stock that he received, especially with regard to the number, race, age, weight and quality of the animals.

If there is an excess, it shall belong to the lessee.

If there is a deficit, the settlement between the parties shall be made on the basis of the value of the animals at the termination of the contract.

An agreement whereby the lessee, at the end of the lease or of its previous termination, must deliver a stock of animals of an amount or kind other than that of the animals originally delivered shall be null.

Article 1828

The parties may agree that the farmer on a share basis shall deliver his share of the wool to the lessor at below its ordinary value;

That the lessor shall take a greater part of the profit;

That he shall have one half of the milk;

But the parties shall not agree that the farmer on a share basis shall bear the total loss.

Article 1829

This kind of lease must expire with the lease of the farm.

Article 1830

It shall be, in any case, subject to the rules of the simple lease of livestock.

SECTION V

The Lease improperly called Lease of Livestock

Article 1831

When one or more cows are delivered to be kept and fed the lessor shall retain their ownership; but he may only take the young that are born.

Article 1833

A partnership must have a lawful object and shall be made in the common interest of the parties.

Every partner must contribute thereto either money or other property or his work.

Article 1834

A partnership agreement must be drawn up in writing when the object exceeds the value of 5,000 Rupees.

Oral evidence shall not be admissible against and beyond the terms of the document of partnership nor as to any terms allegedly agreed before, during or after the drawing-up of the document, even if it relates to less than 5,000 Rupees.

CHAPTER II

THE VARIOUS KINDS OF PARTNERSHIPS

Article 1835

Partnerships are either universal or particular.

SECTION I

Universal Partnerships

Article 1836

There are two kinds of universal partnerships, the partnership of all present property and the universal partnership of profits.

Article 1837

The partnership of all present property, that is to say [illegible]

[illegible]

to the extent of the enjoyment of such property; any agreement tending to include in the partnership the ownership of such property shall be forbidden.

Article 1838

The universal partnership of profits consists of everything which the parties acquire through work, however obtained, during the continuance of the partnership; any movable property which each partner possesses at the time of the contract is also included; but the immovable property which each partner owns personally shall only be included to the extent of its enjoyment.

Article 1839

The simple agreement to set up a universal partnership without any further explanation shall only be construed as setting up a universal partnership of profits.

Article 1840

A universal partnership can only be set up amongst persons who have capacity to transfer to or to receive from one another and who are not forbidden to receive any advantage to the detriment of others.

SECTION V

Particular Partnership

Article 1841

A particular partnership is a partnership which only applies to determinate things or to their use or to any determinate transaction.

Article 1842

[illegible]

CHAPTER III

OBLIGATIONS OF PARTNERS TOWARDS ONE ANOTHER AND IN RESPECT OF THIRD PARTIES

SECTION I

The Obligations of Partners towards one another

Article 1843

A partnership begins when the contract is made unless a different time is stipulated therein.

Article 1844

If a partnership does not contain a term relating to its duration, it is deemed to extend over the lifetime of all the partners, subject to the restriction of article 1869; or if it relates to a venture of limited duration, over the whole of the time in which the venture lasts.

Article 1845

Each partner shall be debtor towards the partnership in respect of all the property which he has promised to contribute.

When that contribution consists of a specific thing of the possession of which the partnership has been deprived, the partner shall stand security for it towards the partnership in the same manner as a seller towards the buyer.

Article 1846

Article 1847

The partners who are only bound to provide their work to the partnership shall render account to it of all the gains they have made through the kind of skill which is the object of that partnership.

Article 1848

When one of the partners is, on his own personal account, creditor of a third party who is also a debtor to the partnership of a sum also due, the sum which he receives from such debtor shall be used towards the discharge of both debts in proportions to each amount due, even if the creditor has by his receipt accepted the payment in full settlement of his private claim: but if by his receipt the creditor accepted the payment in full settlement of the debt to the partnership, this discharge shall be effective.

Article 1849

When one of the partners has received his full share of the partnership claim and the debtor has since become insolvent, that partner shall be bound to transfer his share to the common fund, even if he had given a receipt in settlement of his share of the debt.

Article 1850

Each partner shall be liable to the partnership for any damage caused through his fault, and he shall not be permitted to set off the damage he has caused against the profits which he may have gained through his work from other ventures.

Article 1851

[illegible]

Article 1852

A partner shall have a right of action not only for any sums which he has paid on behalf of the partnership but also for any obligations which he has incurred in good faith in the course of the business of the partnership, and for the risks inherent in the management.

Article 1853

1. When the document of partnership does not provide for the contribution of each partner to the profits and losses, such contribution shall be in proportion to the share that each partner has brought into the capital of the partnership.

As to the person who only contributes his work, his part of the profits and losses shall be deemed to be equal to that of the partner who has brought in the least capital.

2. However, where the work, skill or know-how is such as to justify a higher participation, it shall be open to the Court to adjust the contributions upon an equitable basis, provided that the contract is silent in the matter.

Article 1854

If the partners have agreed that the question of their respective contributions is to be decided by one of them or a third party, the decision of such person shall not be attacked unless it is manifestly unfair.

No claim shall be admitted in this respect after three months from the time when the party having a grievance became aware of such decision or has acted upon it.

Article 1855

[illegible]

other partners, all the acts relating to his management, provided that there is no fraud on his part.

This authority cannot be revoked without lawful cause for so long as the partnership lasts; but if it was granted by a document subsequent to the contract of partnership it is revocable in the same way as the simple power of attorney.

Article 1857

When several partners have been put in charge of the management without their respective duties having been specified or without an indication that one shall not be able to act without the other, each of them may separately perform all the duties of such management.

Article 1858

If it is agreed that one of the managers shall not act without the other, one cannot, without a new agreement, act in the absence of the other even if that other is in fact unable to concur to the acts of management.

Article 1859

In the absence of special terms relating to management, the following rules shall apply:

1st The partners are deemed to have granted one another the power to manage. What is done by one is valid, even in respect of the shares of his other partners although their consent has not been obtained; provided that such other partners, or one of them, shall retain the power to oppose an act before its completion.

2nd [illegible]

3rd [illegible]

4th A partner may not make renovations to the immovable property of the partnership if the other partners do not consent to them even if, in his view, these renovations are beneficial to the partnership.

Article 1860

1. The partner who does not manage the affairs of the partnership, cannot transfer or pledge even the movable property which belongs to it.

2. The legal representatives of the partnership may consent to a mortgage in the name of the partnership by virtue of any powers of attorney written in the contract or by virtue of a decision of the partners taken in acordance with the terms of the contract, even if the terms were established by a document under private signature.

Article 1861

Every partner may, without the consent of his partners, take a third party as a partner in respect of his share in the partnership; but he cannot, without the consent of the others, bring him in as a partner of the partnership, even if he is in charge of its management.

SECTION II

The Obligations of Partners towards Third Parties

Article 1862

In non-commercial partnerships, the partners shall not be jointly and severally liable for the partnership debts and one of the partners cannot bind the others unless they have empowered him to do so.

Article 1863

[illegible]

him powers to enter into such a contract, or unless the partnership has benefitted from it.

CHAPTER IV

DIFFERENT WAYS OF TERMINATING A PARTNERSHIP

Article 1865

A partnership is terminated:

1st By the expiry of the time for which it was set up;

2nd By the destruction of the thing or the conclusion of the business;

3rd By the death of one of the partners;

4th By the interdiction or insolvency of one of them;

5th By the intention which one alone or several partners express no longer to remain in partnership.

Article 1866

The agreement to extend a partnership set up for a limited time shall only be valid if it is made in the same writing and form as the contract of partnership.

Article 1867

When one of the partners promises to bring into the partnership the ownership of a thing, the loss of it prior to the transfer brings the partnership to an end for all the partners.

The partnership shall also be dissolved in all cases of loss of the thing, [illegible] only had been brought into the partnership, the ownership thereof [illegible] in the [illegible].

Death [illegible] shall not [illegible] by the [illegible] the [illegible] [illegible].

[illegible]

[illegible]

either continue with his heir or only with the surviving partners, such provisions shall be observed.

In the second of these two cases, the heir of the deceased shall only be entitled to a distribution in accordance with the assets of that partnership at the time of the death and shall not participate in any later distribution unless such distribution necessarily arises from acts done before the death of the partner from whom he inherits.

Article 1869

1. The dissolution of the partnership at the will of one of the partners shall only apply to partnerships the duration of which is unlimited; it shall be effected by a renunciation served upon all the partners, provided that such renunciation is made in good faith and not at an inopportune moment.

2. A partner who may freely assign his share or who may transfer at will his share corresponding to his contribution shall be deemed to have renounced his right to bring about the dissolution of the partnership at will.

Article 1870

The renunciation shall not be deemed to be in good faith when it is made by a partner in order that he may alone derive a benefit which all the partners had intended to derive jointly.

It is inopportune when the things are no longer in their former state and it is important for the partnership that its dissolution be postponed.

Article 1871

Provision relating to Commercial Partnerships.

Article 1873

The provisions of the present Title shall only apply to commercial partnership to the exent that they are not contary to the laws and usages of commerce.

TITLE X

THE LOAN

Article 1874

There are two kinds of loans :

The loan of things which may be used without being destroyed;

And the loan of things which can be consumed by the use made of them;

The first kind is called loan for use;

Then second is called loan for consumption or simply loan.

CHAPTER I

THE LOAN FOR USE

SECTION 1

The Nature of the Loan for Use

Article 1875

The loan for use is a contract by which one of the parties delivers a thing to the other to be used by him, on condition that he shall return the same after having used it.

Article 1878

Everything which is in commercial exchange and which is not consumed by use may be the subject-matter of this contract.

Article 1879

The rights and duties which are created by the loan for use are transmissible to the heirs of the lender and the borrower.

However, if a person lends to another personally and solely in consideration of that person, his heirs shall not have the enjoyment of the thing lent.

SECTION II

The Rights and Duties of the Borrower

Article 1880

The borrower shall be bound to show reasonable care with regard to the safe-keeping and preservation of the thing lent. He must only use it for the purpose for which it is intended by its nature or by the agreement; failure to do so shall entail his liability to damages.

Article 1881

If the borrower uses the thing for a different purpose or for a period longer than he should have, he shall be liable for the loss, even if it is accidental.

Article 1882

If the thing lent perishes by an inevitable accident from which the loss would have preserved it by making his own of the same thing and choosing to preserve that one, he shall be liable for the loss of the other.

Article 1883

The thing [illegible]

Article 1884

If the thing deteriorates by the mere use for which it is borrowed, provided there is no fault on the part of the borrower, he shall not be liable for its deterioration.

Article 1885

The borrower shall not retain the thing by way of compensation for what is due to him from the lender.

Article 1886

If the borrower in using the property has incurred some expense, he shall not be able to recover it.

Article 1887

If several persons have jointly borrowed the same property, they are jointly and severally liable to the lender.

SECTION III

The Rights and Duties of the Lender for Use

Article 1888

The lender shall not take back the property lent until the expiry of the agreed period; or if there is no agreement, until after it has served the purpose for which it was borrowed.

Article 1889

If, during the period of the loan or before the need of the borrower [illegible] and unforeseen need for the property lent, the [illegible] according to the circumstances, order that it be returned.

Article 1890

[illegible]

Article 1891

When the property lent has such defects as could cause some detriment to its user, the lender shall be liable if he had known of the defects and failed to warn the borrower.

CHAPTER II

THE LOAN FOR CONSUMPTION OR THE SIMPLE LOAN

SECTION I

The Nature of the Loan for Consumption

Article 1892

The loan for consumption is a contract whereby one of the parties delivers to the other a certain quantity of things which are consumed by use on condition that the latter shall return to him as much of the same kind and quality.

Article 1893

The effect of this loan is to make the borrower owner of the thing lent, and the risk of the loss falls upon him however it may occur.

Article 1894

Things which, although of the same kind, differ one from the other, such as animals, may not be given by way of a loan for consumption; in that case the loan is for use.

Article 1895

The obligation which arises from a loan of money shall always be of the number of pieces referred to in the contract.

If there is an increase or decrease in the value of the currency between the time of the loan and the time of repayment, the borrower must return the number of pieces mentioned in the contract and he cannot be compelled to return more or less unless there is a stipulation to the contrary.

Article 1896

The rule laid down in the preceding article shall not apply if the loan consisted of bullion; provided that such loan is lawful in the circumstances and according to such laws as are from time to time enacted.

Article 1897

If the loan is of buillion or of commodities, whatever the increase or decrease in their price, the debtor shall always return the same quantity and quality and nothing else.

The proviso of the preceding article shall also apply in this respect.

SECTION II

The Obligations to the Leader.

Article 1898

In the loan for consumption, the lender shall be bound by the liability of article 1891 relating to the loan for use.

Article 1899

The lender shall not demand the return of the things lent before the expiry of the agreed term

Article 1900

[illegible]

Article 1901

[illegible]

SECTION III

The Rights and Duties of the Borrower

Article 1902

The borrower shall be bound to return things of the same quantity and quality as the things lent and at a time agreed upon.

Article 1903

If he finds it impossible to do so, he shall be bound to pay their value having regard to the time and place at which the thing ought to have been returned according to the contract.

If the time and place had not been fixed, the payment shall be made at the price prevailing at the time and place at which the loan had been contracted.

Article 1904

If the borrower does not return the things lent or their value at the agreed time, he shall be liable for interest as from the day of the filing of the action.

CHAPTER III

The Loan Upon Interest

Article 1905

It is permissible to stipulate an interest for a simple loan to be paid either in money or in produce or in other movable things.

Article 1906

The borrower who has paid interests that were not stipulated may not recover them, unless they exceed the rate of interest fixed by law, in which case the reduction only may be claimed.

Article 1907

The payment of interests for a capital which produces no interest, may be claimed only from the day on which the demand for payment of the capital has been made in a court of law.

The conventional rate of interest must be agreed upon in writing.

Article 1908

The receipt for the capital given without a reservation as to the interest creates a presumption that it has been paid and operates as a discharge for it.

Article 1909

It is permissible to agree upon an interest on capital which the lender undertakes not to claim back.

In that event, the loan shall be called an annuity.

Article 1910

This annuity may be contracted in two ways: in perpetuity or for life.

Article 1911

The annuity contracted in perpetuity is in principle redeemable.

The parties may, however, agree that the redemption shall not be made before the expiry of a period which cannot exceed ten years or that it shall not be made without giving to the creditor such notice in advance as the parties have determined.

Article 1912

The debtor of an annuity contracted in perpetuity may be compelled to redeem it:

1st If he fails to perform his obligations for two years;

2nd If he fails to supply for a period of the securities promised by the contract.

Article 1913

Article 1914

TITLE XI

DEPOSIT AND RECEIVERSHIP

CHAPTER I

THE DEPOSIT IN GENERAL AND ITS VARIOUS KINDS

Article 1915

The deposit in general is a contract whereby a party receives the property of another subject to the obligation of safekeeping and of restoring it in kind.

Article 1916

There are two kinds of deposit, the deposit properly so called on the one hand, and the deposit with a stake-holder or receivership on the other.

CHAPTER II

THE DEPOSIT PROPERLY SO CALLED

SECTION I

The Nature and Essence of the Contract of Deposit

Article 1917

The deposit properly so called is in principle a gratuitous contract.

Article 1918

It can apply only to movable property.

Article 1919

It can only be made by the owner, or by the person who has the power to dispose of the thing deposited.

It is, however, valid if made by a person who is not the owner of the thing deposited, or who has not the power to dispose of it, as regards the depositor himself, in the case where the thing deposited is lost by the means of the person with whom it has been deposited.

Article 1920

The depoit is either voluntary or necessary.

SECTION II

The Voluntary Deposit

Article 1921

The voluntary deposit is made by the mutual agreement of the person who delivers the property and the person who receives it.

Article 1922

The voluntary deposit may only be validly made by the owner of the property deposited or with his consent express or implied.

Article 1923

The voluntary deposit shall be proved in writing. Oral evidence shall not be admissible if the property exceeds 5,000 Rupees in value.

Article 1924

When the deposit valued at less than 5,000 Rupees cannot be proved by writing, the depositary's declaration in proceedings shall be admissible as to whether the deposit was made or as to the subject-matter of it or as to the fact of its restitution.

Article 1925

A voluntary deposit can only be made between persons capable of contracting or [illegible]

However, if a person capable of contracting has received property in deposit from a person lacking capacity, he shall be bound by all the obligations of a true depositary [illegible] the person who lacks capacity.

Article 1926

[illegible]

deposited while it still is in the hands of the depositary; or he shall be entitled to claim restitution to the extent to which the depositary has benefited from the deposit.

SECTION III

The Obligations of the Depositary

Article 1927

The depositary shall show, with regard to the safe-keeping of the property deposited, the same standard of care as he shows in relation to his own property.

Article 1928

With regard to the provisions of the preceding article the standard of reasonable care shall apply:

1st If the depositary has himself offered to receive the deposit;

2nd If he receives payment for the safe-keeping of the deposit;

3rd If the deposit is made solely in the interest of the depositary;

4th If it is expressly agreed that the depositary shall be liable for fault of any kind.

Article 1929

The depositary shall not be bound in any circumstances for any accident or event by reason of God, unless notice had previously been served upon him to restore the property deposited.

Article 1930

He shall not require the property deposited to be restored to him before the expiration of the deposit.

Article 1931

Article 1932

The depositary shall return the identical property which he has received.

Thus, the deposit of sums of money shall be returned in similar coins and notes received, whether their value has increased or diminished.

Article 1933

The depositary shall only be bound to return the property deposited in the state in which it is at the moment of the return. Any deterioration which did not occur through his act shall fall upon the depositor.

Article 1934

The depositary from whose custody the property was taken through an act of God and who has received money or anything else in its place shall return what he has received.

Article 1935

The heir of the depositary who has sold the property in good faith and in ignorance of the deposit shall only be bound to return the price that he has received or, if he has not received the price, he shall be bound to assign his action against the buyer.

Article 1936

If the property deposited has produced any fruits which were collected by the depositary, he shall be obliged to restore them. He shall not be liable for any interest on money deposited unless notice has been served upon him to restore the property, and as from the date of such notice.

Article 1937

The depositary need not return the property deposited except to the person who committed him with it or to the person in whose name the deposit had been made or to the person designated to receive it.

Article 1938

A depositary who [illegible] deposit [illegible]

Nevetheless, if he discovers that the property had been stolen and learns the name of the true owner, he shall disclose to him the deposit made and give him notice to claim it within a fixed and reasonable time.

If the person to whom the disclosure was made neglects to claim the deposit, the depositary shall be validly released from liability by delivering the property to the person from whom he received it.

Article 1939

In case of death of the person who has made the deposit, the property deposited may only be returned to his heir.

If there are several heirs, it shall be returned to each one of them, in proportion to their share, or to the fiduciary if one is appointed.

If the property deposited cannot be divided, the heirs must come to an agreement amongst themselves before they can receive it.

Article 1940

If the person who has made the deposit has changed status, as for instance, if a person of full age becomes interdicted, in this and all other similar cases, the deposit shall not be restored to a person other than the person who administers the rights and the property of the depositor.

Article 1941

If the deposit had been made by a guardian or by a curator in one of those capacities, it shall be restored, if their administration has come to an end, to the person whom that guardian or curator represented.

Article 1942

If the contract of deposit indicates the place where it is to be executed, the depositary shall be bound to keep the property deposited in that place unless he has a reasonable cause to remove it elsewhere.

Article 1943

The depositary is bound to exercise in the keeping of the property deposited the same care as he exercises in the keeping of his own property.

Article 1944

The deposit shall be delivered to the depositor as soon as he claims it, even if the contract had fixed a certain time before its return; unless there is in the hands of the depositary an order for attachment or a Court order against the return or removal of the property deposited.

Article 1945

The depositary who acts in bad faith shall lose his right of assignment.

Article 1946

All the obligations of the depositary shall come to an end if he discovers and if he can prove that he is the owner of the property deposited.

SECTION IV

The Obligations of the Depositor

Article 1947

The person who has made the deposit shall be bound to reimburse to the depositary the costs he has incurred for the maintenance of the property deposited, and to indemnify him for all the losses which he may have incurred through the deposit.

Article 1948

The depositary may retain the deposit until the complete discharge of the sums due to him as a result of it.

SECTION V

The Depositary's Duties

Article 1949

Article 1950

Oral evidence shall be admissible to prove a necessary deposit, even if its value is more than 5,000 Rupees.

Article 1951

The necessary deposit, in any event, shall be subject to all the rules previously enunciated.

Article 1952

1. Innkeepers or hotel-keepers shall be liable, as depositaries, for the effects brought by a traveller who lodges at their premises; a deposit of this kind shall be deemed to be a necessary one.

2. A hotel-keeper shall be liable for any damage to or destruction or loss of property brought to the hotel by any guest who stays at the hotel and has sleeping accommodation put at his disposal.

3. Any property —

(a) which is at the hotel during the time when the guest has the accommodation at his disposal;

(b) of which the hotel-keeper or a person for whom he is responsible takes charge outside the hotel during the period for which the guest has the accommodation at his disposal; or

(c) of which the hotel-keeper or a person for whom he is responsible takes charge whether at the hotel or outside it during a reasonable period preceding or following the time when the guest has the accommodation at his disposal;

shall be deemed to be property brought to the hotel.

4. [illegible]

(b) where he has refused to receive property which he is bound to receive for safe custody.

2. A hotel-keeper shall be bound to receive securities, money and valuable articles; he may only refuse to receive such property if it is dangerous or if, having regard to the size or standing of the hotel, it is of excessive value or cumbersome.

3. A hotel-keeper shall have the right to require that the article shall be in a fastened or sealed container.

Article 1954

A hotel-keeper shall not be liable in so far as the damage, destruction or loss is due to —

(a) the guest or any person accompanying him or in his employment or any person visiting him;

(b) an unforeseeable and irresistible act of nature or an act of war;

(c) the nature of the article.

Article 1954-1

The hotel-keeper shall be liable and shall not have the benefit of the limitation on his liability laid down in paragraph 4 of article 1952 where the damage, destruction or loss is caused by a wilful act or omission or negligence on his part or on the part of any person for whose actions he is responsible.

Article 1954-2

Except [illegible] article 1954-1 of this Code applies, the guest shall [illegible] to the benefit of these provisions if after diligent [illegible] the damage, destruction or loss he does not inform the hotel-keeper without undue delay.

Article 1954-3

[illegible]

Article 1954-4

The provisions of article 1952 to 1954-3 shall not apply to vehicles, property left in a vehicle or live animals.

CHAPTER III

DEPOSIT WITH A STAKEHOLDER AND RECEIVERSHIP

SECTION I

Different Kinds of Deposits

Article 1955

A deposit may take the form of a deposit with a stakeholder if concluded by the agreement of the parties, or of a receivership if judicially imposed.

SECTION II

The Deposit with a Stakeholder

Article 1956

The deposit with a stakeholder is concluded by agreement and is made by one or more persons with regard to property in dispute by placing such property in the hands of a third party who shall be bound to return it after the settlement of the dispute to the person to whom it is adjudged.

Article 1957

The deposit with a stakeholder need not be gratuitous.

Article 1958

When it is not so, it is subject to the rules of the deposit properly so called and subject to the additional rules laid down in Section III.

Article 1959

The stakeholder cannot be relieved of the deposit before the end of the dispute.

Article 1960

The stakeholder shall not be discharged before the dispute is settled except by the consent of all the interested parties or by a Court for just cause.

SECTION III

Receivership or Judicial Deposit

Article 1961

A Court may order into receivership:

1st Movables seized from a debtor;

2nd Immovable property or movable property the ownership or possession of which is subject to litigation between two or more persons;

3rd Things tendered by a debtor to secure his release.

Article 1962

The appointment of a judicial custodian gives rise to mutual obligations between the person entitled to the attachment and the custodian. The custodian shall be bound to show, with regard to the maintenance of the seized property, reasonable care.

He shall deliver such property either to the person entitled to the attachment at the successful outcome of the proceedings so that the property may be sold or to the party against whom execution is levied in case the attachment order is lifted.

The obligation of the person whose property is seized shall consist of paying the remuneration fixed by law.

Article 1963

[illegible]

TITLE XII

CONTINGENT CONTRACTS

Article 1964

A contingent contract is a mutual agreement the effects of which, with regard to the profits and losses, whether for all the parties or one or more of them, depend upon an uncertain event.

Such contract are:

Contracts of Insurance,

Bottomry loans,

Gaming and wagering contracts,

Life annuities.

The first shall be governed by special legislation. In the absence of such legislation the rules relating to marine insurance shall apply.

The second shall be governed by the rules relating to marine insurance.

CHAPTER I

GAMING AND WAGERING CONTRACTS

Article 1965

The law shall not provide any right of action for the recovery of any money won on a wager.

Article 1966

Article 1967

In no circumstances shall the loser be allowed to recover any money paid voluntarily unless there has been fraud, deceit or false pretences on the part of the winner.

CHAPTER II

The Contract of Life Annuity

SECTION I

Conditions required for the validity of the Contract

Article 1968

A life annuity may be granted in a manner involving mutual obligations in return for a sum of money or for movable property of some value or for immovable property.

Article 1969

It may be granted gratuitously, by gift inter vivos or by will. In such cases it shall comply with the forms required by law.

Article 1970

In the case of the preceding article, the life annuity may be reduced if it exceeds the amount of which one is permitted to dispose; it shall be null if granted in favour of a person having no capacity to receive it.

Article 1971

A life annuity may be granted on the head of the person who pays the price or upon the life of a third person who has no interest in its enjoyment.

Article 1972

It may be granted upon one or several lives.

Article 1973

In the last case, although it is in the nature of a gift, it shall not be subject to the form required for gifts; subject to the cases of reduction and nullity laid down in article 1970.

Article 1974

A contract of life annuity on the life of a person who was dead at the time of the contract shall have no effect.

Article 1975

The same shall apply to a contract whereby the annuity was on the life of a person suffering from an illness from which he died during the twenty days following the date of the contract.

Article 1976

A life annuity may be granted at whatever rate the contracting parties choose to fix.

SECTION II

The Effect of the Contract between the Contracting Parties

Article 1977

The person in whose favour the life annuity for value is granted, may demand the rescission of the contract if the debtor does not supply the security agreed upon for its performance.

Article 1978

The failure to pay the arrears of the annuity shall not entitle the person in whose favour it was granted to demand the redemption of the capital or to seize the property which he has alienated; his only right is to exact the repayment of the capital and the payment of the arrears due, and to obtain an order for the sale of sufficient property of the debtor to secure the payment of the annuity.

Article 1979

payments already made; he shall be bound to service the annuity during the whole life of the person or persons on whose life the annuity was granted, whatever the length of the life of such persons and however onerous the service of the annuity may have become.

Article 1980

A life annuity shall only be due to the person entitled to the extent of the number of days that the person on whose life it has been granted is alive.

Nevertheless, if it is agreed that it will be paid in advance, the period for which the full payment is due to the creditor shall run as from the day on which it should have been made.

Article 1981

A term that a life annuity may not be seized shall be void unless the life annuity was granted gratuitously.

Article 1982

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 1983

The person entitled to a life annuity shall only demand payment of it if he establishes his existence or that of the person on whose life the annuity was granted.

Article 1985

A power of attorney may be given by a notarial document or by a document under private signature or even by a letter. It may also be given orally; but oral evidence of it is only admissible in accordance with the Title *Contracts and Agreements in General.*

The acceptance of the agency may be implied and may result from the acts done by the agent thereunder.

Article 1986

Agency is a gratuitous contract unless there is evidence to the contrary.

Article 1987

It is either special and for one case or certain cases only, or general covering all the cases of the principal.

Article 1988

The power of attorney couched in general terms only covers acts of administration.

If it relates to a sale or mortgage or some other act of ownership the power must be expressly granted.

Article 1989

The agent shall do nothing beyond the terms of his agency; his power to compromise does not include the power to submit to arbitration.

Article 1990

Married persons may be appointed agents; but the principal shall have no action against the agent who is a minor except in accordance with the general rules relating to the liability of minors.

He shall be likewise bound to complete any act which he had begun at the death of the principal if there is any risk of damage through delay.

Article 1992

The agent shall be liable not only for fraud but also for negligence in the course of his management.

Article 1993

Every agent shall be held to render account of his management and to deliver and pay to the principal all that he has received by viture of his power of attorney, even though what he receives is not owed to the principal.

Article 1994

The agent shall be answerable for any person whom he has put in his place in charge of management: 1st when he has no authority to substitute another; 2nd when such authority is vested in him without reference to a specified person and the person he has selected was well known to be lacking in ability or was insolvent.

Article 1995

When several persons with powers to act as agents are appointed by the same instrument, there shall be no joint and several liability except to the extent so provided.

Article 1996

The agent shall be bound to pay interest on any sums of the principal which he has used for himself from the date on which he first has made use of it, and shall also be bound to pay interest on those sums which he holds on account of the principal from the day on which notice to pay.

Article 1997

CHAPTER III

THE OBLIGATIONS OF THE PRINCIPAL

Article 1998

1. The principal shall be bound to perform the obligations contracted by the agent in accordance with the authority conferred upon him.

He shall be bound for anything done beyond his authority only to the extent that he has expressly or tacitly ratified it.

2. If the contract of the agent has been ratified and executed, the principal shall not be allowed to sue the agent for lesion.

Article 1999

The principal shall refund to the agent any payments and costs incurred by the agent in the performance of the contract of agency. He shall also pay him his salary, if any was promised.

If no fault can be imputed to the agent, the principal shall not be exempted from making a refund or payment, even if the venture is not successful, nor shall he reduce the amount of costs and payments on the ground that these could have been lower.

Article 2000

The principal shall also indemnify the agent for any loss which he has incurred in the course of the agency and which cannot be attributed to the agent's negligence.

Article 2001

[illegible]

Article 2002

[illegible]

CHAPTER IV

DIFFERENT WAYS OF TERMINATING THE AGENCY

Article 2003

Agency shall be terminated:

By the revocation of the agent;

By his resignation from the agency;

By the death, interdiction or insolvency either of the principal or of the agent.

Article 2004

1. The principal may at any time revoke the agency and oblige the agent, if necessary, to return to him the douement under private signature which contains the power or the original document conferring such power of attorney if it is drafted by a notary, or the notarially authenticated copy if a deed thereof has been made.

2. However, nothing in this article shall preclude the parties from agreeing to make the agency irrevocable for a fixed period or for a specific venture. The irrevocability of the agency may also be implied from the object for which it provides or if the agent has a lawful interest in such object other than the regular remuneration due to him.

Article 2005

A notice of revocation communicated to the agent alone shall not affect third parties who have contracted with the agent in ignorance of such revocation, but the principal shall not be deprived of his right of action against the agent.

Article 2006

The agent may renounce the agency by notifying the principal of his renunciation. The principal may claim damages if the renunciation causes him prejudice.

Article 2007

indemnify him unless the agent is unable to carry on with the agency agreement without himself sustaining considerable loss.

Article 2008

If the agent is unaware of the death of the principal or of any of the other grounds which terminate the agency, anything that the agent may have done in ignorance thereof shall be valid.

In that case, the obligations undertaken by the agent shall be performed with regard to any third parties who are in good faith.

Article 2009

A third party that has treated with an agent whose authority has been withdrawn shall not be penalised if it was reasonable, in the special circumstances of the case, for such party to assume that the agent had acted with the authority of the principal. However, in such a case the Court need only make such an award as it considers equitable.

Article 2010

In the case of death of the agent his heirs must give notice to the principal and in the meantime must see to anything which is required by the circumstances in the interest of the principal.

It is nevertheless possible to answer as surety for an obligation even if it may be annulled by the debtor on a plea which is purely personal to him: for example in case of minority.

Article 2013

Suretyship shall not be contracted for the sum which exceeds the sum due by the principal debtor nor shall it contain more onerous conditions.

It may be contracted in relation to part of the debt only and under less onerous conditions.

The suretyship which exceeds the debt or which contains more onerous conditions shall not be null; however, it shall be scaled down in such a way as to correspond with the principal obligation.

Article 2014

It is possible for a person to become surety without a request from the principal debtor and even without his knowledge.

It is also possible for a person to become surety not only of the principal debtor but also of the surety of such debtor.

Article 2015

Suretyship shall never be presumed; it must be expressly given and cannot be extended beyond the limits within which it was contracted.

Article 2016

A general suretyship of a principal obligation extends to all its accessory parts, even to the costs of the principal action and to all the costs incurred subsequent to the notice of such notice given to the surety.

Article 2017

The obligations of a married woman shall not be binding upon the community of property of the husband and wife, if the married woman has not been authorised thereto by law.

Article 2018

The surety who has paid the debt is subrogated to all the rights which the creditor had against the debtor.

performance of the principal obligation, and whose permanent residence is in the district in which the surety is to be given.

Article 2019

The solvency of a surety shall only be determined by reference to immovable property except in commercial matters or when the debt is small.

No account shall be taken of immovable property which is subject to litigation or which is too distant to make seizure practicable.

Article 2020

When the surety accepted by the creditor, conventional or judicial, becomes subsequently insolvent, another must be provided.

This rules shall only be excluded in the case in which the surety is given by virtue of an agreement whereby the creditor insists on a certain person to stand as surety.

CHAPTER II

THE EFFECTS OF SURETYSHIP

SECTION I

The Effects of Suretyship between the Creditor and the Surety

Article 2021

The surety shall only be bound to pay the creditor in default of the debtor, and the debtor's property must first be sold and realised for the payment of the debt, unless the surety has renounced the benefit of discussion, or has bound himself jointly and severally with the debtor, in which case the effects of the contract between the creditor and the surety are regulated by the principles established for debts of that nature.

Article 2023

The surety who demands the seizure must indicate to the creditor the property of the principal debtor and make adequate funds available to effect the seizure.

He is not expected to indicate the property of the debtor found outside the jurisdiction of the Court where payment must be made or any property subject to litigation or such property as was mortgaged to secure the debt which is no longer in the possession of the debtor.

Article 2024

In all cases in which the surety has indicated the property authorised for seizure by the previous article and has supplied adequate funds to effect the seizure the creditor shall be liable to the surety to the extent of the value of the property indicated for the insolvency of the principal debtor caused through the failure to initiate proceedings.

Article 2025

When several persons act as sureties of the same debtor for the same debt each of them shall be bound for the whole amount of the debt.

Article 2026

Nevertheless each one of them may, unless he has waived the benefit of division, require the creditor to split up his action and reduce it to the part and share of each surety.

If, when one of the sureties has claimed a division to be made, some were insolvent, that surety shall be bound to pay the share of the insolvent sureties, but he shall not be liable for any insolvency which occurred after the division.

Article 2027

If the surety who has claimed the benefit of division has omitted to require that the principal debtor be sued before him, he shall remain liable for the whole debt if the principal debtor becomes insolvent before the surety has obtained payment.

SECTION II

The Effects of Suretyship between the Debtor and the Surety

Article 2028

The surety that has paid up shall have a right of action against the principal debtor, whether the suretyship was contracted with or without the knowledge of the debtor

This right of action shall be exercised for the principal as well as for the interest and costs; nevetheless the surety shall only claim the costs that he incurred after serving notice to the principal debtor of the proceedings started against him.

He shall also have a right to claim damages as appropriate.

Article 2029

The surety that has discharged the debt shall be subrogated in all the rights of the creditor against the debtor.

Article 2030

When there is plurality of principal debtors jointly and severally bound to the same debt, the surety which has answered for them all shall have the right to recover the whole sum paid against each one of them.

Article 2031

The surety that pays the debt shall have no right of action against a principal debtor who repeats the payment owing to the surety's failure to notify him, but he may sue the creditor to recover the money paid

When the surety pays without being constrained by a judgment and without notifying the principal debtor he shall have no right of action against the principal debtor who has valid grounds to [illegible] but he may sue the creditor to recover the money paid.

Article 2032

[illegible]

1st When he is sued for the payment;

2nd When the debtor has become bankrupt or insolvent;

3rd When the debtor is bound to effect the discharge of the surety within a certain time;

4th When the debt becomes due at the end of the period for which it was contracted;

5th After ten years, when the principal obligation is not subject to a time limit, unless the principal obligation, such as guardianship, is not of a kind that can expire within a definite period.

SECTION III

The Effect of Suretyship among Co-Sureties

Article 2033

When several persons have stood surety for the same debtor and the same debt, the surety who discharges the debt shall have a right to sue each of the other sureties for their part and share;

But this right shall only be available when the surety pays under one of the cases listed in the preceding article.

CHAPTER XII

EXTINCTION OF SURETYSHIP

Article 2034

The obligation [illegible] suretyship [illegible] on the [illegible] of the principal obligation.

Article 2035

[illegible]

Article 2036

The surety may plead against the creditor all the exceptions to which the principal debtor is entitled and which arise from the nature of the debt.

But he may not plead the exceptions which are purely personal to the debtor.

Article 2037

The surety shall be discharged when subrogation in the rights, mortgages and privileges of the creditor can no longer, owing to an act of the creditor, operate in favour of the surety.

Article 2038

The voluntary acceptance by the creditor of an immovable or of any other asset whatever in payment of the principal debt shall discharge the surety even if the creditor is evicted from it.

Article 2039

The mere extension of time granted by the creditor to the principal debtor shall not discharge the surety who may, in this case, sue the debtor in order to compel him to pay.

CHAPTER IV

[illegible]

Article 2040

[illegible]

[illegible]

Article [illegible]

[illegible]

Article 2042

A judicial surety may not demand the seizure of the property of the principal debtor.

Article 2043

A person who has simply stood as surety for a judicial surety, may not demand the seizure of the property either of the principal debtor or of the surety.

TITLE XV

COMPROMISE

Article 2044

1. The compromise is a contract whereby the parties put an end to a dispute already begun or prevent a dispute from arising.

2. A person may compromise any rights of which he can freely dispose.

3. This contract must be in writing.

Article 2045

1. Any person may validly compromise if he has the power to dispose of any matter which is the subject of the compromise.

A guardian may not compromise on behalf of a minor or a person interdicted except as provided in article 457 under the Title *Minority, Guardianship and Curatorship* and he may not compromise with the person who has become of full age or with the guardian, except as provided by article 472 of the same Title.

A curator may not compromise with the person who has been the curator or the guardian unless authorised by a family council.

A judicial authority may not compromise in the name of the State or of any public body except in the manner provided by law.

Article 2046

The compromise of civil liability arising from a criminal offence shall be permitted.

The compromise shall not bar any criminal proceedings by the Attorney-General.

Article 2047

It shall be permitted to add a penal clause to a compromise in case of failure to implement it.

Article 2048

A compromise shall extend to its subject-matter; the waiver made of all rights, actions and claims shall only extend to matters relating to the compromise, however general the meaning of its expressed or implied terms.

Article 2049

A compromise shall only settle matters included therein whether the parties have manifested their intention by special or general expressions or whether such expressions are necessarily implied.

Article 2050

A person who compromises a right belonging to him on his own account and who obtains a similar right from another person shall not be bound, with regard to the later right, by the previously concluded compromise.

Article 2051

The compromise concluded by one of the [illegible] shall not bind or benefit the other parties unless [illegible].

Article 2052

[illegible]

2. If, however, the compromise relates to the settlement of compensation to be granted to a victim of an accident, the acceptance of such compensation shall not prevent the victim from demanding a supplement if the original compensation was derisory or if later the condition of the victim became substantially worse. Any waiver by a victim of his rights under this paragraph shall be null.

Article 2053

A compromise may be rescinded when there is an error as to the persons or as to the subject-matter of the dispute.

It may be also annulled for fraud or duress.

Article 2054

A compromise may also be rescinded when it relates to a void title, unless the parties have expressly taken the contingency of nullity into account.

Article 2055

The compromise based upon documents which were subsequently found to be false shall be completely null.

Article 2056

A compromise of litigation which has ended in a final judgment of which the parties to the compromise or one of them were unaware shall be null.

If the judgment which was unknown to a party or parties was subject to an appeal the compromise shall be valid.

Article 2057

[illegible]

Article 2085

An error of calculation in a compromise shall be rectified.

TITLE XVI

IMPRISONMENT FOR CIVIL DEBT

Article 2059

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 2060-2070

Repealed.

Imprisonment for Debt Act. S. 16(1) Cap. 96.

TITLE XVII

PLEDGES AND FLOATING CHARGES

Article 2071

1. A pledge is a contract whereby a debtor delivers a thing to his creditor as a security for his debt.

2. A floating charge is a security created over a class of assets belonging to a person when the act which creates the security does not identify the constituent items comprised in the said class or classes and does not restrict the security to assets held by the person at the time when the charge is executed.

Article 2072

A pledge of a movable thing is called a pawn. [illegible] movable property is called judicial.

Article 2074

This privilege shall apply to valid pledges as follows:

1st When the pledge has been given by a trader or by a person who is not a trader in a transaction of a commercial nature, the contract of pledge may be proved by written or oral evidence or by such other evidence as is in law admissible and such forms and manner of proof shall be available as well to, for, and against the contracting parties as to, for and against third parties.

2nd When negotiable instruments or negotiable securities are given in pledge such pledges shall, to all intents and purposes, be valid as regards the parties to the contract and all third parties and shall be sufficiently proved by an endorsement signed by the pledgor setting forth that the instruments or securities delivered have been delivered only in warranty of a debt.

3rd As regards policies of insurance with an insurance company, the transmission whereof is effected by an entry on the registers of the company, the pledging of the same shall, to all intents and purposes, be valid as regards the parties to the contract and all third parties and shall be sufficiently proved by an entry inscribed on the said registers setting forth the fact that the pledgee holds the said policies of insurance not as owner thereof but in warranty of debt. Provided that it shall be lawful for such company or other legal person to refuse to register such transaction if it has prior claims of privileges upon the policies thought to be given in warranty.

4th. Paragraphs 2 and 3 of this article shall apply both to civil and commercial transactions.

5th [illegible] (Revised Edition) Act, 1982 (Act 1 of 1982)

6th. [illegible]

7th Things delivered and duly registered in accordance with paragraph 6 of this article shall be presumed to remain in the possession of their owners, whose claims shall not be defeated by any third party claiming possession in good faith.

Article 2075

1. The privileges and rights referred to in paragraphs 6 and 7 of the preceding article shall only apply to incorporeal things, such as claims to movable property as provided by such paragraphs. Nothing contained elsewhere in the preceding article shall affect personal claims or claims to movable property with which the assignee can be vested as regards third parties only after notice of the transfer has been served upon the debtor.

2. The deposit of sums or the consignment of goods or assets ordered by a Court by way of security shall enjoy the privilege laid down in article 2073 and the rights and privileges of paragraphs 6 and 7 of article 2074.

3. All negotiable instruments or securities and all other rights or securities given in pledge as aforesaid, may be sued upon and recovered by the creditor to whom the same have been given in pledge.

Article 2076

1. If a pawn is delivered but not registered as provided by paragraph 6 and 7 of article 2074, the privilege shall only subsist upon the pledge for so long as it is delivered and for so long as it remains in the possession of the creditor or a third party appointed by the parties.

2. When pawns are pledged the creditor, or the third party as in paragraph 1 of this article, shall [illegible] to have them in the [illegible] in which [illegible] in the state or remain at the [illegible] [illegible] to [illegible] [illegible] [illegible] of the goods pledged [illegible]. (Ord. 16/1976)

Article 2077

[illegible]

Article 2078

[illegible]

payment to the extent that its value, as calculated by experts, corresponds to the debt; or the Court may order that the pawn be sold at an auction.

A clause which authorises a creditor to appropriate the pawn or to dispose of it without following the procedure referred to above shall be null; however this paragraph shall not affect the sale of a pawn as provided in paragraph 2 of article 2074. (Sch 1/8/1992)

Article 2079

The debtor shall remain owner of the pawn until he has been judicially deprived of it. Until such occurence, the pawn in the hands of the creditor shall merely be a deposit of security ensuring his privilege over it.

Article 2080

The creditor shall be answerable, in accordance with the provisions laid down in the Title *Contracts and Agreements in General,* for the loss or deterioration of the pawn which occurs through his negligence.

On his side, the debtor shall refund to the creditor the appropriate and necessary costs which he incurs for the presentation of the pawn.

Article 2081

If the pawn consists of a claim and such claim bears interest, the creditor shall set off the interest towards any other interest which may be due to him.

If the debt for the security of which the claim has been pawned bears no interest, the set-off shall operate towards the capital due.

Article 2082

Article 2083

A pawn shall not be delivered notwithstanding the possibility of a split-up of the debt towards the heirs of the debtor or those of the creditor.

The heir of the debtor who has discharged his part of the debt may not demand the restitution of his part of the pawn as long as the debt has not been completely discharged.

Equally, the heir of the creditor who has received his part of the debt shall not deliver the pawn to the detriment of those of his co-heirs who have not been paid.

Article 2084

The provisions referred to above shall not apply either to commercial matters or to authorised pawnshops which are governed by special laws and regulations.

CHAPTER II

ANTICHRESIS

Article 2085

An antichresis shall be made in writing.

The creditor only acquires by the contract the right to collect the income of the immovable property which he shall not allow any part against the interest thereof, if there is a surplus applied the capital.

Article 2086

Article 2087

The debtor may not, before the complete discharge of the debt, claim the enjoyment of the immovable property the income of which has been assigned under the antichresis.

But the creditor who wants to avoid the duties stated in the previous article may, unless he has renounced that right, compel the debtor to resume the enjoyment of his immovable property.

Article 2088

The creditor shall not become owner of a building simply because the debtor has failed to pay at the agreed time; any provision to the contrary shall be null; if the debtor fails to pay, the creditor may bring legal proceedings for a declaration that the debtor's right of ownership has lapsed.

Article 2089

When the parties have stipulated that the income shall be set off against the whole or part of the interest, such agreement shall be performed as any other which is not prohibited by law.

Article 2090

1. The provisions of articles 2077 and 2078 shall apply to the antichresis as they do to the pawn.

2. The provisions of this Chapter shall be without prejudice to the rights of third parties upon the immovable property delivered by way of antichresis.

3. The creditor entitled to the income shall have the same obligations and privileges as regards the immovable property delivered to him by way of antichresis as those of a depositary.

paragraphs 6 and 7 of article 2074, insofar as they apply. In particular, references to a full description and delivery shall have no application to a floating charge.

Article 2091-2

It is of the essence of the floating charge that it shall remain dormant until the debtor becomes insolvent or until the person in whose favour the charge operates intervenes. In that event the charge shall crystallise.

Article 2091-3

When a floating charge crystallises, the Court shall decide at its discretion whether any, and if so what, assets of the property of the debtor shall be sold or whether, in addition to the sale or in lieu of it, a receiver shall be appointed. Such receiver shall be bound by such instructions, orders or rules as the Court in the exercise of its unfettered discretion may make, vary or determine.

TITLE XVIII

PRIVILEGES AND MORTGAGES

CHAPTER 1

GENERAL PROVISIONS

Article 2092

Whosoever personally binds himself shall be answerable with all his movable and immovable property, present or future, for his performance.

Article 2093

[illegible]

Article 2094

[illegible]

CHAPTER II

PRIVILEGES

Article 2095

A privilege is a right which the nature of the claim confers upon a creditor to enjoy a priority over other creditors, even those whose debts are secured by a mortgage.

Article 2096

Amongst creditors entitled to a privilege the priority is settled in accordance with the class of privilege applicable.

Article 2097

The creditors entitled to a privilege of the same class shall be paid in proportion to the amount of their claims.

Article 2098

The privileges in favour of the Republic and the order in which they are enforced are governed by such laws as are enacted from time to time.

The Republic, however, shall not acquire a privilege to the detriment of rights previously vested in third parties.

Article 2099

A privilege may exist in relation to both moveable and immoveable property.

1. General Privileges upon Movables

Article 2101

Rights to a privilege upon all movable property generally are stated below in the following order of priority:

1st Judicial costs.

2nd Funeral expenses.

3rd Expenses arising from the last illness before death; these shall be paid pro rata amongst those to whom they are due.

4th The wages of servants up to a full year preceding a judgment of a Court condemning the employer to the payment of arrears.

5th The supply of provisions to the debtor and his family, that is to say, supplies delivered over the last six months by retailers, such as bakers, butchers and others; and during the last year the board and lodging due to landlords and any debts to wholesale dealers.

6th The privilege of the Republic on the furniture and movable property of persons condemned shall only be exercised after the privileges and rights referred to in this article.

2. [illegible] upon certain [illegible]

Article 2102

The claims which carry privilege upon certain movables are the following:

1. [illegible]

by a document under private signature but which has no certain date, for a year as from the end of the current year.

The same privilege shall apply with regard to the tenant's repairs and everthing concerning the performance of the tenancy agreement: it shall also apply with regard to any claim, whether belonging to the landlord or the tenant, arising from the occupation of the premises, however such occupation may have come about.

Nevertheless the sums due for the needs, or for the expenses of the year's crop shall be defrayed from the proceeds of the crop and those for the implements from the proceeds of such implements, in both cases by way of priority;

The owner may seize the furniture furnishing the house or farm if it has been moved without his consent, and shall retain upon it his privileges, provided that he has made his claim; that is to say within forty days where the furniture of a farm is concerned; and within fifteen days withrespect to the furniture of a house.

2. Claims upon a pledge held by the creditor.

3. The costs incurred for the maintenance of a thing.

4. The price of movable property still unpaid, if still in the possession of the debtor, whether purchased on credit or not.

If the sale is for cash the seller may even vindicate his property as long as it is in the possession of the buyer and stop a resale, provided that the vindication is made within eight days from delivery, and the property is in the same condition as when the delivery was made, the privileges of the seller, however, shall rank after that of the landlord of the house or farm unless there is proof that the landlord had knowledge that the furniture and other objects furnishing his house or farm did not belong to the tenant.

This shall not affect any change in the law as to cases of commercial pledge, the conflict of laws,

5. The [illegible] property [illegible]

6. [illegible]

the course of his employment upon the caution money paid by him and upon any interest due thereon.

8. The privilege of the Republic on the furniture and movable property of prsons condemned shall only be exercised after the privileges and rights referred to in this article.

SECTION II

Special Privileges upon Immovables

Article 2103

The creditor entitled to a privilege shall be:

1. The seller upon the immovable property sold for the payment of the price; if there are several successive sales the price of which is wholly or partly due, the first seller shall have priority over the second, the second over the third and so on;

2. Those who have advanced sums for the purchase of an immovable, provided that it is expressly stated in an authentic document of loan that that sum was intended for that purpose, and also stated in the receipt of the seller that that payment was made from the money borrowed;

3. The co-heirs upon the immovables of the inheritance to secure their claims upon the proceeds of a licitation or the co-owners upon any immovable property held on their behalf by a fiduciary. However, a fiduciary may apply to the Court for permission to erase the inscriptions taken on providing proof of adequate security for the payment of the debts owed to the creditors.

4. Architects, contractors, masons or other workmen employed to build, rebuild or repair buildings, canals or any other works, provided, however, that the superintendence of the works by the proper officer of the Republic, and the receipt of the commissioner of the Republic, that the works have been executed, be proved by proces-verbal drawn up for that purpose by the said officer.

5. The persons who have lent money to pay or reimburse workmen shall enjoy the same privilege, provided that that use is confirmed by an authentic document of loan and by the receipt of the workers, as stated above for those who lend money for the purchase of immovable property.

SECTION III

Privileges upon Movable and Immovable Property

Article 2104

The privileges over movable and immovable property shall be those referred to in article 2101.

Article 2105

1. When in the absence of movables, those entitled to the privilege mentioned in the preceding article claim to be paid out of the price of immovable property concurrently with other creditors entitled to privileges upon immovables, the payments shall be made in the following order:

1. Judicial costs and other debts set out in article 2101,

2. The debts mentioned in article 2103.

2. The privileges of the Republic on the immovable property of parties condemned shall only exist on condition of an inscription therefor being taken within two months from the date of judgment condemning the party; after that period the rights of the Republic shall only be exercised in conformity with article 2113.

Article 2107

Exempt from registration are the claims specified in article 2101.

Article 2108

1. The seller entitled to a privilege shall retain his privilege by the transcription of the deed of transfer of ownership to the buyer which shows that the whole or part of the price is due to him; for that purpose the transcription of the transfer to the buyer shall have the effect of an inscription for the benefit of the seller and the lender who has advanced him the money paid, and who is subrogated to the right of the seller by the same transaction; the Registrar-General shall be bound, however, to effect *ex officio* the inscription in his register of the claims arising out of the deed transferring title, both in favour of the seller as well as in favour of the lender, who may also effect the transcription of the deed of sale if it had not been done, for the purpose of obtaining the inscription of what is due to them from the sale price.

2. The seller may, within forty-five days of the deed of sale inscribe his privileges under this article and article 2109 notwithstanding the transcription of any deed in the interval. Such right shall be subject to the provisions of the Immovable Property (Judicial Sales) Act, Cap. 94, or such other law as may from time to time be enacted.

3. In the case of heirs and legatees, their privileges may be secured by an inscription upon any immovable property held by a fiduciary on their behalf. For the purpose of such inscription a memorandum as defined by local law or custom shall be sufficient document of registration. However, inventories made under this paragraph may be created in accordance with the rules laid down in article 2 of paragraph 2.

Article 2109

Article 2110

Architects, contractors, masons and other workmen employed to build, reconstruct or repair buildings, canals or other works and those who have lent money to pay them and reimburse them, provided that the use for such purposes can be proved, shall retain their privileges by the double inscription made:

1. Of the report which ascertains the condition of the premises;

2. Of the report of approval of the works as from the date of the inscription of the first report.

Article 2111

The creditors and legatees who are entitled to a share of the inheritance of the deceased, as provided under the Title *Succession*, shall retain with regard to the creditors of the heirs or other representatives of the deceased their privileges upon immovable property held by the fiduciary, provided that the inscription upon each immovable has been entered within six months from the opening of the succession. For such inscription the deed giving rise to the privilege or mortgages shall not be required.

Before the end of that period no mortgage shall be granted binding such property by the heirs or representatives to the detriment of the creditors or legatees, subject to paragraph 3 of article 2103.

Article 2112

The assignees of those claims carrying a privilege shall exercise the same rights in favour of the assignors and in their place and stead.

Article 2113

months from the date of judgment condemning a party as provided by article 2105 paragraph 2.

CHAPTER III

MORTGAGES

Article 2114

A mortgage is a real right upon immovable property intended to secure the discharge of an obligation.

By its nature, it cannot be divided; it burdens the immovables so charged in their entirety and each one and each part of them.

It follows property into whatever hands it may pass.

Article 2115

A mortgage can only be created in the cases and in accordance with the forms established by law.

Article 2116

A mortgage is created by law or by agreement.

Article 2117

A legal mortgage is created by law.

A conventional mortgage is the result of agreement.

Article 2118

Only the following property may be mortgaged:

1. [illegible]

2. [illegible]

Article 2120

Nothing in the present Code shall affect the provisions of shipping or air law relating to ships, sea vessels and aircraft.

SECTION I

Legal Mortgages

Article 2121

The rights and claims which a legal mortgage secures shall be:

Those of minors and interdicted persons upon the property of their guardians;

Those of the Republic and public bodies upon the property of receivers and civil servants whose duty extends to accounting.

Article 2122

A creditor who is entitled to a legal mortgage may enforce his right upon the whole of the immovable property of his debtor, and upon those which the debtor may subsequently acquire, subject to the restrictions hereinafter expressed.

SECTION II

Judicial Mortgages

Article 2123

Repealed.

[illegible] Legislative Act, S. 16, Cap. 134.

[illegible]

[illegible]

[illegible]

[illegible]

Article 2125

Persons who have a right to immovable property subject to a condition precedent or, in certain cases, subsequent, or a right which is subject to rescission, may only grant mortgages upon it subject to the same conditions or the same rescission. However, a mortgage agreed to by all the co-owners of immovable property shall remain valid notwithstanding the outcome of the licitation or division.

Article 2126

The property of minors, interdicted persons and of absentees (so long as the Court has only put a person in temporary possession of such absent person's property) may not be subject to a mortgage except in the case and forms established by law or else by virtue of a judgment of the Court.

Article 2127

1. A conventional mortgage shall be executed in the presence of a notary who shall attest the execution in the prescribed form. If a party required to execute a mortgage is unable to do so through ignorance he shall be deemed to have executed such instrument if he makes his mark thereon in the presence of a notary and two witnesses able to sign their names. If his inability to execute such instrument is due to physical disability he shall declare or acknowledge his assent in the presence of the aforementioned notary and two witnesses. In either case of inability to execute the instrument, it shall be read out by the notary in the presence of the party required to execute it and of the two witnesses. Specific mention shall be made thereon that the aforementioned formalities have been observed. In respect of instruments executed out of Seychelles the provisions of the Land Registration Act, Cap. 107, shall have application.

2. [illegible]

Article 2129

1. A conventional mortgage shall only be valid if the authentic document of the grant or an authentic document subsequently executed states specifically the nature and place of each immovable belonging at the time to the debtor upon which he agrees to secure the claims. Every item of his present property may specifically be subject to a mortgage.

2. Future property may not be mortgaged.

3. However, nothing in this article shall prevent the creation of a floating charge upon property as provided by articles 2091 - 1, 2091 - 2 and 2091 - 3.

Article 2130

However, if the available property of a debtor is insufficient for the security of the claim, he may admit this insufficiency and consent that any property he may subsequently acquire shall be used as security in the order of acquisition.

Article 2131

Likewise, if an immovable or immovables actually owned and which are burdened with a mortgage perish or suffer deterioration of a kind that renders them insufficient for the security of the creditor the latter may either claim reinstatement forthwith or obtain an additional mortgage.

Article 2132

A conventional mortgage shall only be valid if the sum for which it is granted is stated in an authentic document of the present or the future, [illegible] the validity of such agreement as to the sum for which it is granted [illegible] the sum stated in the mortgage [illegible] the sum for which it is granted [illegible] the mortgage [illegible] the sum stated in the mortgage [illegible]

Article [illegible]

[illegible]

SECTION IV

The Order in which Mortgages rank

Article 2134

As between creditors, a mortgage whether legal or conventional shall only rank from the inscription made by the creditor in the register of the Registrar-General, in the manner and form provided by law, except in the cases referred to in the following articles.

SECTION V

The Inscription of Mortgages by Guardians

Article 2135

Minors under guardianship shall be entitled to their legal mortgages as provided under this Code. They shall be inscribed for a determined sum and shall rank only from the dates of their inscriptions.

Article 2136

The inscription of the minor's legal mortgage shall be taken by a notary appointed by the Court on account of such minor and for a sum to be determined by the said Court. It shall specify the immovable property or properties of the guardian which such mortgage shall affect. The inscription shall be made within six clear days from the decision of the Court.

Article 2137

No guardian shall be entitled to receive or take possession of the objects of moneys of any property whatsoever belonging to the minor before he has [illegible] discharge for the same or received the sum at which the minor's legal mortgage has been [illegible] by the Court, except in the [illegible] mortgage shall have been inscribed [illegible] inscription.

Article 2138

[illegible]

all Courts in Seychelles that the guardian has power to receive moneys and otherwise to act as guardian according to the laws of Seychelles.

Article 2139

The guardian shall be lawfully entitled to compel the payment into the registry of the Supreme Court of all moneys or claims which he cannot as yet lawfully receive and he shall also make or cause to be made all conservatory acts which it may be necessary to make or cause to be made in order to secure the minor's rigts of whatsoever nature and shall have the power to appear in and defend all actions and suits, real and personal, brought against the minor.

Provided that any debtor indebted to a minor may pay the amount of this debt into the Registry of the Supreme Court when there is no guardian lawfully entitled to receive the same.

And every debtor making such payment shall be lawfully discharged of his debt and entitled to obtain an order from a Judge in chambers ordering the erasure of any inscription or mortgage or privilege securing the claim so paid.

Article 2140

1. If the Court is satisfied that the guardian either has no immovable property or that such property is not sufficient as security, the Court may require the guardian to furnish security or further security in such form and in such amount as the Court may deem fit.

2. A certificate under article 2138 to the effect that such security has been given shall be evidence before all Courts in Seychelles that the guardian has the power to receive moneys and otherwise to act as guardian according to the laws of Seychelles.

Article 2141

Article 2142

If the Court is satisfied that the minor has no immovable or movable property it shall declare that no inscription or mortgage shall be taken, and such declaration shall be evidence before all Courts that the guardian has power to act as such according to the laws of Seychelles, but it shall be the duty of the guardian, under the penalties hereinafter enacted, to apply to the Court for the purposes mentioned in article 2135 and 2136 should the minor at any time during his minority acquire property to be administered by the guardian, provided always that no such inscription of mortgages shall be required when the property owned or acquired by the minor shall not exceed the sum or value of five thousand Rupees.

Article 2143

1. It shall be lawful for any guardian at any time to apply to a Judge in chambers for a rule restricting the minor's legal mortgage to part only of the real estate on which it has been inscribed, or to one or more only of the several properties subsequently acquired by the guardian, but it shall be lawful for the Judge to grant such application only if satisfied by sufficient evidence that the minor's interest will not be prejudiced thereby.

2. Upon application by the guardian or the Attorney-General to the Supreme Court, it shall be lawful for a Judge for cause shown, after having heard the guardian or any party having a lawful interest, to vary the amount for which the inscription has been taken, and the immovable property or properties of the guardian which such mortgage has affected.

3. It shall be lawful for the Supreme Court on the application of the guardian or of the guardian of the immovable property burdened with an inscription in favour of a minor for the reduction of such inscription to such sum as the Court shall think fit, the judge being the subject-matter. Such application shall be made by the guardian shall be made with the guardian's consent.

Article 2143 - 2

All the provisions of this Code regulating the legal mortgages of minors, the rights, duties, and liabilities of the Judge, guardians, sub-guardians and others, shall have the same force and shall be applied equally in the case of interdicted persons whose interdiction shall begin after the promulgation of this Code.

Article 2144-2145

Repealed.

Status of Married Women Act. Schedule I. Cap. 231.

CHAPTER IV

THE INSCRIPTION OF PRIVILEGES AND MORTGAGES

Article 2146

1. Inscriptions shall be effected at the Mortgage and Registration Office. They shall have no effect if registered at a time or in circumstances contrary to the provisions of the law relating to bankruptcy.

The same rule shall apply to the creditors of a succession, if the inscription is made by one of them since the opening of the succession and if such succession has only been accepted subject to the benefit of inventory.

2. Nevertheless, any creditor having acquired rights by way of privilege or mortgage, which rights shall have become null and void before the act of the debtor, may cause such rights to be inscribed within [illegible] days from the opening of the succession.

Article 2147

[illegible]

Article 2151

The creditor whose mortgage is inscribed as security for a claim relating to capital and interest or arrears shall be entitled to be placed in respect of arrears of interest for two years only and for the current year, in the same preference as for the capital; this shall not prejudice any particular inscription valid as from its own date relating to a mortgage granted as security for arrears other than those secured by the first inscription.

Article 2152-2153

Repealed.

Mortgage and Registration Act. S.49(1). Cap. 134.

Article 2154

The inscription taken on behalf of minors and interdicted persons need not be renewed during minority or whilst the interdiction is in force. Such inscriptions must, however, be renewed within one year after the cessation of the minority or the interdiction. Otherwise their effect shall cease.

Article 2155

The costs of inscription shall burden the debtor unless the agreement provides otherwise; the person requiring the inscription shall pay the money due to the Registrar-General for the inscription of which the Registrar-General may require from the debtor. The debtor shall pay the costs of the inscription and the Registrar-General may claim from the buyer.

Article 2156

CHAPTER V

ERASURE AND REDUCTION OF INSCRIPTIONS

Article 2157

Inscriptions are erased by the consent of an interested party having capacity to do so or by virtue of a final judgment against which no further appeal lies or in accordance with paragraph 3 of article 2103 of this Code.

Article 2158

In both cases, the persons applying for the erasure shall file with the Registrar-General the officially certified copy of the authentic document containing the consent of the parties or the judgment of the Court.

Article 2159

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 2160

The erasure must be ordered by the Court when the inscription has been made without a legal ground or without a lawful title, or when it has been made on the strength of an irregular title, extinguished or discharged, or when the rights of privilege or mortgage have been extinguished by operation of law.

Article 2161

Whenever the inscriptions made by a creditor who, by operation of law would be entitled to enforce the debt upon the present or future property of the debtor will operate a charge over more property than necessary for the security of his claim, the Court may, upon the application of the debtor, order the reduction of the inscription to such property as is sufficient for the security of the claim.

Article 2162

Article 2163

Inscriptions which were made after an estimate by the creditor may also be reduced as excessive if they relate to claims which, insofar as the mortgages to be granted for the security are concerned, were not settled by agreement and which by their nature are conditional, contingent or indefinite.

Article 2164

The excess in that case is, in the last resort, a matter for the Court to decide according to the circumstances, the likelihood of events and the presumptions of fact, in such a manner as to reconcile the probable rights of the creditor with the debtor's interest to retain sufficient credit; this shall not prejudice any new inscriptions of mortgages which shall have effect from the date of inscription, when circumstances have increased the amount of the uncertain claims.

Article 2165

The valuation of immovable property ordered by article 2164 of this Code for determining the amount to be deducted when the inscriptions are excessive shall be made by arbitrators selected by the parties; if not so selected, by those appointed by the Court.

CHAPTER VI

[illegible]

Article 2166

[illegible]

Article 2167

[illegible]

Article 2168

A third party holder of property shall also be bound either to pay all the interest and capital due whatever the amount or to surrender the property subject to the mortgage without any reservation.

Article 2169

Failure of the third party holding the property to discharge fully any of his obligations shall entitle each one of the mortgagees to have the property sold thirty days after a notice demanding payment has been served upon the original debtor, and after service of a notice upon the third party holding the property requiring him to discharge the debt due or to surrender the property.

Article 2170

Nevertheless, the third party holder of the property who is not personally liable for the debt may bar the sale of the mortgaged property which has been transferred to him if there is in the hands of the principal debtor or debtors other immovable property subject to a mortgage for the same debt; he may require the creditor first to seize such property in accordance with the provisions of the Title *Suretyship*: while the seizure in proceeded with, he shall have the benefit of a postponment of the sale of the property.

Article 2171

The plea of seizure may not be set up against a creditor entitled to a privilege or having a specific mortgage upon the property.

Article 2172

[illegible]

Article 2173

[illegible]

Article 2174

The surrender by reason of a mortgage shall be made at the Registry of the Supreme Court; and a certificate of surrender shall be delivered by that Court.

On the application of the most diligent of the interested parties, a curator of the surrendered property shall be appointed against whom proceedings may be taken in accordance with the forms laid down for judicial sales.

Article 2175

Dilapidations to the detriment of mortgagees or persons entitled to a privilege which result from the negligence of a third party holder of the property shall give rise to an action for damages against him; but he shall not be entitled to any costs incurred or improvements except to the extent of the increased value of the property which is the result of such improvement.

Article 2176

The income from the mortgaged property shall only be due by the third party holder as from the day of notice to pay or surrender, and if the legal proceedings begun have been abandoned for three years as from the date of the new notice served.

Article 2177

The servitudes and other real rights which the third party holder enjoyed upon the immovable property before it came into the possession of it shall revive after the surrender or after the judicial sale.

The [illegible] their rights of mortgage according to the [illegible] property [illegible] judicial [illegible] the [illegible]

Article 2178

[illegible]

Article 2179

The third party holder who want to free his property by paying the price shall comply with the forms which are laid down in Chapter VIII of this Title.

CHAPTER VII

THE EXTINCTION OF PRIVILEGES AND MORTGAGES

Article 2180

Privileges and mortgages shall be extinguished:

1st By the extinction of the principal obligation.

2nd By the waiver by a creditor of his mortgage.

3rd By compliance with the forms and conditions required to redeem the property and applicable to third party holders of property.

4th By prescription.

The prescription shall run in favour of the debtor, with regard to the property in his possession, by the lapse of time required for the prescription of actions for the enforcement of a mortgage or a privilege.

With regard to property held by a third party, he shall acquire by prescription through the lapse of time required for the acquisition of ownership by him; in the case in which prescription is based upon presumption of title, it shall only begin to run from the day of transcription in the register of the Registrar-General.

The inscription made by a creditor shall not interrupt the running of the prescription period established by law in favour of a debtor or in favour of a third party who holds the property.

This transcription shall be made upon a register specifically provided; the Registrar-General shall be bound to issue a certificate to the applicant.

Article 2182

The transcription of documents of title transferring ownership on the register of the Registrar-General shall not redeem, on its own, the mortgages and privileges which burdern the property.

The seller can only convey to the buyer the right of property and other rights that he himself has on the property sold; he conveys them subject to the same privileges and mortgages which burdened them previously.

Articles 2183-2192

Repealed.

Immovable Property (Judicial Sales) Act. S.238. Cap. 94.

CHAPTER IX

EXTINCTION OF UNREGISTERED MORTGAGES ON THE PROPERTY OF MINORS AND GUARDIANS

Articles 2193-2195

Repealed.

Civil Code of Seychelles Act. Fourth Schedule. Cap. 33.

Article 2197

He shall be liable for any damage arising:

1st From an omission in his register of any transcription of documents of conveyance and of any inscriptions applied for at his office.

2nd In the absence of a reference in his certificates to one or several existing inscriptions, unless in this case the error is due to his having been supplied insufficient data for which no error can be attributed to him.

Article 2198

The property in respect of which the Registrar-General has in his certificate omitted to refer to one or more inscriptions shall remain subject to the liability of the Registrar-General, unencumbered in the hands of the new possessor, provided that the latter has applied for a certificate since the transcription of his document of title; this shall not prejudice, however, the right of creditors to rank in the order of their entitlement so long as the price has not yet been paid by the buyer or so long as the order of priority amongst creditors has not been judicially confirmed.

Article 2199

In no circumstance shall the Registrar-General refuse or delay under penalties of damages (to the parties) the transcription of documents of conveyance, the inscription of mortgage rights or the delivery of certificates which have been applied for; to this effect reports of a refusal or delay shall be drawn forthwith at the request of the applicants, either by the Registrar of the Supreme Court or by a police officer or notary in the presence of two witnesses.

Article 2200

[illegible]

and he shall inscribe any memoranda in the appropriate registers only in accordance with the date and in the order in which they were delivered.

**Article 2201*

The registers shall be closed every day in the same manner as those kept for the registration of documents.

Article 2202

The Registrar-General shall be bound to comply, in the course of his employment, with all the provisions of this Chapter under penalty of any fine prescribed by law; this rule shall apply without prejudice to any damages payable to the parties which shall be paid before the fine.

Article 2203

Repealed.

Civil Code of Seychelles Ordinance, Fourth Schedule, Cap. 33.

TITLE XIX

THE COMPULSORY SALE OF PROPERTY AND THE ORDER OF PRIORITY AMONG CREDITORS

CHAPTER I

THE COMPULSORY SALE OF IMMOVABLE PROPERTY

Article 2204

Article 2205

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 2206

The immovable property of a minor, even if emancipated, or of an interdicted person shall not be sold before the seizure of his movable property except with the consent of the Court.

Article 2207

The seizure of movable property shall not be a prerequisite of the compulsory sale of the immovable property of a person of full age or a person of full age who has subsequently become interdicted.

Article 2208

Repealed.

Status of Married Women Act, Schedule I. Cap. 231.

Article 2209

The separate immovable properties belonging to the same debtor shall only be seized successively unless they are worked together as one estate or unless they have been specially mortgaged for the security of one debt. No second or subsequent seizure shall take place unless the price of the first sale has not been sufficient to pay the claims of the seizing creditor.

Article 2210

[illegible]

Article 2211

[illegible]

property shall have been seized, the execution debtor or any of the inscribed or judgment creditors shall have a right to ask that the whole property be included in the same sale and adjudication.

2. A separate valuation shall be made of the price which may be obtained at the public sale of each of the various properties.

Article 2212

If the debtor can establish by an authentic tenancy agreement that the net and available yearly income from his immovable property is sufficient for the payment of the debt, principal, interest and costs included, and if he offers to assign such income to the creditor, proceedings may be stayed by the Court but may be continued if there is any opposition or obstacle to the payment.

Article 2213

Proceedings for the compulsory sale of immovable property shall only be pursued if there is an authentic document of title for a debt which is certain and definite. If the debt is for an unliquidated sum, the proceedings may continue but the compulsory sale may only be made when the amount of the debt has been ascertained.

Article 2214

The assignee of an authentic document of title shall not start proceedings for a compulsory sale until after notice of the assignment is served upon the debtor.

Article 2215

The proceedings may begin on the basis of an interim or other order, or a judgment or a conditional judgment, but the compulsory sale shall not be made unless and until a final judgment is given which is not liable to appeal.

[illegible]

Article 2217

All proceedings for the compulsory sale of immovable property shall be commenced by a summons to pay issued at the suit and the request of the creditor and served upon the debtor in person by an usher of the Court.

The form of the issue of a summons and of the proceedings for a compulsory sale shall be regulated by such laws as are from time to time enacted.

CHAPTER II

THE ORDER OF PRIORITY AMONG CREDITORS AND THE APPORTIONMENT OF THE PROCEEDS

Article 2218

The order of the apportionment of the proceeds of the sale of immovable property and the manner of proceedings are regulated by special laws.

TITLE XX

PRESCRIPTION

CHAPTER I

GENERAL PROVISIONS

Article 2219

[illegible]

[illegible]

Article 2220

[illegible]

Article 2221

The waive of a right of prescription may be express or implied; an implied waiver arises from an act which presumes the abandonement of an acquired right.

Article 2222

A person who cannot transfer property cannot waive an acquired right of prescription.

Article 2223

The Court cannot, on its own, take judicial notice of prescription in respect of a claim.

Article 2224

A right of prescription may be pleaded at all stages of legal proceedings, even on appeal, unless the party who has not pleaded it can be presumed to have waived it.

Article 2225

Creditors as well as all persons having a lawful interest in acquiring a right of prescription may plead it, even if the debtor or owner waives it.

Article 2226

There shall be no right of prescription in respect of things which cannot be the subject of commercial dealings.

Article 2227

The imprescriptible and public domain shall be governed by the rules of prescription as provided and any other applicable prescription.

2. The person whose property is temporarily under the control of another or the person who holds land for a fixed period of time shall be deemed to have possession thereof.

3. In the case of easements or other land charges, possession consists of the effective exercise of such rights.

Article 2229

In order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of an owner.

Article 2230

A person shall be presumed to possess for himself as owner unless it is proved that he possesses on behalf of another.

Article 2231

When a person begins to possess on behalf of another, he shall always be presumed to possess on the same basis unless there is proof to the contrary.

Article 2232

Purely optional acts or acts which are merely permitted shall not give rise to possession or prescription.

Article 2233

Acts taint[illegible] by duress shall not give rise to possession leading to prescription.

[illegible]ative prescription shall only begin when the duress has ceased.

Article 2234

[illegible] possessor who [illegible] previously had possession shall be presumed to have had possession during the intervening period, unless there is proof to the contrary.

Article 2235

[illegible]

CHAPTER III

OBSTACLES TO PRESCRIPTION

Article 2236

Those who possess on behalf of another shall not acquire by prescription however long they may be in possession.

Thus the tenant-farmer, the lessee, the depositary, the usufructuary and all the others who hold the property of the owner for a temporary period shall not be entitled to prescription.

Article 2237

The heir of deceased persons who hold property in any of the capacities listed in the preceding article shall not be entitled to prescription.

Article 2238

Nevertheless, the persons listed in article 2236 and 2237 may be entitled to prescription if the title of their possession changes either through an act of a third party or through acts which are incompatible with the rights of the owner.

Article 2239

Persons to whom tenant-farmers, depositaries and other temporary holders have transferred the property by a donation or transferring by onerous title shall be entitled to prescription.

Article 2240

[illegible]

CHAPTER IV

THE GROUNDS UPON WHICH PRESCRIPTION IS INTERRUPTED OR SUSPENDED

SECTION I

The Grounds upon which Prescription is Interrupted

Article 2242

Prescription may be interrupted either naturally or by a legal act.

Article 2243

A natural interruption occurs when the possessor is deprived for longer than a year of the enjoyment of the thing through the actions of the former owner or even through the action of a third party.

Article 2244

A writ or summons or a seizure served upon a person in the process of acquiring, by prescription shall have the effect of a legal interruption of such prescription.

Article 2245

Repealed

Civil Code of Seychelles Act (Fourth Schedule), Cap. 33.

Article 2246

[illegible]

Article 2248

The prescription shall also be interrupted by an acknowledgement by a debtor or a possessor of the right of the person against whom the prescription was running.

Aticle 2249

Proceedings started, or an acknowledgement made in accordance with the above articles, against any one of joint and several debtors shall interrupt the prescription against all, even against their heirs.

Proceedings started against one of the heirs of a joint and several debtor, or the acknowledgement of such heir, shall not interrupt prescription as regards the other co-heirs, even if the claim is secured by a mortgage, unless the debt is indivisible.

Such proceedings or acknowldegement shall not interrupt prescription as regards the other co-debtors except to the extent of the share for which the heir is liable.

To effect an interruption for the whole debt, that is with regard to the other co-debtors, the proceedings must be directed against all the heirs of the deceased debtor or there must be acknowledgement of all these heirs.

Article 2250

Proceedings started against the principal debtor or the acknowledgement of the debtor shall interrupt the prescription against the surety.

within two years of reaching majority and for the interdicted person within the two years from the removal of the disability, they or their representatives exercise their rights over the property subject to prescription. Provided that in no circumstances shall the period of prescription exceed twenty years including the period of suspension.

Article 2253

Prescription shall not run between spouses.

Article 2254-2256

Repealed.

Status of Married Women Act Schedule I. Cap. 231.

Article 2257

The prescription shall not run :

With regard to a claim which is subject to a condition, until that condition is fulfilled;

With regard to an action for warranty, until the eviction has been effected;

With regard to a claim maturing on a fixed date, until such date arrives.

Article 2258

[illegible]

CHAPTER V

THE PERIOD OF PRESCRIPTION

SECTION I

GENERAL PROVISIONS

Article 2260

Prescription shall be claculated on the basis of days not hours.

Article 2261

Rights by prescription shall be acquired when the last day of the period has ended.

SECTION II

The Prescription of Twenty Years

Article 2262

All actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not.

Article 2263

[illegible]

SECTION III

The Prescription of Ten Years

Article 2265

If the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith, the period of prescription of article 2262 shall be reduced to ten years.

Article 2266

Repealed.

Civil Code of Seychelles Act, Fourth Schedule, Cap. 33.

Article 2267

A title which is null because of a defect of form shall not serve as the basis for the prescription of ten years.

Article 2268

Good faith shall always be presumed. The person who makes an allegation of bad faith shall be required to prove it.

Article 2269

It is sufficient that the good faith existed at the moment of acquisition of the property.

Article 2270

Architects, contractors and other persons bound to the owner of the property by [illegible] shall be discharged [illegible] after ten years.

2. Provided that in the case of a judgment debt, the period of prescription shall be ten years.

Article 2272

This Title (relating to prescription) shall be applicable to and binding upon private parties and the Republic in like manner.

All amendments or modifications of the laws which regulate prescription or limitation of whatever nature are and shall hereafter be, unless the contrary is expressly provided in any law, equally applicable to and binding upon the Republic and private parties.

Article 2273

Repealed.

Civil Code of Seychelles Act, Fourth Schedule. Cap. 33.

Article 2274

Prescription, as established by the provisions of this Title, shall run even if supplies, deliveries, services and works continue. It shall cease to run only when there is an account stated or a writ of execution or legal proceedings still pending.

Article 2275

Article 2278

Prescription as established by this Title shall run against minors as well as adults under guardianship; but such persons shall have a remedy against their guardians.

Article 2279

With regard to movables, possession in good faith establishes a presumption of ownership.

Nevertheless, a person who has lost something or whose goods were stolen may vindicate these during a period of five years from the date of the loss or the theft against any person in whose hands the goods are found; but the latter shall have a remedy against the person from whom he obtained them.

Article 2280

If the present possessor of goods stolen or lost has bought the same at a fair or market or at a public sale, or from a trader dealing in similar goods, the original owner may not obtain the return of his property unless he pays back to the possessor the price that the latter paid for them.

Article 2281

Nothing contained in this Title shall revive any right of action barred by prescription at the date when this Code comes into operation.

Any right of action which has not been barred by prescription at the date on which this Code comes into operation shall be barred by prescription at the earliest of the following periods, namely –

(a) [illegible]

(b) [illegible]

SECOND SCHEDULE

(Section 10)

TRANSITIONAL PROVISIONS

1. The provisions of the Civil Code of Seychelles shall not affect in any way the decision, judgment, ruling or order of any Court in any civil case in which an issue relating to any article of the exisiting Code or other enactment amended or repealed by this Act has been raised before the commencement of this Act.

2. In all cases relating to the recognition of illegitimate children or proof of their descent coming under the provisions of the Civil Code of Seychelles, such children shall not acquire any rights or claims to successions opened before such recognition or proof except to such successions as may have been left vacant, and such claims and rights shall not interfere with any rights vested or acquired at the time of such recognition or proof.

3. If a child has a duly appointed guardian, or a sub-guardian, and a properly constituted Family Council when this Act comes into force, the guardian shall be vested with all the powers conferred upon him by the Civil Code of Seychelles; and the subguardian, insofar as his functions are taken over by the guardian, and the Family Council shall cease to exercise those functions.

4. In respect of paragraph 3 of this Schedule, the sub-guardian or any member of the family council or any person having a lawful interest, and the Attorney-General may [illegible] the appointment of the [illegible] guardian in place of the [illegible] the Family Council may [illegible] the [illegible] guardian [illegible]

the estate under section 109(1) of the Immovable Property (Judicial sales) Act are pending before the Court; and provided also that any order of the Court to postpone the sale of immovable property under section 108 of that Act shall continue to have effect.

6. The Registrar-General shall issue written notices of conversion to all registered co-owners. such persons may, within six months after the issue of such notices, agree to nominate a fiduciary in whose name the property shall be registered. Failing such agreement, articles 1686, 1687 and 1688 of the Civil Code of Seychelles (which relate to licitation) and the Immovable Property (Judicial Sales) Act shall apply.

7. Nothing in this Act shall affect a mortgage granted prior to the commencement hereof by all the co-owners of immovable property held in co-ownership. Such mortgages and charges shall continue to bind the property, but co-owners, whose claims shall henceforth be in money, shall no longer be able to create any further mortgages or charges upon property formely held in co-ownership except as provided in the Civil Code of Seychelles. Where such property is sold as a result of licitation or division of property, it shall continue to be subject to any mortgages or charges duly inscribed.

8. References in any law in force at the commencement of this Act to the existing Code shall, subject to sections 7 and 8 of this Act, be construed as references to the Civil code of Seychelles.

FOURTH SCHEDULE

(Section 10)

ENACTMENTS REPEALED

These have been given effect to and are accordingly omitted.

ARTICLES OF THE EXISTING CODE HAVING NO EQUIVALENT IN THE CIVIL CODE OF SEYCHELLES

BOOK I : Art. 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 377, 378, 379, 380, 381, 382, 393, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 423, 424, 425, 426, 431, 432, 438, 440, 441, 446, 449, 455, 458, 465, 466, 467, 483, 484, 485, 486 and 515.

BOOK II : Art. 542, 561, 642, 643 and 710.

BOOK III : Art. 721, 722, 747, 754, 768, 806, 836, 837, 838, 839, 840, 841, 842, 874, 875, 876, 883, 884, 885, 886, 892, 993, 996, 1004, 1005, 1006, 1008, 1030, 1031, 1054, 1263, 1329, 1430, 1648, 1668, 1669, 1670, 1671, 1672, 1685, 1686, 2059, 2169, 2193, 2194, 2195, 2202, 2205, 2243, 2256, 2273, 2276, and 2277.



LAWS OF SEYCHELLES

CIVIL CODE OF SEYCHELLES ACT

CHAPTER 33

(CONSOLIDATED TO 31ST DECEMBER 2007)

ARTICLES 724 AND 820

PRACTICE DIRECTION No. 1 OF 1989

GN 186/1989.

APPLICATIONS UNDER ARTICLES 724 AND 820 OF THE CIVIL CODE

(15th May, 1989)

In applications where a party or attorney is seeking the appointment of an executor under article 724 of the Civil Code or a fiduciary under article 820, the following documents shall be submitted to the Registry together with the petition or other document praying for the appointment.

1. The death certificate of the deceased.

2. The conveyance, deed of title or other document showing the entitlement of the deceased to ownership of immovable property.

3. The bank statement, savings book or certificate of deposit showing ownership of any movable assets of the deceased, consisting of money, cash or securities.

4. The marriage certificate of any surviving spouse of the deceased.

5. The death certificate of the deceased's spouse, if any.

6. Birth certificates of all heirs.

7. Affidavits of all [illegible] may be necessary in order to explain or reconcile any difference or discrepancy in names which appear in the material documents.