

THE CIVIL LAW  
OF  
PALESTINE  
AND  
TRANS-JORDAN

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## PREFACE.

In placing this work before the public in Palestine I believe I am meeting an actual want. The translations into English which have appeared of the Ottoman Civil Code, one by Dr. Grigsby and the other by Sir Charles Tyser have long since been out of print and are now unobtainable. The break-up of the Ottoman Empire as a result of the war left Palestine under a British Mandate, and with English as one of the three official languages. British judges and magistrates and occasionally administrative officials now preside in the Courts, and there is an increasing number of advocates practising in Palestine who carry on their legal work and plead in English. My object is to place at their disposal, in a separate volume, a complete English version of the Turkish text. The second volume will contain an exposition of the whole subject.

The Ottoman Civil Code became part of the law of Palestine, together with many other Ottoman enactments, in virtue of the terms of Article 46 of the Palestine Order-in-Council, 1922, and of Transjordan, in virtue of the terms of Article 58 of the Organic Law of the 16th April, 1928.

I have naturally endeavoured to obtain complete accuracy in the translation. With this object in view, I first wrote out by hand a complete translation from a reliable Turkish text published by authority in Constantinople in 1308 A. H. I then checked this translation with the two Arabic versions which are most commonly in use in the Arabic speaking territories of the former Ottoman Empire. Where any divergence was found, I referred again to the Turkish text to

settle the point. This check revealed the existence of certain errors in these translations. The first of these Arabic versions is that of *Baz* published in Beyrouth (3rd Edition) in 1923, which is the version most commonly used in Palestine; the second is that of *Hawawini* published at Damascus in 1923, and which has been adopted as an official translation by the State of Syria.

In this connection I am happy to acknowledge the invaluable help of Abdullah Nusseir, Superintendent of the Ministry of Justice, Amman, who willingly gave up many hours of his spare time to the tedious task of hearing me read over my English translation, while he watched for any divergencies between this and the two Arabic versions referred to above. Fuad Ghanma, clerk in the Ministry of Justice, Amman, has also helped in the same way.

I also wish to acknowledge the kindly help and interest of Mr. Henry Kantrovitch, Junior Government Advocate, Government of Palestine, whose assistance has been invaluable in seeing this Volume through the press in Jerusalem.

C. A. HOOPER.

*Amman, Transjordan*

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## REPORT OF THE COMMISSION APPOINTED TO DRAFT THE MEJELLE.

The science of Muhammadan jurisprudence in its relation to temporal matters is divided into sections dealing with domestic relations, civil obligations and punishments. The fundamental laws of civilized nations are also divided into these three sections, the section dealing with civil obligations being called civil law. In recent times, however, commercial transactions have extended considerably, and for this reason a large number of exceptions to the original law have been created, such as bills of exchange and bankruptcy, and a separate Commercial Code has been drawn up containing these exceptions. This Code is applied in commercial matters, but in other respects recourse must be had to the civil law. For example, in a case dealt with in the Commercial Court in accordance with the terms of the Commercial Code, recourse must be had to the original law in respect to such various matters as pledge, guarantee and agency. Similar procedure is adopted in actions brought in respect to civil rights arising out of criminal offences. Many laws and regulations corresponding to the civil law have been promulgated both in former times and recently in the Ottoman Empire; but although these laws and regulations are not sufficient for the settlement of all civil obligations, that branch of Muhammadan jurisprudence relating to civil obligations is amply sufficient for such purpose. It is true that the reference of actions to *Sharia* and civil law is the cause of certain difficulties. *Sharia* matters, however, are settled in accordance with Muhammadan

Law by the Civil Courts of Cassation presided over by *Sharia* judges, who also deal with civil matters, the difficulty being overcome in this manner, since the science of Muhammadan jurisprudence is the origin and source of the civil laws and regulations, a number of subsidiary matters dealt with by the Civil Courts being settled by applying the rules of Muhammadan jurisprudence. The members of the Courts of Cassation, however, have no knowledge of these rules, and this has given rise to a considerable amount of suspicion and gossip that the *Sharia* judges, when dealing with matters other than those comprised within the laws and regulations promulgated by the State, conduct the proceedings in whatever way they wish.

The Commercial Code is also applied in the Commercial Courts of the Ottoman Empire, but the various matters which have no relation to commercial actions are a source of great difficulty. If recourse is had to the laws of Europe, no judgment can be based thereon in the Courts of the Ottoman Empire, since these laws have not been promulgated by Royal Irada. If they are referred to the *Sharia*, however, the *Sharia* Courts are bound to treat such various matters on the basis of an original action. The rules of procedure of the two Courts, in fact, are fundamentally divergent and for this reason confusion is bound to occur. The result is that no reference can be made from the Commercial Courts to the *Sharia* Courts. If it is argued that the members of the Commercial Courts should refer to the treatises on Muhammadan Law, such argument is untenable, since these persons are in the same position in matters relating to Muhammadan jurisprudence as members of the Courts of Cassation.

The resources of the science of Muhammadan juris-

prudence, however, are inexhaustible and it is possible to find therein the answer to all questions necessary to solve the difficulties which are dependent upon expert knowledge thereof. In particular, a large number of interpreters of all ranks of the Hanifite school have arisen, the result being a large number of divergencies of opinion. In spite of this fact, however, the *Hanifite* school did not crystallize as was the case of the *Shafi* school, but on the contrary has split up into innumerable sections and opposing sub-divisions. The result is that great difficulty has been occasioned in distinguishing the truth among these conflicting views, and applying the same to any given set of facts.

At the same time, questions of Muhammadan jurisprudence which were based upon custom have changed with the change in the times. For example, Muhammadan jurists in former times held that it was sufficient to inspect one room of a house which it was proposed to buy. Subsequent jurists, however, have held that it is necessary to inspect every room. This, however, is not a fundamental change in regard to evidence, but has arisen out of custom regarding building construction, the effect of which was that in former times every room of a house was built to a standard pattern and the inspection of one room was equivalent to an inspection of all. In later times, however, it became the custom to construct houses with rooms differing from each other, and consequently it became necessary to inspect each room. In fact, the essential point was to obtain sufficient knowledge with regard to the contemplated purchase. Consequently, the original rule of Muhammadan jurisprudence has not been changed, but the method of applying this rule to any given set of facts has changed with the change in the times. A great deal of attention is also required to dis-

tinguish between the change in the times in such matters and a change in respect to proof.

It is a matter of great difficulty to obtain a knowledge of the principles of Muhammadan jurisprudence, and although at one period the jurists and learned men of the time assembled together and compiled treatises such as the *Tatarkhanieh* and the *Fatavai Jihangerieh* embracing the questions of Muhammadan jurisprudence according to the Hanifite school, they were not able to deal with the whole of the details thereof, nor of the divergencies of the school.

By *Fetwa* books is meant those compilations which contain *fetwas* issued regarding the application of the rules of Muhammadan jurisprudence to any given set of facts. There is, perhaps, no necessity to state how difficult it is to collect together the *fetwas* which have been issued by Hanifite jurists in respect to such matters during the course of the centuries. For this reason, *Ibn Nujaim* collected together a number of rules and questions and included thereunder in compendious form the details of Muhammadan jurisprudence. Succeeding centuries, however, were not so favourable to studies in Muhammadan jurisprudence as was formerly the case. People were content with the labours of *Ibn Nujaim* and no attempt was made to work on the ground which he had prepared.

At the present time, owing to the scarcity in any given locality of persons versed in Muhammadan jurisprudence, it is a matter of difficulty to find even a sufficient number of judges in the *Sharia* Courts of the Ottoman Empire, not to mention the question of finding members of the Civil Courts who, in case of need, could refer to the treatises on Muhammadan jurisprudence for the solution of any doubtful question. Consequently, if a work were compiled devoid of divergencies and

including only accepted opinion with regard to civil obligations in Muhammadan Law and which is easy to refer to, all persons could easily study the same and apply the contents thereof to civil obligations. In the event of a book being in existence compiled in this manner, it would be of immense value to the judges of the Sharia Courts, members of the Civil Courts, and administrative officials who, by studying the same, could, if necessary, conduct their business in accordance with the precepts of Muhammadan jurisprudence. Such a book would be in force in the *Sharia* Courts and there would be no need to enact a law for civil actions in the Civil Courts. These are considerations which, for some time past, has made it desirable to produce an authoritative work of this nature. With this object in view, a Committee of jurists was set up in the office of the Legislative Council and a large number of questions were dealt with. The labours of this Committee, unfortunately, did not reach fruition, which, like many other beneficial matters, had to be adjourned until the time of His Majesty the present Sultan.

In accordance with the orders of His Majesty the Sultan to produce a work of this nature, sufficient for the application of the doctrines of Muhammadan jurisprudence to the daily civil obligations of the people, we met in the office of the High Court and collected together those matters of Muhammadan jurisprudence, according to the Hanifite school, which relate to civil obligations and are of frequent occurrence and of the greatest necessity at the present day. We then began to arrange them in the form of a Code, divided into Books and called *Ahkam-i-Adlieh* (rules of justice). When the Introduction and Book I were finished, we sent a copy to the *Sheikh-al-Islam*. Copies were also sent to persons skilled and learned in Muhammadan jurisprudence, and modifications were incor-

porated therein according to their recommendations, whereupon a corrected copy was sent to the Grand Vizier. The translation of this work into Arabic was put in hand, and the other books are being composed.

Upon a perusal of the Introduction you will see that the second section thereof consists of the rules of Muhammadan jurisprudence collected together by *Ibn Nujaim* and jurists of his school. Although these rules alone are not sufficient to enable the *Sharia* judges to give a judgment in the absence of any more explicit authority, they are, nevertheless, of great value in connecting together the various questions of Muhammadan jurisprudence; and persons who have studied these questions are able to settle them by means of proofs.

In addition, other officials can refer to them in any matter whatsoever. By means of them a man can make his conduct conform to the *Sharia* law as far as possible. For this reason they have been included in an Introduction and not given the title of Book or Chapter. Although in treatises on Muhammadan jurisprudence details are mixed with principles, in this Code the terms of Muhammadan jurisprudence relating to each Book have been set forth in an Introduction to that Book and the details have been arranged in sequence. In order to explain the fundamental points, however, a large number of questions have been added by way of illustration taken from the *fetwa* books.

Commercial transactions at the present day are generally carried on subject to certain conditions. The most important part of the Book on Sale is the Section relating to sale subject to a condition. Owing to the Hanifite school holding that the majority of the conditions stipulated upon the conclusion of a contract of sale subject to a condition render the sale invalid, your Committee have examined the question with great care and have thought fit to set forth a summary of their discussions below.

The majority of the interpreters of Muhammadan law express conflicting opinions regarding sale subject to a condition. According to the Malikite School the vendor can stipulate to have some special advantage for himself in the thing sold for a limited period; and according to the Hanbalite school for an unlimited period. It seems, however, that to give the vendor this option and not to give it to the purchaser is contrary to opinion and to legal analogy. The Great Imam and the two interpreters of Muhammadan law, *Ibn Abu Leila* and *Ibn Shibrima*, who lived during the same period, and whose followers subsequently disappeared, are also completely opposed to one another in this respect. Thus, according to *Ibn Abu Leila*, in every case both sale and condition are voidable; but in the opinion of *Ibn Shibrima* both sale and condition are absolutely valid.

The school of *Ibn Abu Leila* seems to be contrary to the tradition of the Prophet which states "let the Muslims keep to their conditions". The school of *Ibn Shibrima* is in entire agreement with the doctrine of the Prophet: but should vendor or purchaser make any condition, whether legal or illegal, or whether capable of execution or not, it is a point agreed upon by all Muhammadan jurists that the observance of a condition shall only take place so far as that is possible.

Consequently, the question of observance of a condition is a rule which admits of limitation and exception. For this reason a middle course has been adopted in the Hanifite school and conditions have been divided into three categories: a valid condition, a voidable condition and a condition which is null and void. Thus, any condition stipulated in favour of one of the contracting parties and which is not of the very essence of the contract, or which does not serve to assure one of the essential elements thereof, is voidable and

renders the sale voidable. A condition which brings no advantage to either of the parties, is regarded as null and void, the sale being valid, since the object of buying and selling is to confer and obtain ownership, that is to say, to enable the purchaser to obtain ownership of the thing sold and the vendor to obtain ownership of the price, without any let or hindrance. But if a condition existed in favour of one of the contracting parties alone, who insisted on the execution of such condition, and the other party sought to escape therefrom, such conduct would give rise to disputes, and it could not be claimed in such circumstances that the sale was complete. Sale subject to a condition of this nature, however, is permissible when it is allowed by custom, because in such a case the dispute itself would be finally settled by custom.

Commercial transactions in themselves are exceptional, as has been stated above. The majority of trade guilds have decided upon a procedure which is sanctioned by custom. There is consequently no need to deal with them, subject, however, to those conditions made without reference to custom, by persons undertaking some special piece of business. These are not numerous, however, and do not justify special treatment. It has consequently not been thought right to depart from the Hanifite school in their favour and to adopt the school of *Ibn Shibrima*. For this reason we have contented ourselves with mentioning in Section IV of Chapter I, the conditions which do not make a sale voidable according to the Hanifite school, a procedure adopted in the other Sections.

Finally, in view of the fact that the majority of the matters dealt with in this Code do not depart from the doctrines of the Hanifite school and are applied in the *Fatwakhāna* at the present day, there is no need to discuss them here. But since the opinions of certain of the



jurists of the Hanifite school who are accepted as authoritative owing to their being convenient for the people and suitable to the affairs of the moment are included, the sources of these persons and the reasons therefor are set out below.

In accordance with the terms of Articles 197 and 205 the sale of a thing not in existence is invalid. In view of the fact, however, that the produce of flowers such as roses and artichokes and of vegetables and fruits appear in succession, certain parts thereof maturing before the other parts, it has become the custom generally to sell the produce of such things which have appeared and which have yet to appear *en bloc*. The Imam *Muhammad Ibn Hassan al Shaibani* has, by applying the Muhammadan doctrine of equity, authorized the sale *en bloc* of things not yet in existence, together with the produce of things already in existence. Moreover, the Imam *Fasli, al-Halwani* and *Abu Bekr Ibn Fazl* have issued *fetwas* in conformity with this opinion. Consequently, the terms of Article 207 have been drawn up in conformity with the opinion of *Muhammad*, which is preferred in this Code, since it is not possible to disregard customs of this nature and since it is preferable to facilitate civil transactions as far as possible rather than to hinder them.

As regards sale *en bloc* such as the sale of a heap of corn at so much per *kilé*, the Great Imam holds that the sale of one *kilé* only is valid. The two Imams, however, hold that the price must be paid according to the total number of *kilés* comprised in that heap when it has been entirely sold. The terms of Article 220 have been drawn up in accordance with this opinion with a view to facilitating the transaction of civil business, more particularly since this view is shared by a large number of Muslim jurists such as the author of the *Hedaya*.

According to the Great Imam, the period of an option conferred by contract may not exceed three days. According to the two Imams, however, the contract is valid, according to the number of days agreed upon in the contract. In view of this fact, the opinion of the latter has been deemed to be more in accordance with the needs of the people and an unlimited period has been inserted in Article 300.

These divergencies of opinion are also apparent as regards the option as to payment. The Imam *Muhammad* is alone in prescribing an unlimited period for the exercise of this option. Nevertheless, since this option is deemed to be most suitable to the needs of the people, the period was left to the contracting parties when drafting the terms of Article 313.

According to the Great Imam, when a contract for manufacture and sale is concluded, the contractor for manufacture can go back on the sale. According to the Imam *Abu Yusuf*, however, he may not go back on the sale if the manufactured article is up to description. In these days, however, a large number of manufactories have been established and among other things guns, rifles and steamships are built to contract to such an extent that the contract for manufacture and sale has now become of very great importance. Consequently, if the contractor for sale had an option to denounce the contract for manufacture and sale, a large number of important interests would be ruined. Moreover, the contract for manufacture and sale, which is based upon the custom of the people, has a close resemblance to sale by immediate payment against future delivery, which is sanctioned by Muhammadan equity, although the latter is contrary to legal analogy. Therefore, in view of the needs of the time, it has been deemed essential to prefer the view of

the Imam *Abu Yusuf* and the terms of Article 392 have been drafted accordingly.

In questions which have been the subject of legal interpretation it has been found necessary to act in accordance with whatever order has been issued by the Sultan. If you approve, we request you to obtain Imperial sanction for this Code.

*Dated 18 Zil Hijja 1285/ 10th. March 1285.*

## DEFINITION AND CLASSIFICATION OF MUHAMMADAN JURISPRUDENCE

Article 1. The science of Muhammadan jurisprudence consists of a knowledge of the precepts of the Divine Legislator in their relation to human affairs.

The questions of Muhammadan jurisprudence either concern the next world, being known as rules relating to worship, or to this world, being divided into sections dealing with domestic relations, civil obligations and punishments. Thus God willed the continuation of the world until the appointed day. This, however, can only occur by mankind being perpetuated which is dependent upon marriages of male and female with a view to procreation. Moreover, the continuation of the human species is assured by individuals associating together. Man, however, in view of the weakness of his nature is dependent upon food, clothing, housing and the industries for his subsistence. In other words, in view of the fact that man is a civilized being, he cannot live in solitude like the other animals, but is in need of co-operation and association. He works with his fellow men in order to live in a state of civilization. Every person, however, asks for the things

which he likes and avoids those which are disagreeable to him. As a result it has become necessary to establish laws

# INTRODUCTION

## PART I.

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marriage, mutual help and social relations, which are the basis of all civilization.

The first division of Muhammadan jurisprudence is the section dealing with domestic relations. The second is the section dealing with civil obligations. In view of the fact that the continuance of civilization on this basis necessitates the drawing up of certain matters relating to punishment, the third section of Muhammadan jurisprudence deals with punishments.

As regards the section dealing with civil obligations, the questions which are of the most frequent occurrence have been collected together from reliable works and set out in this Code in the form of Books. These Books have been divided into Chapters and the Chapters into Sections. The questions of detail which will be applied in the Courts are those questions which are set out in the following Chapters and Sections. Muslim jurists, however, have grouped questions of Muhammadan jurisprudence under certain general rules, each one of which embraces a large number of questions and which, in the treatises on Muhammadan jurisprudence, are taken as justification to prove these questions. The preliminary study of these rules facilitates the comprehension of the questions and serves to fix them in the mind. Consequently, ninety nine rules of Muhammadan jurisprudence have been collected together as follows, before commencing on the main work and form Part II.

Although a few of them, taken alone, admit of certain exceptions, their general application is in no way invalidated thereby, since they are closely interrelated.

## PART II.

## MAXIMS OF MUHAMMADAN JURISPRUDENCE.

Article 2. A matter is determined according to intention; that is to say, the effect to be given to any particular transaction must conform to the object of such transaction.

Article 3. In contracts effect is given to intention and meaning and not to words and phrases. Consequently, a contract for sale subject to a right of redemption has the force of a pledge.

Article 4. Certainty is not dispelled by doubt.

Article 5. It is a fundamental principle that a thing shall remain as it was originally.

Article 6. Things which have been in existence from time immemorial shall be left as they were.

Article 7. Injury cannot exist from time immemorial.

Article 8. Freedom from liability is a fundamental principle.

Therefore, if one person destroys the property of another, and a dispute arises as to the amount thereof, the statement of the person causing such destruction shall be heard, and the onus of proof as to any amount in excess thereof is upon the owner of such property.

Article 9. Non-existence is a fundamental principle which applies to all rights which may subsequently accrue.

*Example :-*

In a case of partnership of capital and labour, a dispute arises as to whether profit has been made or not. The statement of the person supplying the labour is heard, and the owner of the capital must prove that profit has in fact been made, since the fundamental principle is the non-existence of the profit.

Article 10. Judgment shall be given in respect to any matter which has been proved at any particular time, unless the contrary is proved.

Consequently, if it is proved at any particular time that a particular thing is owned by a particular person in absolute ownership, the ownership thereof shall be held to be valid unless circumstances arise which invalidate such ownership.

Article 11. It is a fundamental principle that any new occurrence shall be regarded as happening at the time nearest to the present. That is to say, if a dispute arises regarding the cause of some new event and the time at which it occurred, such event shall be considered with reference to the time nearest to the present, unless it is proved that it relates to some remoter period.

Article 12. It is a fundamental principle that words shall be construed literally.

Article 13. No attention shall be paid to inferences in the face of obvious facts.

Article 14. Where the text is clear, there is no room for interpretation.

Article 15. A matter which has been proved contrary to legal analogy cannot be cited by way of analogy in respect to any other matter.

Article 16. One legal interpretation does not destroy another.

Article 17. Difficulty begets facility; that is to say, difficulty is the cause of facility and in time of hardship consideration must be shown. Very many subjects of Muhammadan jurisprudence, such as loans, transfer of debts and interdiction are derived from this principle, and

the latitude and indulgence shown by Muhammadan jurists in their rulings are all based upon this rule.

Article 18. Latitude should be afforded in the case of difficulty, that is to say, upon the appearance of hardship in any particular matter, latitude and indulgence must be shown.

Article 19. Injury may not be met by injury.

Article 20. Injury is removed.

Article 21. Necessity renders prohibited things permissible.

Article 22. Necessity is estimated by the extent thereof.

Article 23. A thing which is permissible by reason of the existence of some excuse therefor, ceases to be permissible with the disappearance of that excuse.

Article 24. When a prohibition is removed, the thing to which such prohibition attaches reverts to its former status of legality.

Article 25. An injury cannot be removed by the commission of a similar injury.

Article 26. A private injury is tolerated in order to ward off a public injury. The prohibition from practice of an incompetent physician is derived from this principle.

Article 27. Severe injury is removed by lesser injury.

Article 28. In the presence of two evils, the greater is avoided by the commission of the lesser.

Article 29. The lesser of two evils is preferred.

Article 30. Repelling an evil is preferable to securing a benefit.

Article 31. Injury is removed as far as possible.



Article 32. Any want, whether of a public or private nature, is so dealt with as to meet the exigencies of the case. The validity of sale subject to a right of redemption is of this nature. The inhabitants of Bokhara having fallen badly into debt, this procedure was put into operation in order to meet the exigencies of the case.

Article 33. Necessity does not invalidate the right of another. Consequently, if a hungry person eats bread belonging to another, such person must later pay the value thereof.

Article 34. A thing which may not be taken may also not be given.

Article 35. It is forbidden to request the performance of a prohibited act.

Article 36. Custom is an arbitrator; that is to say, custom, whether public or private, may be invoked to justify the giving of judgment.

Article 37. Public usage is conclusive evidence and action must be taken in accordance therewith.

Article 38. A thing which it is customary to regard as impossible is considered to be impossible in fact.

Article 39. It is an accepted fact that the terms of law vary with the change in the times.

Article 40. In the presence of custom no regard is paid to the literal meaning of a thing.

Article 41. Effect is only given to custom where it is of regular occurrence or when universally prevailing.

Article 42. Effect is given to what is of common occurrence; not to what happens infrequently.

Article 43. A matter recognized by custom is regarded as though it were a contractual obligation.

Article 44. A matter recognized by merchants is regarded as being a contractual obligation between them.

Article 45. A matter established by custom is like a matter established by law.

Article 46. When prohibition and necessity conflict, preference is given to the prohibition.

Consequently, a person may not sell to another a thing which he has given to his creditor as security for debt.

Article 47. An accessory which is attached to an object in fact is also attached to it in law.

Consequently, when a pregnant animal is sold, the young in its womb is sold with it.

Article 48. An accessory to an object cannot be dealt with separately.

*Example :*

The young in an animal's womb cannot be sold separately.

Article 49. The owner of a thing held in absolute ownership is also the owner of the things indispensable to the enjoyment of such thing.

*Example :*

A person who buys a house is also owner of the road leading to it.

Article 50. If the principal fails, the accessory also fails.

Article 51. A thing which fails is not restored; that is to say, that which goes does not return.

Article 52. When a thing becomes void, the thing contained in it also becomes void.

Article 53. When the original undertaking cannot be carried out, the equivalent thereof is carried out.

Article 54. A thing which is not permissible in itself, may be permissible as an accessory.

*Example :-*

It is not permissible for a purchaser to make the vendor his agent to receive the thing sold; but if he gives a sack to the vendor to measure and put therein the provisions which he has bought and the vendor puts the provisions into the sack, the purchaser thereby receives them impliedly and as an accessory.

Article 55. A thing which is not permissible at the outset may become permissible at some later period.

*Example :-*

The disposal of a share of undivided jointly owned property by way of gift is invalid, but if a person entitled to a share of undivided jointly owned property which has been bestowed by way of gift appears and takes possession thereof, the gift does not become void, but the remaining share becomes the property of the recipient of the gift.

Article 56. Continuance is easier than commencement.

Article 57. A gift becomes absolute only when delivery thereof is taken.

*Example :-*

A person bestows a thing upon another person by way of gift. Such gift is not binding until delivery thereof has been taken.

Article 58. The exercise of control over subjects is dependent upon the public welfare.

Article 59. Private guardianship is more effective than public guardianship.

*Example :-*

The guardianship exercised by the trustee of a pious foundation is more effective than the guardianship of the Court.

Article 60. A word should be construed as having some meaning, rather than passed over in silence. That is to say, if any particular meaning can be attributed to a word, it may not be passed over as devoid of meaning.

Article 61. When the literal meaning cannot be applied, the metaphorical sense may be used.

Article 62. If no meaning can be attached to a word it is disregarded altogether. That is to say, if a word cannot be construed in either a literal or metaphorical sense it is passed over in silence as being devoid of meaning.

Article 63. A reference to part of an indivisible thing is regarded as a reference to the whole.

Article 64. The absolute is construed in its absolute sense, provided that there is no proof of a restricted meaning either in the text of the law or by implication.

Article 65. A description with reference to a thing present is of no effect, but the contrary is the case if such thing is not present.

*Example :-*

When a vendor who is about to sell a grey horse, such grey horse being present at the meeting where the sale took place, states that he is selling a brown horse for so many thousand piastres, his offer is held to be good and the word brown is of no effect. But if he sells a grey horse which is not present and he describes it as brown, the description is held to be good but the sale is not concluded.

Article 66. A question is considered to have been repeated in the answer. That is to say, in the event of a question being answered in the affirmative, the person answering the question is considered to have repeated the question.

Article 67. No statement is imputed to a man who keeps silence, but silence is tantamount to a statement where there is an absolute necessity for speech. That is to say, it may not be said that a person who keeps silence has made such and such a statement, but if he keeps silence where he ought to have made a statement, such silence is regarded as an admission and a statement.

Article 68. In obscure matters the proof of a thing stands in the place of such thing. That is to say, obscure matters concerning which it is hard to discover the truth are judged according to the obvious proof concerning them.

Article 69. Correspondence takes the place of an exchange of conversation.

Article 70. The signs of a dumb person which are generally recognized take the place of a statement by word of mouth.

Article 71. The word of an interpreter is accepted in every respect.

Article 72. No validity is attached to conjecture which is obviously tainted by error.

Article 73. Probability, even though based upon evidence, is not proof.

*Example:-*

If a person admits while suffering from a mortal sickness that he owes a certain sum of money to one of his heirs, such admission is not proof unless confirmed by the other heirs, since the probability of such person defrauding the other heirs of their property is based upon the mortal sickness. If the statement, however, is made while in a state of good health, such admission is considered to be valid. The probability in that case is mere supposition and consequently there is no objection to the validity of the admission.

Article 74. No weight is attached to mere supposition.

Article 75. A thing established by proof is equivalent to a thing established by ocular inspection.

Article 76. Evidence is for him who affirms; the oath for him who denies.

Article 77. The object of evidence is to prove what is contrary to appearance; the object of the oath is to ensure the continuance of the original state.

Article 78. Evidence is proof affecting third persons; admission is proof affecting the person making such admission only.

Article 79. A person is bound by his own admission.

Article 80. Contradiction and proof are incompatible; but this does not invalidate a judgment given against the person contradicting.

*Example:-*

Witnesses contradict themselves by going back upon the evidence they have given. Such evidence is not proof; but if the Court has already given judgment based upon the original evidence, such judgment may not be set aside, but the witnesses must pay the value of the subject matter of the judgment to the persons against whom judgment has been given.

Article 81. Failure to establish the principal claim does not imply failure to establish a claim subsidiary thereto.

*Example:-*

A person states that A owes a sum of money to B and that he is the surety of A. Such person will be obliged to pay the sum in question if A repudiates the debt and B demands payment.

Article 82. If the validity of a condition is established, the validity of anything dependent thereon must also be established.

Article 83. A condition must be observed as far as possible.

Article 84. Any promise dependent upon a condition is irrevocable upon such condition being fulfilled.

*Example:-*

A person tells A to sell a certain thing to B and informs A that he will pay him in the event of B failing to do so, and B does in fact fail so to do. The person making the promise is obliged to pay the money.

Article 85. The enjoyment of a thing is the compensating factor for any liability attaching thereto; that is to say, in the event of a thing being destroyed, the person to whom such thing belongs must suffer the loss and conversely may enjoy any advantages attaching thereto.

*Example:-*

An animal is returned by reason of an option for defect. The vendor may not charge any fee on account of the use of the animal, because if it had been destroyed before being returned, the loss would have fallen upon the purchaser.

Article 86. Remuneration and liability to make good loss do not run together.

Article 87. Disadvantage is an obligation accompanying enjoyment. That is to say, a person who enjoys a thing must submit to the disadvantages attaching thereto.

Article 88. The burden is in proportion to the benefit and the benefit to the burden.

Article 89. The responsibility for an act falls upon the author thereof; it does not fall upon the person ordering such act to be performed, provided that such person does not compel the commission thereof.

Article 90. If a person performs any act personally and is implicated therein with the person who is the cause thereof, the person performing such act is responsible therefor.

*Example:-*

A digs a well in the public highway and B causes C's animal to fall therein and to be destroyed. B is responsible therefor and no liability rests with the person who dug the well.

Article 91. An act allowed by law cannot be made the subject of a claim to compensation.

*Example:-*

An animal belonging to A falls into a well which B has dug on his own property held in absolute ownership and such animal is destroyed. No compensation can be claimed.

Article 92. A person who performs an act, even though not intentionally, is liable to make good any loss caused thereby.

Article 93. A person who is the cause of an act being performed is not liable to make good any loss caused by such act unless he has acted intentionally.

Article 94. No liability attaches in connection with offences of or damage caused by animals of their own accord.

Article 95. Any order given for dealing with the property of any other person held in absolute ownership is void.

Article 96. No person may deal with the property of another held in absolute ownership without such person's permission.

Article 97. No person may take another person's property without some legal reason.



Article 98. Any change in the cause of the ownership of a thing held in absolute ownership is equivalent to a change in that thing itself.

Article 99. Any person who hastens the accomplishment of a thing before its due time, is punished by being deprived thereof.

Article 100. If any person seeks to disavow any act performed by himself, such attempt is entirely disregarded.

place with a view to making a disposition of property and such disposition is proved thereby.

Article 102. Acceptance is the statement made in the second place with a view to making a disposition of property. The contract becomes completed thereby.

Article 103. Contract is what the parties bind themselves and undertake to do with reference to a particular matter. It is composed of the combination of offer and acceptance.

Article 104. The conclusion of a contract consists of connecting offer and acceptance together legally in such a manner that the result may be perfectly clear.

Article 105. Sale consists of exchanging property for property. It may be concluded or non-concluded.

Article 106. A concluded sale is a sale in which there is a concluded contract. Such sales are divided into valid, voidable, executory, and conditional.

Article 107. A non-concluded sale is a sale which is void.

Article 108. A valid sale or a sale which is permitted, is a sale which is lawful both in itself and as regards matters incidental thereto.

# BOOK I.

## SALE.

### INTRODUCTION.

#### TERMS OF MUHAMMADAN JURISPRUDENCE RELATING TO SALE.

Article 101. Offer is the statement made in the first place with a view to making a disposition of property and such disposition is proved thereby.

Article 102. Acceptance is the statement made in the second place with a view to making a disposition of property. The contract becomes completed thereby.

Article 103. Contract is what the parties bind themselves and undertake to do with reference to a particular matter. It is composed of the combination of offer and acceptance.

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Article 106. A concluded sale is a sale in which there is a concluded contract. Such sales are divided into valid, voidable, executory, and conditional.

Article 107. A non-concluded sale is a sale which is void.

Article 108. A valid sale, or a sale which is permitted, is a sale which is lawful both in itself and as regards matters incidental thereto.

Article 109. A voidable sale is a sale which, while valid in itself, is invalid as regards matters incidental thereto. That is to say, it is a concluded sale in itself, but is illegal as regards certain external particulars. (See Chapter VII.)

Article 110. A void sale is a sale which is invalid in itself.

Article 111. A conditional sale is a sale which is dependent upon the rights of some third party, such as a sale by an unauthorized person.

Article 112. An unauthorized person is a person who, without any legal permission, deals with the property of some other person.

Article 113. An executory sale is a sale not dependent upon the rights of any third person. Such sales are divided into irrevocable and revocable sales.

Article 114. An irrevocable sale is an executory sale to which no options are attached.

Article 115. A revocable sale is an executory sale to which an option is attached.

Article 116. An option means having the power to choose, as will be explained in the relevant Chapter.

Article 117. An absolute sale is a final sale.

Article 118. A sale subject to a right of redemption is a sale in which one person sells property to another for a certain sum of money, subject to the right of redeeming such property, upon the price thereof being returned. Such a sale is considered to be permissible in view of the fact that the purchaser has a right to enjoyment of the property sold. It is also in the nature of a voidable sale inasmuch as the two parties have the right of cancelling the sale. Again, it is in the nature of a pledge, in view

of the fact that the purchaser cannot sell the property sold to any third party.

Article 119. A sale with a right of usufruct is a sale subject to a right of redemption, the vendor having a right to take the property sold on hire.

Article 120. Sales are also divided into four categories with reference to the thing sold: 1) Sale of property to another person for a price. This is the commonest category of sale and is consequently specifically called sale; 2) Sale by exchange of money for money; 3) Sale by barter; 4) Sale by immediate payment against future delivery.

Article 121. Exchange of money for money consists of selling cash for cash.

Article 122. Sale by barter consists of exchanging one specific object for some other specific object, that is to say, of exchanging property for property other than money.

Article 123. Sale by immediate payment against future delivery consists of paying in advance for something to be delivered later, that is to say, to purchase something with money paid in advance, thereby giving credit.

Article 124. A contract for manufacture and sale consists of making a contract with any skilled person for the manufacture of any particular thing. The person making the article is called the manufacturer; the person causing the article to be made is called the contractor for manufacture, and the object made is called the manufactured article.

Article 125. Property held in absolute ownership is anything owned absolutely by man and may consist either of some specific object or of an interest therein.

Article 126. Property consists of something desired by human nature and which can be put aside against time of necessity. It comprises movable and immovable property.

Article 127. Property of some specific value is spoken of in two senses. (1) It is a thing the benefit of which it is lawful to enjoy; (2) The other is acquired property.

*Example :*

A fish while in the sea is not of any specific value. When it is caught and taken, it becomes property of some specific value.

Article 128. Movable property consists of property which can be transferred from one place to another. This includes cash, merchandise, animals, things estimated by measure of capacity and things estimated by weight.

Article 129. Immovable property consists of property such as houses and land which are called real property and which cannot be transferred to another place.

Article 130. Cash consist of gold and silver coins.

Article 131. Merchandise consists of things such as goods and piece-goods other than cash, animals, things estimated by measure of capacity and things estimated by weight.

Article 132. Things estimated by quantity are those things the amount of which is determined by any measure of capacity or of weight, or of number, or of length.

Articles 133-6. These Articles repeat the measures of capacity etc. given in Articles 131 and 132 above.

Article 137. The expression 'possessing defined boundaries' refers to real property the boundaries and limits of which can be fixed.

Article 138. Undivided jointly owned property is property which contains undivided jointly owned shares.

Article 139. An undivided jointly owned share is a share which extends to and includes every part of the jointly-owned property.

Article 140. By a particular species of thing is meant a thing in respect to which there is no disproportionate difference in so far as the component elements thereof are concerned.

Article 141. A wholesale contract is a contract for sale *en bloc*.

Article 142. Right of way is the right of passing over real property held in absolute ownership belonging to another.

Article 143. The right of taking water is the right of taking a clearly defined and ascertained share of water from a river.

Article 144. The right of flow is the right of discharging water and of letting water drip from a house to some place outside.

Article 145. A common article is a thing the like of which can be found in the market without any difference of price.

Article 146. A rare article is an article the like of which cannot be found in the market, or, if it can be found, is different in price.

Article 147. Articles measured by enumeration and which closely resemble each other are those things in respect to which there is no difference as regards the price of each particular object. They are all in the nature of common articles.

Article 148. Articles measured by enumeration and

which are dissimilar from each other are those things in respect to which a difference in price exists as regards each particular article. They are all regarded as rare articles.

Article 149. The fundamental basis or essence of sale consists of one piece of property being exchanged for another. Offer and acceptance are also referred to as the fundamental basis of sale, since they imply exchange.

Article 150. The subject of sale is the thing sold.

Article 151. The thing sold is the property disposed of, that is, the specific object specified at the sale and which constitutes the original object thereof, because enjoyment can only be had of specific objects, price being the means of exchanging property.

Article 152. The price is the amount to be paid for the article sold, and entails liability to make payment.

Article 153. A fixed price is a price mutually named and agreed upon by the two contracting parties whether corresponding to the real value or whether more or less.

Article 154. The value is the real price of an article.

Article 155. A priced article is a thing which is sold for a price.

Article 156. A postponement of payment consists of putting off a debt to a definite date.

Article 157. Payment by instalments consists of a postponement of payment of a debt in order that it may be paid at different and definite periods.

Article 158. A debt is the thing which is proved to be owing.

*Examples:-*

- (1) A certain sum of money lent to A and owed by him ;

- (2) A sum of money not immediately available ;
- (3) A definite sum of money now available ;
- (4) An ascertained share of a heap of corn prior to division. All these are in the nature of debts.

Article 159. A specific object is any object which is definite and identified.

*Examples:-*

A house; a horse; a chair; a heap of corn in existence; a sum of money. All these are specific objects.

Article 160. The vendor is a person who sells property.

Article 161. The purchaser is a person who buys.

Article 162. The two parties to the sale are the vendor and the purchaser. They are also called the two contracting parties.

Article 163. Rescission is setting aside and stopping a contract of sale.

Article 164. Deceit is cheating.

Article 165. Flagrant misrepresentation is misrepresentation which is practised with regard to no less than one twentieth in the case of merchandise; one tenth in the case of animals; and one fifth in the case of real property.

Article 166. Time immemorial refers to that thing the origin of which is unknown to any person.

## CHAPTER I.

### THE CONTRACT OF SALE.

#### SECTION I.

##### *Fundamental basis of sale.*

Article 167. Sale is concluded by offer and acceptance.

Article 168. In sale, offer and acceptance is made



by the use of words commonly employed in the particular locality in making a contract of sale\*

Article 169. The past tense is usually employed in offer and acceptance.

*Examples:-*

(1) A vendor informs a purchaser that he has sold him a certain thing for one hundred piastres and the purchaser states that he has purchased it; or the purchaser states that he has bought a certain thing and the vendor afterwards states that he has sold such thing. The sale is concluded. In the first case the offer consists of the words "I have sold" and the acceptance of the words "I have purchased". In the second case the words "I have purchased" constitute the offer and the words "I have sold" the acceptance.

(2) The vendor, instead of stating that he has sold, states that he has given a person something or has transferred the property in it to him, and the purchaser instead of stating that he has purchased states that he has agreed thereto or has accepted. A valid contract of sale is concluded.

Article 170. A contract of sale may be concluded by employing the aorist tense if it imports the present: but if the future is meant, no sale is concluded.

Article 171. If the future tense is used in the sense of a mere promise, such as the statement "I will buy" or "I will sell" no sale is concluded.

Article 172. No sale is concluded by the use of the imperative mood, such as the expression "Sell" or "Buy". But when the present tense is necessarily meant a sale may also be concluded by the use of the imperative mood.

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\* An explanation of a Turkish word is not translated here as being of no significance to the English reader.

*Example :-*

A purchaser says to a vendor: "Sell me this article for so much money." The vendor replies "I have sold it to you". No sale is concluded. But if the vendor says: "Take this article for so much money" and the purchaser replies saying: "I have taken it"; or if the purchaser says "I have taken it", and the vendor says, "take it" or "you may enjoy the benefit of it," a valid sale is concluded, the expressions "take" or "enjoy the benefit of it" being equivalent to "I have sold" and "take it".

Article 173. Offer and acceptance may be made by writing as well as by word of mouth.

Article 174. A dumb person may make a valid contract of sale by making use of generally recognized signs.

Article 175. The fundamental object of offer and acceptance being the mutual agreement of the parties, a sale may also be concluded by any conduct of the parties which is evidence of offer and acceptance. This is called sale by conduct of the parties.

*Examples :-*

(1) A purchaser without bargaining and without making any statement gives money to a baker and the baker delivers bread to the purchaser. A contract of sale is concluded.

(2) A purchaser tenders money and takes a melon. The vendor remains silent. A contract of sale is concluded.

(3) A purchaser wishes to buy corn. With this object in view he tenders five pounds to a corn merchant asking the latter to tell him at what price he sells corn. The corn merchant replies that he sells corn at one pound per *kilé*. The purchaser thereupon remains silent, and later asks for the corn and the corn merchant states that on the following day he will deliver it to him. In this case a contract of sale has been concluded, although there has been no offer and

acceptance by the parties. So much so that if on the following day corn has gone up half a pound in price per *kilé*, the vendor is bound to deliver at one pound. If, on the other hand, the price of corn has gone down, the purchaser cannot refuse for this reason to accept delivery at the original price.

(4) A purchaser asks a butcher to weigh him so much money's worth of meat from such and such a part. The butcher cuts the meat up and weighs it. A contract of sale has been concluded, and the purchaser cannot refuse to accept the meat.

Article 176. If as a result of fresh bargaining after the conclusion of the contract, the price is changed, increased or decreased, the second contract is valid.

*Example:-*

A contract is concluded for the purchase of an article for one hundred piastres. Later on fresh bargaining takes place and as a result the original hundred piastres is substituted for a gold piece of one hundred piastres, or for one hundred and ten piastres or for ninety piastres. The second contract is valid.

SECTION II.

*Agreement of acceptance with offer.*

Article 177. The acceptance of one of the two contracting parties must agree exactly with the offer of the other contracting party as regards the price or subject matter. Such party has no power to separate or divide either the price or the subject matter.

*Examples: -*

(1) A vendor tells a purchaser that he has sold him certain cloth for one hundred piastres and the purchaser agrees thereto. He is then obliged to take the whole of such cloth for one hundred piastres. He cannot claim to take the cloth or a half thereof for fifty piastres.

(2) A tells B that he has sold him two horses for three thousand piastres and B accepts. B must take the two for three thousand piastres. He cannot take one of them for one thousand five hundred piastres.

Article 178. It is sufficient if the acceptance agrees with the offer by implication.

*Examples :-*

(1) A vendor informs a purchaser that he has sold him certain property for a thousand piastres. The purchaser tells the vendor that he accepts for one thousand five hundred piastres. The contract of sale is for one thousand piastres. If the vendor, however, agrees to the increase of price at the time it is mentioned, the purchaser is bound to pay the additional five hundred piastres.

(2) A purchaser states that he has bought certain property for one thousand piastres. The vendor states that he has sold it for eight hundred piastres. A contract of sale has been concluded, and the two hundred piastres must be deducted.

Article 179. If one of two parties to a sale enumerates the prices of various articles, and proposes the sale of such articles *en bloc* and the other party accepts such offer, the latter may buy the whole lot for the whole price. If he does not do so, he may not divide up the lot and agree to buy any article he wishes at the fixed price.

*Examples :-*

(1) A vendor states that he has sold two particular horses for three thousand piastres. The first one for one thousand piastres and the second for two thousand piastres; or each of them for one thousand five hundred piastres. The purchaser can take the two for three thousand piastres. He cannot, however, take the one he prefers of the two for the fixed price.

(2) A vendor states that he has sold three pieces of cloth for one hundred piastres. The purchaser states

that he has bought one piece for one hundred piastres, or two pieces for two hundred piastres. No sale is concluded.

Article 180. If one of the two parties to a sale enumerates the prices of the various articles, and offers them for sale separately and the other party accepts the article he desires, at the fixed price, a contract of sale is concluded.

*Example :-*

A vendor enumerates the prices of various articles for sale and repeats that he has sold them, this one for a thousand piastres and that one for two thousand piastres. In that case, the purchaser may accept one of the two for the fixed price and buy the same.

SECTION III

*The place where the sale is concluded.*

Article 181. The place where the sale is concluded is the place where the parties meet together with a view to the conclusion of the sale.

Article 182. Both parties possess an option during the meeting at the place of sale, after the offer has been made, up to the termination of the meeting.

*Example :-*

One of the two parties to the sale makes an offer at the meeting place of the parties to the sale by stating that he has sold such and such property for a certain sum of money, or that he has bought such property, and the other party fails to state immediately afterwards that he has bought or has sold and some time later accepts at the same meeting. The sale is concluded, no matter how long the meeting may have lasted or how long the period between offer and acceptance may have been.

Article 183. If one of the parties gives any indication of dissent after the offer and prior to acceptance, either by word or by deed, the offer becomes void and there is no longer any reason for acceptance.

*Example:-*

One of the two parties to the sale, after stating that he has bought or that he has sold, occupies himself with some other matter, or discusses some other question. The offer becomes void, and thereafter the sale cannot be concluded by acceptance.

Article 184. If one of the two parties to the sale makes an offer, but revokes such offer before the other party has accepted, the offer becomes void, and thereafter the sale cannot be concluded by acceptance.

*Example :-*

A vendor states that he has sold such and such goods for so much money, but revokes such offer before the purchaser has accepted, and the purchaser later states that he has accepted such offer. No sale is concluded.

Article 185. A renewal of the offer before acceptance cancels the first offer and its place is taken by the second offer.

*Example :-*

The vendor states that he has sold such and such property for one hundred piastres, but before the purchaser has accepted, revokes the offer, and states that he has sold for one hundred and twenty piastres, and the purchaser accepts such offer. The first offer is of no effect, and a sale is concluded on the basis of one hundred and twenty piastres.

## SECTION IV.

*Sale subject to a condition.*

Article 186. If a contract of sale is concluded with an essential condition attached, both sale and condition are valid.

*Example:-*

A vendor sells subject to a right of retaining the thing sold until he has received payment of the price. This condition in no way prejudices the sale, but on the contrary is an essential condition of the contract.

Article 187. In the case of a sale concluded subject to a condition the object of which is to assure the due performance of the contract, both sale and condition are valid.

*Example :-*

A certain thing is sold subject to the condition that some other thing shall be pledged or that a certain individual shall become a surety. Both sale and condition are valid. Moreover, should the purchaser fail to observe the condition, the vendor may cancel the sale. The reason for this is that these conditions assure the handing over of the price, which is an essential condition of the contract.

Article 188. In the case of a sale concluded subject to a condition sanctioned by custom established and recognized in a particular locality, both sale and condition are valid.

*Example :-*

The sale of a fur subject to a condition that it shall be lined; or of a lock subject to a condition that it shall be nailed to its place; or of a suit of clothes subject to the condition that they shall be repaired. In these cases the condition must be observed in carrying out the sale.

Article 189. In the case of sale subject to a condition which is not to the benefit of either party, the sale is valid, but the condition is voidable.

*Example :-*

The sale of an animal subject to a condition that it shall not be sold to a third party, or that it shall be put out to graze. In such a case the sale is valid, but the condition is of no effect.

SECTION V.

*Rescission of the sale.*

Article 190. The two contracting parties may, by mutual agreement, rescind the sale after the conclusion of the contract.

Article 191. As in the case of sale, rescission is carried out by means of offer and acceptance.

*Example :-*

One of the two contracting parties states that he has rescinded or cancelled a sale and the other states that he has agreed thereto; or one of the parties tells the other to rescind the sale and the latter states that he has done so. The rescission is valid and the sale cancelled.

Article 192. A valid rescission may also be effected by any conduct which takes the place of offer and acceptance.

Article 193. As in the case of sale, a meeting of the parties must take place in the case of rescission. That is to say, acceptance must be made known at the place where the offer is made. If this is not done, and one of the contracting parties states that he has rescinded the sale, and the other party leaves without expressing his concurrence, or if one of the parties does anything which indicates dissent, the subsequent acceptance by the other is of no effect.



Article 194. It is an essential condition that the thing sold should be in the possession of the purchaser at the time of the rescission. Consequently, if the thing sold is destroyed, the rescission is invalid.

Article 195. If a portion of the thing sold is destroyed, rescission is valid as regards the remainder.

*Example :-*

A vendor sells land he owns in absolute ownership, together with growing crops. After the crops have been reaped by the purchaser, the parties rescind the contract. The rescission is valid in so far as that part of the price concerning the land is concerned.

Article 196. The loss of the price does not affect the validity of the rescission.

## CHAPTER II.

### THE SUBJECT MATTER OF THE SALE.

#### SECTION I.

#### *Conditions affecting the subject matter of the sale and description thereof.*

Article 197. The thing sold must be in existence.

Article 198. The thing sold must be capable of delivery.

Article 199. The thing sold must be property of some specific value.

Article 200. The thing sold must be known to the purchaser.

Article 201. The fact that the thing sold is known is ascertained by referring to its state and description which distinguish it from other things.

*Example :-*

A specific quantity of red corn, or a piece of land bounded by specific boundaries. If these are sold, the nature thereof is known and the sale is valid.

Article 202. If the thing sold is present at the meeting place of the parties to the sale, it is sufficient if such thing is pointed out by signs.

*Example :-*

The vendor states that he has sold a particular animal. The purchaser sees that animal and accepts it. The sale is valid.

Article 203. Since it is enough for the nature of the thing sold to be known to the purchaser, there is no need for any other sort of description or particularisation.

Article 204. The thing sold must be the particular thing with reference to which the contract is concluded.

*Example :-*

A vendor, pointing to a particular watch, states that he has sold it. Upon the purchaser accepting, the vendor is bound to deliver that identical watch. He cannot put that particular watch on one side and deliver another of the same sort.

## SECTION II.

*Things which may and may not be sold.*

Article 205. The sale of a thing not in existence is void.

*Example :-*

The sale of the fruit of a tree which has not yet appeared is void.

Article 206. The sale of fruit which is completely visible while on a tree is valid, whether it is fit for consumption or not.

Article 207. The sale at one and the same time of dependent parts which are connected together is valid. For example, in the case of fruit, flowers, leaves and vegetables, which do not arrive at maturity simultaneously, a portion thereof only having come out, that portion which has not yet arrived at maturity may be sold together with the rest.

Article 208. If the species of the thing sold has been stated, and the thing sold turns out to be of another species, the sale is void.

*Example :-*

The vendor sells a piece of glass stating that it is a diamond. The sale is void.

Article 209. The sale of a thing which is not capable of delivery is void.

*Example :-*

The sale of a rowing-boat which has sunk in the sea and cannot be raised, or of a runaway animal which cannot be caught and delivered.

Article 210. The sale of a thing which is not generally recognized as property or the purchase of property therewith is void.

*Example :-*

The sale of a corpse or of a free man, or the purchase of property in exchange for them is void.

Article 211. The sale of things which do not possess any specific value is void.

Article 212. The purchase of property with property which does not possess any specific value is voidable.

Article 213. The sale of a thing the nature of which is not known is voidable.

*Example :-*

A vendor tells a purchaser that he has sold him the whole of the property he owns for a certain sum of money, and the purchaser states that he has bought the same. The nature of the things bought by the purchaser, however, is unknown. The sale is voidable.

Article 214. The sale of an ascertained, jointly owned, undivided share in a piece of real property owned in absolute ownership prior to division, such as a half, a third or a tenth, is valid.

Article 215. A person may sell his undivided jointly owned share to some other person without obtaining the permission of his partner.

Article 216. The sale of a right of way, and of a right of taking water and of a right of flow attached to land and of water attached to canals is valid.

SECTION III.

*Procedure at the sale.*

Article 217. The sale of things estimated by measure of capacity, or by weight, or by enumeration, or by length, may be sold individually or *en bloc*.

*Example :-*

A vendor sells a heap of corn, or a barn full of straw, or a load of bricks, or a bale of merchandise *en bloc*. The sale is valid.

Article 218. If grain is sold in a specified vessel or measured in a measure, or by weighing it according to a fixed weight, the sale is valid, although the capacity of the vessel or measure, or the heaviness of the weight may not be known.

Article 219. A thing which may be sold separately may validly be separated from the thing sold.

*Example: -*

The vendor stipulates to retain a certain number of *okes* of the fruit of a tree that he has sold. The stipulation is valid.

Article 220. The sale *en bloc* of things estimated by quantity on the basis of the price of each thing or part thereof is valid.

*Example: -*

The sale of a heap of corn, a ship-load of wood, a flock of sheep, and a roll of cloth, on the basis of the price of each *kilé*, or measure, or *oke*, or herd of sheep, or yard, is valid.

Article 221. Real property may be sold by defining the boundaries thereof. In cases where the boundaries have already been defined, it may be sold by the yard or the donum.

Article 222. The contract of sale is only valid in respect to the amount stipulated in the contract.

Article 223. The sale of things estimated by measure of capacity, or by enumeration and which closely resemble each other and things estimated by weight, and which do not suffer damage by being separated from the whole, may be sold *en bloc* if the amount thereof is made known, whether the price is named in respect to the whole amount, or in respect to each individual unit. If on delivery the amount is found to be correct, the sale is irrevocable. If it is found to be short, however, the purchaser has the option of cancelling the sale, or of purchasing the amount actually delivered for the proportionate part of the price. If more than the stipulated amount is delivered, the excess belongs to the vendor.

*Examples: -*

(1) A vendor sells a heap of corn said to be fifty *kilés*, at five hundred piastres, or, on the basis of fifty *kilés*,

at ten piastres a *kilé*. If the amount delivered is correct, the sale is irrevocable. If forty-five *kilés* only are delivered, the purchaser has an option of cancelling the sale, or of taking forty-five *kilés* for four hundred and fifty piastres. If fifty-five *kilés* are delivered, the five *kilés* in excess belong to the vendor.

(2) A basket of eggs said to contain one hundred is sold for fifty piastres, or at twenty *paras* for each egg. If it turns out on delivery that there are only ninety eggs, the purchaser has an option of cancelling the sale or of taking the ninety eggs for forty-five piastres. If one hundred and ten are delivered, the ten eggs remaining over belong to the vendor.

(3) A barrel of oil is sold as containing one hundred *okes*. The principle explained above applies.

Article 224. In the case of the sale of a whole amount of things estimated by weight which suffer by being separated from the whole, the price of the whole amount only being named, the purchaser has the option of cancelling the sale on delivery, if the amount proves to be short, or of taking the portion delivered for the price fixed for the whole. If more than the amount is delivered, it belongs to the purchaser and the vendor has no option in the matter.

*Example :-*

A diamond stated to be five carat is sold for twenty thousand piastres. It turns out to be four and a half carat. The purchaser has the option of rejecting the diamond, or of taking the stone for twenty thousand piastres. If it turns out to be five and a half carat, the purchaser can have it for twenty thousand piastres, the vendor having no option in the matter.

Article 225. In the case of the sale of a whole amount of things estimated by weight which suffer damage by being separated from the whole, stating the amount thereof and the price fixed for parts or portions thereof, the purchaser

has an option on delivery, if the amount delivered turns out to be less or more, of cancelling the sale, or of taking the amount delivered on the basis of the price fixed for the parts and portions thereof.

*Example :-*

A copper brazier said to weigh five *okes* is sold at the rate of forty piastres per *oke*. If it turns out to weigh either four and a half or five and a half *okes*, the purchaser has two options. He can either decline to accept the brazier, or, if it weighs four and a half *okes* he can purchase it for one hundred and eighty piastres, and if it weighs five and a half *okes*, he can purchase it for two hundred and twenty piastres.

Article 226. In the case of the sale of a whole amount of things estimated by measure of length, whether land, goods, or similar things on the basis of the price for the whole amount, or of the price per yard, they are dealt with in both cases as in the case of things estimated by weight which suffer damage by being separated from the whole. Goods and articles such as linens and woollens which do not suffer damage by being cut and separated, are treated in the same manner as things estimated by measure of capacity.

*Examples :-*

(1) A piece of land said to measure one hundred yards is sold for one thousand piastres. It turns out to measure ninety-five yards only. The purchaser has an option of leaving it or of buying it for one thousand piastres. If it turns out to be larger, the purchaser can take the whole piece for one thousand piastres.

(2) A piece of cloth said to measure eight yards is sold for four hundred piastres with a view to being made up into a suit of clothes. It turns out to measure seven yards only. The purchaser has an option of leaving it or of buying it for four hundred piastres.

If it turns out to measure nine yards, the purchaser can take the whole piece for four hundred piastres.

(3) A piece of land said to measure one hundred yards is sold at the rate of ten piastres per yard. If it turns out to measure ninety-five or one hundred and five yards, the purchaser has an option of leaving it, or, if it turns out to be ninety-five yards, of buying it for nine hundred and fifty piastres, or, if it turns out to be one hundred and five yards, of buying it for one thousand and fifty piastres.

(4) Some cloth said to measure eight yards is sold at the rate of fifty piastres per yard with a view to being made up into a suit of clothes. If it turns out to measure seven or nine yards, the purchaser has an option of either rejecting it or, if it turns out to be seven yards, of buying it for three hundred and fifty piastres, and if it turns out to be nine yards of buying it for four hundred and fifty piastres.

(5) If a whole piece of cloth, however, said to measure one hundred and fifty yards is sold for seven thousand five hundred piastres, or at the rate of fifty piastres per yard, turns out to measure one hundred and forty yards, the purchaser has the option of cancelling the sale or of taking the hundred and forty yards for seven thousand piastres. If it turns out to be more, the balance belongs to the vendor.

Article 227. In the event of the sale of things estimated by enumeration and which are dissimilar from each other, the price of the whole amount only being named and the number of such things is found to be exact on delivery, the sale is valid and irrevocable. If the number is greater or smaller, however, the sale is voidable in both cases.

*Example :-*

A flock of sheep said to contain fifty head of sheep is sold for two thousand five hundred piastres. If on delivery the flock is found to consist of forty-five or fifty-five sheep, the sale is voidable.



Article 228. In the event of the sale of a portion of a whole amount of things estimated by enumeration, and which are dissimilar from each other, stating the amount thereof, and at a price calculated at so much per piece or per unit, and on delivery the number is found to be exact, the sale is irrevocable. If the number is found to be smaller, the purchaser has the option of leaving the things or of taking them for the proportionate share of the fixed price. If more than the stated number are delivered, the sale is voidable.

*Example :-*

A flock of sheep said to consist of fifty is sold at the rate of fifty piastres per head. If it turns out to consist of forty-five head of sheep, the purchaser has the option of leaving them or of buying the forty-five head of sheep for two thousand two hundred and fifty piastres. If it turns out to be fifty-five head of sheep, the sale is voidable.

Article 229. The purchaser, after having taken delivery of the thing sold, loses the option of cancelling the sale conferred upon him by the preceding Articles, if he knew that less than the stipulated amount had in fact been delivered.

SECTION IV.

*Matters included but not explicitly mentioned in the sale.*

Article 230. The sale includes everything which by local custom is included in the thing sold, even though not specifically mentioned.

*Example :-*

In the case of the sale of a house, the kitchen and the cellar are included; and in the event of the sale of an olive grove, the olive trees are included, even though not specifically mentioned. The reason for this

is that the kitchen and cellar are appurtenances of the house, and the olive grove is so called because it is a piece of land containing olive trees. A mere piece of land, on the other hand, is not called an olive grove.

Article 231. Things which are considered to be part of the thing sold, that is to say, things which cannot be separated from the thing sold, having regard to the object of the purchase, are included in the sale without being specifically mentioned.

*Example :-*

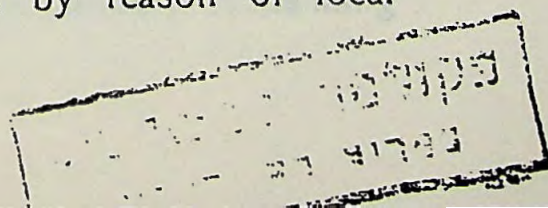
In the case of the sale of a lock, the key is included; and in the case of the sale of a milch cow, the sucking calf of such cow is included in the sale without being specifically mentioned.

Article 232. Fixtures attached to the thing sold are included in the sale, even though not specifically mentioned.

*Example :-*

In the event of the sale of a large country house, things which have been fixed or constructed permanently, such as locks which have been nailed, and fixed cupboards and divans, are included in the sale. Similarly, the garden included in the boundaries of the house, together with the paths leading to the public road or to a blind alley are included. Again, in the event of the sale of a garden and of a piece of land, trees planted as fixtures are included in the sale, even though this was not specifically stated at the time the bargain was concluded.

Article 233. Things which are neither appurtenances nor permanent fixtures attached to the thing sold, and things which are not considered to be part of the thing sold, or things which are not by reason of custom included in the thing sold, are not included in the sale unless they are specifically mentioned at the time the sale was concluded. But things which by reason of local



custom go with the thing sold, are included in the sale without being specifically mentioned.

*Example :-*

\* In the case of the sale of a house, things which are not fixtures, but have been placed so that they may be removed, such as cupboards, sofas and chairs, are not included in the sale unless specifically mentioned. And in the event of the sale of an orchard or a garden, flower pots, and pots for lemons and young plants which have been planted with a view to their removal elsewhere, are not included in the sale, unless specifically mentioned. Similarly, when land is sold, the growing crops, and when trees are sold, the fruit thereof, are not included in the sale, unless some special stipulation to that effect was made at the time the bargain was concluded. But the bridle of a riding horse and the halter of a draught horse are included in the sale although not specifically mentioned, in places where such is the custom.

Article 234. The thing included in the sale as being attached thereto is not a part of the price of such sale.

*Example :-*

If the halters of draught horses are stolen before the delivery thereof, there is no necessity to deduct anything from the fixed price.

Article 235. Things comprised in any general expressions added at the time of the sale are included in the sale.

*Example :-*

The vendor states that he has sold a particular house "with all rights". Any right of way, or right of taking water, or right of flow attaching to the house are included in the sale.

Article 236. Any fruits or increase occurring after the conclusion of the contract and before delivery of the thing sold belong to the purchaser.

*Examples : -*

- (1) In the case of the sale of a garden, any fruit or vegetables that are produced before delivery belong to the purchaser.
- (2) Where a cow has been sold, a calf born before delivery of the cow becomes the property of the purchaser.

*CHAPTER III.**MATTERS RELATING TO PRICE.**SECTION I.**Nature of and circumstances affecting price.*

Article 237. The price must be named at the time of the sale. Consequently, if the price of the thing sold is not mentioned, the sale is voidable.

Article 238. The price must be ascertained.

Article 239. The price is ascertained by being seen, if it is visible. If not, it is ascertained by stating the amount and description thereof.

Article 240. If the price is stated to be so many gold coins in a locality in which different types of gold coins are in circulation, without stating the particular type of gold coin, the sale is voidable. The same rule applies to silver coins.

Article 241. If the price is stated in piastres, the purchaser can give any type of coin he likes, provided that the circulation thereof is not forbidden.

Article 242. When a contract is drawn up expressing the nature of the price, payment must be made in whatever kind of currency is mentioned.

*Example :-*

A contract is made for payment in Turkish, English, or French pounds, or in pieces of twenty *medjidies* each, or in dollars. Payment must be made in whatever currency is stipulated.

Article 243. Anything produced at the time of the conclusion of the contract cannot be regarded as determining the nature of the price.

*Example :-*

A purchaser shows a gold piece of one hundred piastres which he has in his hand, and states that he has bought such and such a piece of property with that particular gold coin. The vendor agrees to sell. The purchaser is not obliged to give that particular gold coin itself, but may substitute for it another gold piece of one hundred piastres of the same type.

Article 244. Fractions of coins may be given instead of a particular type of coinage. In this case, however, local custom must be followed.

*Example :-*

A bargain is concluded for payment by *medjidies* of twenty piastres. Payment may also be made with pieces of ten and five. But in view of custom now prevailing in Constantinople, fractions of pieces of forty and of two may not be given instead of pieces of twenty.

## SECTION II.

*Sale subject to payment at a future date.*

Article 245. A valid sale may be concluded in which payment of the price is deferred and is made by instalments.

Article 246. In the event of deferment and payment of the price by instalments, the period thereof must be definitely ascertained and fixed.

Article 247. If a bargain is concluded with a promise for payment at some definite future date which is fixed by the two contracting parties, such as in so many days, or months, or years time, or the 26th October next, the sale is valid.

Article 248. If a bargain is concluded stipulating for payment at a time which is not clearly fixed, such as "when it rains" the sale is voidable.

Article 249. If a bargain is concluded whereby credit is given for an undefined period, payment becomes due within one month.

Article 250. The time agreed upon for deferred payment, or payment by instalments, begins to run from the time the thing sold is delivered.

*Example :-*

Goods are sold to be paid for in a year's time. The vendor after keeping them for a year, delivers them to the purchaser. The money must be paid after a period of one year from the date of delivery, that is, upon the expiration of precisely two years from the time of the sale.

Article 251. An unconditional sale is concluded with a view to payment forthwith. But in places where by custom an unconditional sale is concluded for payment by some definite future date, or by instalments, payment becomes due on the date or dates in question.

*Example :-*

A purchases a thing from the market without stipulating as to whether payment is to be made forthwith or whether purchased on credit. Payment must be made forthwith. But where by local custom the whole or a part of the price is payable at the end of a week or month, such custom must be observed.

## CHAPTER IV.

POWER TO DEAL WITH THE PRICE AND THE  
THING SOLD AFTER THE SALE.

## SECTION I.

*Right of the vendor to dispose of the price and of the purchaser to dispose of the thing sold after the conclusion of the contract and prior to delivery.*

Article 252. The vendor has a right to dispose of the price of the thing sold before receiving the same.

*Example :-*

A person who has sold property of his own can transfer the price thereof to meet a debt.

Article 253. If the thing sold is real property, the purchaser can sell such real property to another person before taking delivery thereof. He may not, however, sell movable property.

## SECTION II.

*Increase and decrease in the price and in the thing sold after the conclusion of the contract.*

Article 254. The vendor may increase the amount of the thing sold after the conclusion of the contract. If the purchaser agrees to such increase at the meeting place of the parties, he has a right to insist upon such increase and the vendor may not go back upon his offer. An acceptance by the purchaser after the meeting, however, is invalid.

*Example :-*

A bargain is concluded for the purchase of twenty melons at twenty piastres. The vendor states that he has given five more. If the purchaser accepts at the meeting, he has the right of taking twenty-five melons

for twenty piasters. If he fails to accept at the meeting however, but seeks to accept subsequently, the vendor cannot be obliged to give the additional number.

Article 255. The purchaser may increase the fixed price after the conclusion of the sale. If the vendor accepts such increase at the meeting where the offer is made, he has the right to insist upon such increase and the purchaser may not go back upon his offer. If the vendor accepts after the meeting, however, such acceptance is invalid.

*Example :-*

A bargain is concluded for the sale of an animal for one thousand piastres. After the conclusion of the sale, the purchaser states that he has added an additional two hundred piastres. If the vendor accepts at the meeting where the offer is made, he must pay one thousand two hundred piastres for the animal. If the vendor fails to accept at the meeting, however, but signifies his acceptance later, the purchaser cannot be forced to pay the additional two hundred piastres which he has undertaken to give.

Article 256. The vendor may validly deduct a portion of the fixed price after the conclusion of the contract.

*Example :-*

A bargain is concluded for the sale of certain property for one hundred piastres. Later, the vendor states that he has deducted twenty piastres. He can only obtain eighty piastres for the property in question.

Article 257. Any increase made by the vendor in the thing sold and by the purchaser in the fixed price, or any decrease on the part of the vendor of the fixed price after the conclusion of the contract becomes a part of the original contract. That is to say, such increase or decrease is contemplated as having been part of the original contract at the time such contract was concluded.



Article 258. If the vendor increases the thing sold after the conclusion of the contract, the increase becomes part of the fixed price.

*Examples:-*

(1) A vendor adds two water melons to the eight water melons which he has sold for ten piastres. The purchaser agrees and the ten water melons are sold for ten piastres. If the two water melons are destroyed before delivery, the price thereof is deducted from the total price and the vendor can only demand eight piastres for the eight water melons.

(2) A vendor sells a piece of land measuring one thousand yards for ten thousand piastres. After the sale he adds one hundred yards, to which the purchaser agrees. If a person claiming a right of pre-emption comes forward, he can take the whole amount represented by the ten thousand piastres, that is to say, one thousand one hundred yards.

Article 259. If the purchaser increases the fixed price after the conclusion of the contract, the sum total of the fixed price together with the increase becomes the corresponding value of the thing sold in respect to the two contracting parties.

*Example :-*

A purchaser buys a piece of real property held in absolute ownership for ten thousand piastres. Before taking delivery he adds five hundred piastres, to which the vendor agrees. The price of the real property in question is ten thousand five hundred piastres. If a person who is entitled to such property comes forward, proves his case, obtains judgment, and takes possession of the real property in question, the purchaser is entitled to claim the sum of ten thousand five hundred piastres from the vendor. If a person claiming a right of pre-emption to such real property comes forward, such person can take the real property in question for ten thousand piastres, but the vendor cannot claim the

five hundred piastres subsequently added from the person claiming the right of pre-emption, because such person's right is based upon the fixed price in the original contract, the subsequent increase to the original contract affecting the contracting parties only and in no way invalidating such person's claim.

Article 260. If the vendor reduces the price of the thing sold after the conclusion of the contract, the remainder of the fixed price is the corresponding value of the whole of the thing sold.

*Example :-*

A piece of real property held in absolute ownership is bought for ten thousand piastres. The vendor deducts one thousand piastres. The price of the real property in question is nine thousand piastres. Consequently, if a person claiming a right of pre-emption comes forward, he may take such property for nine thousand piastres.

Article 261. The vendor may deduct the whole of the price of the thing sold before delivery, but this is not part of the original contract.

*Example :-*

The vendor sells a piece of real property held in absolute ownership for ten thousand piastres. Prior to delivery he forgoes the price thereof altogether. A person claiming to have a right of pre-emption may take such real property for ten thousand piastres. He may not claim to take it for nothing.

## CHAPTER V.

## GIVING AND TAKING DELIVERY.

## SECTION I.

*Procedure on giving and taking delivery.*

Article 262. Taking delivery is not an essential condition of sale. After the conclusion of the contract, however, the purchaser must first deliver the price to the vendor, and the vendor is then bound to deliver the thing sold to the purchaser.

Article 263. The thing sold must be delivered in such a way that the purchaser may take delivery thereof without hindrance. The vendor must give permission for such delivery.

Article 264. As soon as the thing sold has been delivered, the purchaser is considered to have taken delivery thereof.

Article 265. The method of delivery differs, according to the nature of the thing sold.

Article 266. If the purchaser is on a piece of land, or in any field, or if the purchaser sees such land or fields from near by, any permission given by the vendor to take delivery thereof, is considered to be delivery.

Article 267. If land is sold upon which crops are growing, the vendor must clear the land of such crops by reaping them or by pasturing animals thereon.

Article 268. In the event of the delivery of a tree bearing fruit, such fruit must first be gathered and the tree then handed over by the vendor.

Article 269. If fruit is sold while upon a tree, and the vendor gives permission to the purchaser to pick such fruit, delivery thereof has been effected.

Article 270. If the purchaser is within any real property, such as a house or an orchard, which can be closed by locking, and is informed by the vendor that the latter has delivered such real property to him, delivery thereof has been effected. If he is outside such property, and the purchaser is so near thereto that he could immediately lock the same, delivery thereof is effected by the vendor merely stating that he has made delivery. If he is not in such close proximity to such property, however, delivery is effected after the expiration of such time as is necessary for him to arrive and enter therein.

Article 271. Delivery of real property which can be locked is effected by handing over the key.

Article 272. Delivery of an animal is taken by seizing it by the head or by the ear or by the halter. Delivery of such animals may also be given by the vendor merely pointing to them and giving permission for them to be taken, if they are in such a place that the purchaser can take delivery thereof without inconvenience.

Article 273. Delivery of things estimated by measure of capacity, or by weight, may be given by placing them in a cover or receptacle prepared by order of the purchaser.

Article 274. Delivery of articles of merchandise is effected by placing them in the hands of the purchaser or by placing them beside him, or, if they are exposed to view, by pointing to them and giving him permission to take them.

Article 275. Delivery of things sold *en bloc* and kept in a locked place, such as a store or box, is effected by giving the key to the purchaser and giving him permission to take them.

*Example :-*

A store full of corn or a box of books is sold *en bloc*. Delivery of the things sold is effected by handing over the key.

Article 276. If the purchaser takes delivery of the things sold and the vendor, seeing this, makes no objection, permission to take delivery is given.

Article 277. If the purchaser takes delivery of the thing sold without paying the price and without the permission of the vendor, such taking delivery is invalid. But if the thing sold is taken by the purchaser without permission and is destroyed or damaged while in his possession, such taking delivery is valid.

SECTION II.

*Right of retention over the thing sold.*

Article 278. In the case of a sale for immediate payment, the vendor has a right of retaining the thing sold until the price is fully paid by the purchaser.

Article 279. If the vendor sells various articles *en bloc*, the whole of the things sold may be retained until the full price has been paid, even though a separate price has been stated for each article.

Article 280. The fact that a pledge or a guarantor has been furnished by the purchaser does not invalidate the vendor's right of retention.

Article 281. If the vendor gives delivery of the thing sold without receiving the price, he loses his right of retention. He cannot ask for the return of the thing sold in order to hold it until payment of the price is made.

Article 282. If the vendor transfers the right of receiving the price of the thing sold from the purchaser

to some other person, he loses his right of retention. In this case, the thing sold must be delivered to the purchaser forthwith.

Article 283. In the case of a sale on credit, there is no right of retention on the part of the vendor. He must deliver the thing sold to the purchaser forthwith in order to receive payment on due date.

Article 284. Should the vendor postpone payment of the price after having sold for immediate payment, he loses his right of retention. He must hand the thing sold to the purchaser forthwith in order to receive payment on due date.

#### SECTION III.

##### *The place of delivery.*

Article 285. In an unconditional contract the thing sold must be delivered at the place where it was when the sale was concluded.

##### *Example :-*

A sells wheat at *Tekfur Dagh* to B in Constantinople. A delivers the wheat in *Tekfur Dagh*. He cannot be forced to deliver the wheat in Constantinople.

Article 286. If at the time of the sale the purchaser did not know where the thing sold was, but received information thereof after the conclusion of the contract, he has an option. He may either cancel the sale, or take delivery of the thing sold at the place where it was at the time the sale was concluded.

Article 287. Property sold with a condition for delivery at a given place must be delivered at that place.

## SECTION IV.

*Expenses connected with delivery.*

Article 288. Expenses connected with the price fall upon the purchaser.

*Example :-*

Fees in connection with money-changing, such as counting and weighing the money, fall upon the purchaser.

Article 289. Expenses connected with the delivery of the thing sold fall upon the vendor.

*Example :-*

Fees of measurers and weighers must be borne by the vendor.

Article 290. Any charges connected with things sold *en bloc* must be borne by the purchaser.

*Examples :-*

(1) If grapes in an orchard are sold *en bloc*, the purchaser must gather them.

(2) If a store full of corn is sold *en bloc*, the purchaser must take such corn away from the store.

Article 291. In the case of things sold which are loaded upon animals, such as wood and charcoal, the question of transport to the house of the purchaser is decided in accordance with local custom.

Article 292. The cost of drawing up contracts and written instruments falls upon the purchaser. The vendor, however, must declare the sale and attest the same in Court.

## SECTION V.

*Destruction of the thing sold.*

Article 293. If the thing sold is destroyed while in the possession of the vendor prior to delivery, no liability attaches to the purchaser, and the loss must be borne by the vendor.

Article 294. If the thing sold is destroyed after delivery, no liability attaches to the vendor, and the loss must be borne by the purchaser.

Article 295. If the purchaser dies bankrupt after having taken delivery of the thing sold, but without having paid the price, the vendor cannot demand the return of the thing sold, but becomes one of the creditors.

Article 296. If the purchaser dies bankrupt before the delivery of the thing sold and payment of the price, the vendor has a right of retaining the thing sold until payment has been made from the estate of the purchaser. Thus, the thing sold is disposed of by the Court and if the sum realized is sufficient, the amount due to the vendor is paid in full, any surplus being paid to the other creditors. If less than the sum due to the vendor is realized, the full amount thereof is paid to the vendor, and the balance still remaining due is deducted from the estate of the purchaser.

Article 297. If the vendor dies bankrupt after having received the price, but without having delivered the thing sold to the purchaser, such thing remains in the possession of the vendor on trust. Thus, the purchaser takes the thing sold, and the other creditors cannot intervene.



## SECTION VI.

*Sale on approval and subject to inspection.*

Article 298. If property bought on approval as to price, that is to say, property the price of which has been fixed, is delivered to the purchaser and while in his possession is destroyed or lost, the price thereof must be paid to the vendor, if it is in the nature of a thing the like of which cannot be found in the market. If it is a thing the like of which can be found in the market, a similar article must be given to the vendor. If the price has not been fixed, however, it is considered to be in the possession of the purchaser on trust, and if it is destroyed or lost without any fault of the purchaser, there is no need to make good the loss.

*Example :-*

A vendor offers an animal for one thousand piastres, asking the purchaser to buy it if he is pleased with it. If the purchaser takes it with a view to buying it and the animal is destroyed while in his possession, the purchaser must pay the price to the vendor. But if the price is not stated and the vendor asks the purchaser to buy the animal if he is pleased with it, and the purchaser, being satisfied with it, later enters into negotiations with a view to purchase, and the animal is destroyed without any fault of the purchaser, while in the latter's possession, the purchaser is not obliged to make good the loss.

Article 299. If delivery is taken of property on approval subject to inspection, that is to say, to be examined or shown, and such property is destroyed or lost while in the possession of the prospective purchaser without any fault on his part, such purchaser is considered to have held the property on trust and there is no need to make good the loss, whether the price has been stated or not.

## CHAPTER VI.

## OPTIONS

## SECTION I.

*Contractual Options.*

Article 300. The vendor, or the purchaser, or both, may insert a condition in the contract of sale giving them an option, within a fixed period, to cancel the sale or to ratify it by carrying out the terms thereof.

Article 301. The person in the enjoyment of an option conferred by the contract is empowered either to cancel or to ratify the contract within the period of the validity of the option.

Article 302. Both cancellation and ratification of the contract may be by word of mouth or by conduct.

Article 303. Words importing ratification are words implying satisfaction, such as, "I ratify", or "I am pleased". Words importing cancellation are words implying dissatisfaction, such as, "I have cancelled" or, "I have gone back".

Article 304. Acts importing ratification are those acts implying satisfaction and acts importing cancellation are those acts implying dissatisfaction.

*Example:-*

A purchaser having a right to an option performs some act within the period during which the option is valid, indicative of a right of ownership in such property, such as putting it up for sale, or pledging it, or letting it on hire. Such act is an act of ratification by conduct. If the vendor has an option and deals with the property in the same way, it is an act of cancellation by conduct.

Article 305. If the person possessing the option allows the period during which the option is valid to

expire without either cancelling the sale or ratifying it, the sale becomes irrevocable.

Article 306. An option conferred by contract is not transmissible by way of inheritance. Thus, if the person possessing the option is the vendor, the purchaser becomes the owner of the thing sold upon the death of the vendor. If the purchaser is the person having the option and dies, his heirs become owners of the thing sold without any option.

Article 307. If both vendor and purchaser have an option, the sale can be cancelled by whichever party so desires. If one party only ratifies, that party loses his option, the other retaining his.

Article 308. If the vendor alone has an option, he does not lose his title in the thing sold, which is still considered to be a part of his own property. If the thing sold is destroyed while in the possession of the purchaser after delivery thereof, the fixed price does not become due, but the purchaser must pay the value thereof on the day he took delivery.

Article 309. If the purchaser alone has an option he acquires a title in the thing sold, which is considered to be a part of his own property. If the thing sold is destroyed while in the possession of the purchaser after delivery thereof, the fixed price must be paid.

#### SECTION II.

##### *Option for misdescription.*

Article 310. If the vendor sells property as possessing a certain desirable quality and such property proves to be devoid of such quality, the purchaser has the option of either cancelling the sale, or of accepting the thing sold for the whole of the fixed price. This is called option for misdescription.

*Examples :-*

(1) If a cow is sold described as giving milk and it proves that she has ceased to give milk, the purchaser acquires an option.

(2) If a stone sold at night-time as a red ruby proves to be a yellow ruby, the purchaser acquires an option.

Article 311. The option for misdescription is transmissible by way of inheritance. That is to say, that if on the death of the purchaser who has an option for misdescription, it turns out that the thing sold does not conform to the description given, the heir also has the power of cancelling the sale.

Article 312. If the purchaser having an option for misdescription deals with the thing sold in a manner indicative of a right of ownership over such thing, he loses his option thereby.

## SECTION III.

*Option as to payment.*

Article 313. Vendor and purchaser may validly conclude a bargain whereby payment of the price is to be made by a certain time and in the event of payment not being made, the sale is not to take place. This option is called an option as to payment.

Article 314. If the purchaser does not pay the price within the stipulated period, a sale concluded subject to an option as to payment is voidable.

Article 315. If a purchaser having an option as to payment dies within the prescribed period, the sale is void.

## SECTION IV.

*Option as to selection.*

Article 316. A stipulation may validly be made in a sale whereby the purchaser may take whichever he likes of two or three things at different prices the like of which cannot be found in the market, or the vendor may give whichever one he pleases. This is called an option as to selection.

Article 317. A period must be fixed during which the option as to selection is valid.

Article 318. A person having an option as to selection is bound to choose the thing he has bought on the expiration of the prescribed period.

Article 319. An option as to selection is transmissible by way of inheritance.

*Example :-*

If the vendor sells three pieces of cloth all being of one type and consisting of superior, medium and inferior quality, the purchaser to take the piece he prefers within a period of three or four days, and such purchaser agrees thereto, a valid sale is concluded, and on the expiration of the stipulated period, the purchaser must choose one and pay the fixed price thereof. If he dies before exercising his option, his heir must choose one in the same manner.

## SECTION V.

*Option as to inspection.*

Article 320. If a person buys a piece of property without seeing such property, he has an option upon inspection thereof of either cancelling the sale or of ratifying it. This is called the option of inspection.

Article 321. The option of inspection is not transmissible by way of inheritance. Consequently, if the purchaser dies without having seen the property which he has bought, his heir becomes owner of the property without having any option in the matter.

Article 322. No option of inspection accrues to the vendor who sells property without seeing it.

*Example :-*

A sells property which he has not seen and which has come to him by way of inheritance. The sale is concluded without any right of option.

Article 323. The object of the option of inspection is to ascertain the nature of the thing sold and the whereabouts thereof.

*Example :-*

A person who examines the outside of a plain piece of cloth which is the same on both sides; or a piece of cloth marked with stripes or flowers; or the teat of a sheep bought for breeding; or the back of a sheep bought for killing; or who tries the taste of things for eating and drinking and who later makes a purchase, has no option of inspection.

Article 324. It is sufficient to see a sample produced of things sold by sample.

Article 325. If the thing sold proves to be inferior to the sample, the purchaser has an option of taking or rejecting it.

*Example :-*

If such things as corn or oil, and linen or wool manufactured so as to conform to a set standard of excellence are bought after inspecting a sample thereof, and are later found not to come up to sample, the purchaser has an option.

Article 326. In the purchase of real property such as an inn or a house, every room must be inspected. If the rooms are all of one type, however, it is sufficient to inspect one of the rooms.

Article 327. When things which are dissimilar to each other are purchased *en bloc*, each one must be inspected separately.

Article 328. If the purchaser buys things which are dissimilar from each other *en bloc* and inspects some of them and fails to inspect the rest, and, upon inspection of the latter, is dissatisfied therewith, he has the option of accepting or rejecting the whole lot. He may not take those with which he is satisfied and reject the rest.

Article 329. A blind person may validly buy and sell, but if he buys property the description of which is unknown to him, he has an option.

*Example :-*

If he buys a house the description of which is unknown to him, he has an option, upon learning the description thereof, of accepting or rejecting.

Article 330. A blind person has no option if he purchases a thing which has been described to him beforehand.

Article 331. If a blind person touches anything the nature of which can be ascertained by means of the sense of touch, and smells things the nature of which can be ascertained by means of the sense of smell, and tastes things the nature of which can be ascertained by means of the sense of taste, his right of option is destroyed. That is to say, if he touches or smells such things and afterwards purchases them, the sale is valid and irrevocable.

Article 332. If a person who has inspected a piece of property with a view to purchase later buys such property knowing it is the property in question, such person has no option of inspection. Should any change have been made in such property, however, such person has an option.

Article 333. Inspection by an agent authorized to buy or receive the thing sold, is equivalent to inspection by the principal.

Article 334. Inspection by a messenger, that is to say, a person sent, who merely has the power of collecting and despatching the thing sold, does not destroy the purchaser's option of inspection.

Article 335. If the purchaser deals with the thing sold in any way indicative of a right of ownership, his option of inspection is destroyed.

#### SECTION VI.

##### *Option for defect.*

Article 336. In an unconditional sale, the thing sold must be free from any defect. That is to say, although property is sold without stipulating that it shall be free from faults, and without stating whether it is sound, or bad, or defective, or free from fault, such property nevertheless must be sound and free from defect.

Article 337. If some defect of long standing is revealed upon the unconditional sale of any piece of property, the purchaser has the option of rejecting it or accepting it for the fixed price. He cannot keep the property and reduce the price on account of the defect. This is called option for defect.



Article 338. A defect consists of any faults which, in the opinion of persons competent to judge, cause a depreciation in the price of the property.

Article 339. A defect of long standing is a fault which existed while the thing sold was in the possession of the vendor.

Article 340. Any defect which occurs in the thing sold after sale and before delivery, while in the possession of the vendor, is considered a defect of long standing and justifies rejection.

Article 341. If the vendor declares at the time of the sale that there is a defect in the thing sold, and the purchaser accepts the thing sold with the defect, he has no option on account of such defect.

Article 342. If the vendor sells property subject to the condition that he shall be free from any claim on account of any defect, the purchaser has no option on account of defect found therein.

Article 343. If a purchaser buys property, including all defects, he cannot make any claim on account of any defect found therein.

*Example :-*

If a purchaser buys an animal with all faults of any description whatsoever whether blind, lame, or worthless, he cannot return such animal asserting that it had a defect of long standing.

Article 344. If the purchaser after becoming aware of a defect in the thing sold performs any act indicative of the exercise of a right of ownership, he loses his option for defect.

*Example :-*

The purchaser, after becoming aware of the existence of a defect of long standing in the thing sold, offers

such thing for sale. He is taken to have acquiesced therein and cannot reject the thing sold.

Article 345. If a defect appears in the thing sold while in the possession of the purchaser, and it proves to be a defect of long standing, the purchaser has no right to return the thing sold to the vendor, but has a right to claim a reduction in the price.

*Example :-*

If the purchaser discovers a defect of long standing in the thing he has purchased, such as a piece of cloth which after being cut up and measured is found to be rotten and frayed, he cannot return the same, because by cutting it he caused a fresh defect. He can, however, claim a reduction in the price on account of the defect.

Article 346. The amount of the reduction in the price is ascertained by a report drawn up by impartial experts. With this object in view, the value of the thing sold when sound and also when defective is ascertained, and a reduction is made from the fixed price on the basis of the difference between the two prices.

*Example :-*

A purchaser after buying a roll of cloth for sixty piastres and cutting it up and measuring it becomes aware of a defect of long standing. Experts estimate the value of such property at sixty piastres when sound and with the defect of long standing at forty-five piastres. The reduction to be made in the price is fifteen piastres, and the purchaser has a right to make a claim for that amount. If the experts report that the value of such property when sound was eighty piastres and with the defect sixty piastres, the difference of twenty piastres between the two prices, that is to say a fourth of eighty piastres or a quarter of the fixed price may be claimed by the purchaser. If the value of the cloth when sound is reported to be fifty piastres

and with the defect forty piastres, the difference of ten piastres between the two, that is to say, one fifth of the fixed price, is considered to be the amount to be deducted from the price.

Article 347. If a defect of recent origin disappears, a defect of long standing still justifies rejection.

*Example :-*

A horse is purchased and falls sick while in the possession of the purchaser. Thereupon a defect of long standing is revealed. The purchaser is unable to return the horse, but can obtain a reduction in the price. If the animal recovers from the illness, the purchaser can return the horse to the vendor on account of the defect of long standing.

Article 348. If the vendor agrees to take back the thing sold after the occurrence of a defect while in the possession of the purchaser which reveals a defect of long standing, and should there be nothing to prevent its return, the purchaser cannot claim a reduction in price, but must either return the thing sold or keep it and pay the full price. Should the purchaser sell the property to some third person after becoming aware of the existence of the defect of long standing, he is in no way entitled to claim a reduction of price.

*Example :-*

A purchaser buys a roll of linen and cuts it up to make shirts. He then finds it to be defective and sells it. He cannot claim any reduction of the price from the vendor. The reason for this is that while the vendor may state that he would take back the stuff with the defect of recent origin, that is to say, cut up, the sale thereof by the purchaser is tantamount to an adoption of the defect.

Article 349. Any increase, that is to say, any addition of property belonging to the purchaser to the thing sold makes any return thereof impossible.

*Example :-*

A purchaser adds certain sewing or dyeing with his own thread or colour to a piece of cloth; or the purchaser of a piece of land plants trees therein. Such acts prevent the return of the thing sold.

Article 350. If there is anything to prevent the return of the thing sold, the vendor cannot receive back the defective thing sold, even though he is willing to do so, but must make a reduction in price. If the purchaser becomes aware of the existence of a defect of long standing in the property in question and sells the same, he can demand a reduction in price from the vendor.

*Example :-*

A purchaser buys a roll of linen to make into shirts. After measuring them and sewing them, he finds that the linen is defective. He cannot ask for the linen to be taken back, even though the vendor is prepared to do so. The vendor is obliged to make a reduction in the price. If the purchaser sells the shirts, he can recover the reduction in the price from the vendor. The reason for this is that the thread belonging to the purchaser has been added to the thing sold and prevents its return. The vendor cannot say that he will take the thing back after it has been cut up and sewn, and the purchaser is not considered to have kept back the thing sold from the vendor.

Article 351. Before taking delivery, the purchaser may reject the whole of a number of things bought *en bloc*, if some of them prove to be defective, or he may elect to take them for the fixed price. He cannot reject the things which are defective and keep the rest. If the defect becomes apparent after delivery, and no loss is

incurred by separation, he can return that portion in which the defect has appeared, against a proportionate share of the fixed price when sound. He cannot return the whole, unless the vendor agrees thereto. If any loss is caused by the separation, however, he may return or keep the whole amount at the fixed price.

*Example :-*

If one of two fezzes bought for forty piastres proves to be defective before delivery, both can be rejected together. If one of them proves to be defective after delivery, he can return that fez, deducting the value of such fez when sound from the forty piastres. If he has bought a pair of shoes, however, and after delivery, one of them turns out to be defective, he can return them both and can demand the return of the whole of his money.

Article 352. If a person who has bought and taken delivery of a definite number of things estimated by measure of capacity or weight and which are of one type, finds a portion thereof to be defective, he has the option of accepting or rejecting the whole number.

Article 353. If cereals such as wheat prove to be earthy, though to an extent considered by custom to be negligible, the sale is valid and irrevocable. If, however, such cereals are considered by local opinion to be positively defective, the purchaser has an option.

Article 354. If such things as eggs and nuts prove to be bad and defective but not to a greater extent than that sanctioned by custom, such as three per cent, the sale is valid. If the defect is considerable, however, such as ten per cent, the sale is invalid and the purchaser can return the whole amount to the vendor and recover the entire price.

Article 355. If the thing sold appears to be in such a state that no benefit can ever be derived therefrom, the sale is void and the purchaser can recover the whole of the price.

*Example:-*

If eggs which have been bought prove to be so bad that they are useless, the purchaser can recover the whole of his money.

SECTION VII.

*Misrepresentation and Deceit.*

Article 356. The existence of flagrant misrepresentation in a sale, but without actual deceit, does not enable the person who has been the victim of such misrepresentation to cancel the sale. But if the sale of the property of orphans is tainted by flagrant misrepresentation, although there is no actual deceit, such sale is invalid. Property belonging to a pious foundation and to the Treasury is treated on the same basis as the property of orphans.

Article 357. If one of the two parties to the sale deceives the other, and flagrant misrepresentation is also proved to be present in the sale, the person so deceived can cancel the sale.

Article 358. If the person who is the victim of flagrant misrepresentation dies, no right to an action for deceit is transmitted to his heirs.

Article 359. If the purchaser who is the victim of deceit becomes aware that the sale is tainted by flagrant misrepresentation and deals with the thing sold in any manner indicative of a right of ownership, he has no right whatsoever to cancel such sale.

Article 360. If a thing sold which has been bought as a result of deceit or flagrant misrepresentation is destroyed, or perishes, or becomes defective, or if something new is added, such as a building to a piece of land, the victim of such misrepresentation has no right to cancel the sale.

## CHAPTER VII.

### VARIOUS CATEGORIES OF THINGS SOLD AND THE EFFECT THEREOF.

#### SECTION I.

#### *Types of Sale.*

Article 361. It is a condition precedent to the conclusion of the sale that the parties thereto should be of sound mind and perfect understanding and that the sale should be made with reference to some thing which may properly be the subject of sale.

Article 362. A sale which is defective in any essential condition, such as sale by a lunatic, is void.

Article 363. In order that any object may properly be the subject of sale, such object must be in existence, must be capable of delivery, and must be of some specific value. Consequently, the sale of a thing which is not in existence, or is incapable of delivery, or is not of any specific value, is void.

Article 364. If a sale is concluded validly, but is not legal as regards certain subsidiary matters, such as the thing sold being unknown, or defective as regards the price, the sale is voidable.

Article 365. For a sale to be executory, the vendor must be the owner of the thing sold, or the agent of the owner, or his tutor or guardian, and no other person must be entitled thereto.

Article 366. A voidable sale becomes executory on taking delivery. That is to say, the purchaser may deal with the thing sold.

Article 367. If one of the options attaches to the sale, such sale is not irrevocable.

Article 368. A sale dependent upon the right of some third person may validly be concluded if the permission of such person is obtained, as in the case of a sale by an unauthorized person, or the sale of property given as a pledge.

#### SECTION II.

##### *Effect of various kinds of sale.*

Article 369. The effect of the conclusion of a sale is ownership, that is to say, the purchaser becomes the owner of the thing sold and the vendor becomes the owner of the price.

Article 370. A sale which is void is of no effect whatsoever. Consequently, if in the case of a sale which is void, the purchaser has taken delivery of the thing sold with the permission of the vendor, and such thing is destroyed without the fault of the purchaser while in his possession, there is no necessity for the purchaser to make good the loss, the thing sold being in the nature of a thing deposited on trust.

Article 371. A voidable sale, on delivery, is effective, that is to say, if the purchaser takes possession of the thing sold with the permission of the vendor, he becomes



the owner thereof. Consequently, if a thing bought as the result of a voidable sale is destroyed while in the possession of the purchaser, the purchaser must make good the loss. If the thing sold is one the like of which can be found in the market, a like thing must be given by the purchaser to the vendor, or if it is a thing the like of which cannot be found in the market, the value thereof on the day of delivery must be paid.

Article 372. In the case of a voidable sale, each of the contracting parties has the right of cancelling the sale. But if the thing sold is destroyed while in the possession of the purchaser, or if the purchaser disposes of it in any way, such as consuming it, or selling it validly to some other person, or bestowing it upon someone by way of gift, or if the thing sold being a house, the purchaser adds to it in any way, such as repairing it, or, if it is a piece of land, planting trees on it, or, if it is corn, changes it by grinding it into flour, so that its name is changed, there is no right of cancellation.

Article 373. In the case of cancellation of a voidable sale, if the price has been received, the purchaser has the right of retaining the thing sold until the vendor has returned the price.

Article 374. An executory sale becomes effective forthwith.

Article 375. An executory sale is irrevocable, and neither of the two parties to the sale may go back thereon.

Article 376. In the case of a revocable sale, a person possessing an option can cancel such sale.

Article 377. A conditional sale becomes effective when the necessary permission is given.

Article 378. In the event of a sale by an unauthorized person, such sale is executory if the owner of the property, or his agent, or his tutor, or his guardian give their permission. Otherwise it is of no effect. For the permission to be effective, however, it is necessary for the vendor, the purchaser, the person giving permission and the thing sold to be in existence. If any of these is absent, the permission is invalid.

Article 379. In the case of sale by barter, the conditions applicable to a thing sold also apply, since the value of the two things exchanged is considered to constitute a thing sold. If a dispute arises as to delivery, however, the two parties to the sale must respectively give and take delivery simultaneously.

### SECTION III.

#### *Sale by immediate payment against future delivery.*

Article 380. A contract of sale by immediate payment against future delivery is concluded by offer and acceptance, as in the case of sale.

#### *Example :-*

A purchaser tells a vendor that he has paid a thousand piastres immediately against future delivery of one hundred *kilés* of corn. The vendor agrees. A contract of sale by immediate payment against future delivery has been concluded.

Article 381. A sale by immediate payment against future delivery can only be concluded validly with reference to things the quantity and quality of which can be determined; for example, the highest or lowest.

Article 382. The amount of things estimated by measure of capacity or by weight or by length is fixed by the *kilé*, the weight, or the yard.

Article 383. The amount of things estimated by enumeration and which closely resemble each other may be measured by counting, and also by the *kilé* and by weight.

Article 384. In the case of things estimated by enumeration, such as burnt bricks and sundried bricks, the mould thereof must be made known.

Article 385. The length, breadth and thickness of things measured by length, such as linen and woollens, the material they are made from, and the place in which they were made, must be stated.

Article 386. It is essential to the validity of a sale by immediate payment against future delivery that the type of thing sold should be stated; for instance, corn, rice or dates: and the particular variety; for example, whether produced by rain or by irrigation: and the quality; for example, the highest or the lowest: the amount of the price of the thing sold, and the time and place of delivery thereof must also be stated.

Article 387. It is essential to the validity of a sale by immediate payment against future delivery that the price should be paid at the meeting where the contract is concluded. If the two contracting parties separate before the price is handed over, the contract is cancelled.

#### SECTION IV.

##### *Contract for manufacture and sale.*

Article 388. If a person requests a skilled workman to make a certain thing for a certain sum of money and the latter undertakes to do so, a contract for manufacture and sale has been concluded.

*Examples :-*

(1) A purchaser displays his foot to a boot-maker and asks him to make a pair of boots from such and such leather for so many piastres and the latter agrees to do so; or a bargain is struck with a ship's carpenter for the building of a rowing boat or ship, after describing the length, breadth and essential qualities thereof. A contract for manufacture and sale has been concluded.

(2) A bargain is concluded with a manufacturer for the production of a certain number of needle guns at so much per gun, after describing the length and size thereof, and other requirements. A contract for manufacture and sale has been concluded.

Article 389. A contract for manufacture and sale is generally valid if it is customary to conclude such a contract. If a period is prescribed, however, in respect to things to which no such custom applies, the conditions applicable in the case of immediate payment against future delivery are in force. If no period is prescribed, however, the contract is in the nature of a contract for manufacture and sale.

Article 390. In the case of contract for manufacture and sale, an identification and description of the article must be given as required.

Article 391. It is not essential to a contract for manufacture and sale, that the money should be paid immediately.

Article 392. After the conclusion of a contract for manufacture and sale, neither party can go back on the bargain they have struck. If, however, the object manufactured is not in accordance with the specification, the person who has given the order may exercise an option.

## SECTION V.

*Sale by a person suffering from a mortal sickness.*

Article 393. If a person suffering from a mortal sickness sells a thing to one of his heirs, such sale is dependent upon the permission of the other heirs. If such heirs give their permission after the death of the person suffering from the mortal sickness, such sale becomes executory. If they do not so give their permission, it is not executory.

Article 394. If a person suffering from a mortal sickness sells a thing to a person who is not one of his heirs at the time of his death for a price equal to the value of such thing, such sale is valid. If he gives favourable terms, that is to say, sells such thing for less than its value and gives delivery thereof, and one third of his property allows thereof, and thereafter dies, the sale is valid. If a third of his property is insufficient to allow of such favourable terms, the purchaser must make good such deficiency. If he does not do so, the heirs can cancel the sale.

*Examples:-*

(1) A person suffering from a mortal sickness, and who owns nothing but a house worth one thousand five hundred piastres, sells and delivers such house to a person who is not one of his heirs for one thousand piastres. Such sale is valid, since the five hundred piastres which he has made a subject of his generosity do not exceed a third of his property, and the heir cannot cancel the sale.

(2) If a person suffering from a mortal sickness sells and delivers the house for five hundred piastres, the purchaser is obliged to increase the price to two thirds, upon being requested to do so by the heirs, since the thousand piastres which he has made the subject of his generosity is twice as much as one third of his

property. If he does so, the buyer must accept the sale. If he fails to do so, the seller may rescind the sale and demand the return of the property.

Article 395. If a person who is insolvent or who is overburdened by debts and who is suffering from a mental infirmity sells his property for a price less than its fair value and then dies, the creditors may sue the purchaser to make good the balance of the price. If the purchaser does so, the creditors can cancel the sale.

## BOOK II.

### HIRE.

Article 396. In a contract of hire, the hirer may return the thing hired to the vendor before it is sold. The purchaser has no right to demand the thing and claim back the price.

Article 397. A contract of hire may be terminated by redemption, may not be terminated by the death of either the vendor or the purchaser.

Article 398. A contract of hire may be terminated by a portion of the price of the thing hired being paid to the purchaser.

#### *Example 1-*

If it is mutually agreed that a certain quantity of grapes of a vineyard shall be hired to the purchaser, the contract may be terminated by the payment of a portion of the price of the grapes to the purchaser.

Article 399. If a contract of hire is terminated by redemption, the thing hired perishes while in the possession of the purchaser, the debt which it secures is extinguished.

property. If he does so, the heir cannot cancel the sale. If he fails to do so, the heirs can cancel the sale and demand the return of the house.

Article 395. If a person whose estate is overwhelmed by debts and who is suffering from a mortal sickness sells his property for a price less than the true value and then dies, the creditors can oblige the purchaser to make good the balance of the price. If he does not do so, the creditors can cancel the sale.

#### SECTION VI.

##### *Sale subject to a right of redemption.*

Article 396. In sale subject to a right of redemption the vendor may return the price and claim back the thing sold. The purchaser likewise can return the thing sold and claim back the price.

Article 397. A thing sold subject to a right of redemption may not be sold to any other person by either the vendor or the purchaser.

Article 398. A condition may validly be made that a portion of the profits of the thing sold shall be for the purchaser.

##### *Example :-*

If it is mutually agreed to make a contract that the grapes of a vineyard sold subject to a right of redemption shall be equally divided between vendor and purchaser, the contract must be carried out.

Article 399. If property sold subject to a right of redemption is equal to the amount of the debt and perishes while in the possession of the purchaser, the debt which it secures is cancelled.

Article 400. If the value of the property sold subject to a right of redemption is less than the debt and perishes while in the possession of the purchaser, a sum equivalent to the amount of the debt is deducted, and the purchaser can claim the return of the balance from the vendor.

Article 401. If the value of the property sold subject to a right of redemption is greater than the amount of the debt and perishes while in the possession of the purchaser, a sum equivalent to the amount of the debt is deducted. If the purchaser has been guilty of some wrongful act, he must make good the balance. If he has not been guilty of any wrongful act, and the property has been destroyed, the purchaser is not obliged to make good the balance.

Article 402. If one of the two parties to a sale subject to a right of redemption dies, the right of cancellation is transmitted to his heirs by way of inheritance.

Article 403. No other creditors of the vendor have the right of interfering with property sold subject to a right of redemption, until the purchaser thereof has recovered payment of what is due to him.

*Promulgated by Royal Iradah, 8th. Muharram, 1286.*



Article 410. The lessee is the person who takes on hire.

Article 411. The thing hired is the thing which is given on hire.

Article 412. Property given to work upon is property handed to a person employed by the employer, so that the person employed may do the work which has been entrusted to him, such as stuff given to a tailor to make into clothes, or a load given to a porter to carry.

Article 413. The employee is the person giving his services on hire.

Article 414. Estimated rent is the rent fixed by disinterested experts.

Article 415. Fixed rent is the rent mentioned and fixed at the time of the conclusion of the contract.

Article 416. Indemnification consists of giving a similar thing if it is a thing the like of which can be found in the market, or the value thereof, if it is a thing the like of which cannot be found.

Article 417. Prepared for hire is said of any thing designed and prepared to be let on hire. It relates to real property such as inns, houses, baths and shops originally built or bought in order to be let on hire, and also such things as carriages and horses let on hire. If a thing is let continuously on hire for a period of three years, it is a proof that it is prepared for hire. If a person has a thing made for himself and tells people that it is prepared for hire, such thing is deemed to be prepared for hire.

Article 418. A hirer of a wet nurse is a person who hires a nurse to give milk to a baby.

Article 419. Partition of usufruct consists of a division of benefit.

*Example :-*

Two persons who are joint owners of a house agree to take the benefit arising therefrom separately in alternate years.

## CHAPTER I.

### GENERAL.

Article 420. In a contract of hire, the subject matter of the contract consists of some advantage to be derived from such contract.

Article 421. Hire in relation to the subject matter of the contract is of two categories. The first is a contract for hire made with reference to an interest in specific things. The thing which is the subject of hire is called both the object given on hire and the object taken on hire. The first category is divided into three classes.

The first class relates to the lease of real property, such as the hire of houses and lands.

The second class relates to the hire of merchandise such as the hire of clothes and utensils.

The third class relates to the hire of animals.

The second category is a contract of hire with regard to labour. In this category, the person hired is called the employee, as in the case of workmen and servants employed for a wage. Hiring the services of craftsmen and artisans is also included in this category.

*Example :-*

A contract for manufacture and sale is concluded when clothes are ordered to be made by a tailor who supplies the cloth. If the cloth is given to the tailor in

order that he should make the clothes, such person's labour has been hired.

Article 422. Employees are of two classes.

The first class comprises private employees, that is, persons whose services are retained by one employer only, as in the case of a servant paid a monthly wage.

The second class comprises public employees, that is persons who are not bound by an undertaking not to work for more than one employer.

*Example :-*

Porters, brokers, tailors, clock-makers, jewellers, harbour boatmen, cab-drivers, and village shepherds are all public employees; that is, persons who are not employed specially by one particular individual, but work for anyone. But if any one of such persons undertakes to give his services on hire to one employer only for a specific period, he becomes during that period a private employee. Again, a porter, or a cab-driver, or a boatman who gives his services on hire to one employer alone to take such employer to a certain place, and who works for no other person is, until he arrives at his destination, a private employee.

Article 423. The person employing a private employee may be one single individual or several persons contemplated as one individual only. Consequently, when the inhabitants of a village hire the services of a shepherd for themselves alone by means of a single contract, such shepherd becomes a private employee. But should those persons permit the shepherd to tend some other person's animals, such shepherd becomes a public employee.

Article 424. The wages of a public employee are due when the work is done.

## BOOK II

### HIRE.

#### INTRODUCTION.

#### TERMS OF MUHAMMADAN JURISPRUDENCE RELATING TO HIRE.

Article 404. Rent is hire, that is to say, the price paid for the use of a thing; letting is giving on hire, and hiring is taking on hire.

Article 405. *Has no meaning for the English reader.*

Article 406. An irrevocable contract of hire is any valid contract of hire which is not burdened by a contractual option, or by an option for defect or by an option for inspection, and which neither of the parties may cancel without some lawful excuse.

Article 407. An immediate contract of hire is a contract of hire which comes into force immediately upon the conclusion of the contract.

Article 408. A future contract of hire is a contract of hire which comes into force as from some definite future date.

#### *Example:-*

A house is given on hire as from the beginning of some future month for a certain period and for a certain sum of money. A future contract of hire has been concluded.

Article 409. The lessor is the person who gives on hire.

100 Article 425. The wages of a private employee are due if he is ready to work during the period for which his services were hired. It is not essential that he should actually have performed the work. He cannot, however, decline to do the work. If he does so, he is not entitled to his wages.

Article 426. A person who is entitled to a definite advantage arising out of a contract of hire may obtain enjoyment of such advantage or the equivalent thereof, or of some lesser advantage. He cannot, however, obtain any greater advantage.

*Examples :-*

(1) A blacksmith hires a shop in order to carry on his trade there. He can carry on any other trade there which causes no greater injury to the lessor, or a trade causing a lesser degree of injury.

(2) If a person does not live in a house which he has hired for purposes of habitation, he may store goods therein. But he may not carry on trade as a blacksmith in a shop which he has hired as a grocer's shop.

Article 427. Anything which becomes altered by any change in the person using it may validly be made the subject of a restriction.

*Example :-*

A person hires a horse to ride himself. No other person may ride it.

Article 428. Any restriction imposed in connection with any thing which does not become altered by any change in the person using it is inoperative.

*Example :-*

A hires a house to dwell in. B can also dwell in it.

Article 429. The owner of a share of undivided jointly owned property may let such share to his co-owner

whether such share is capable of division or not. He may not let it to any other person. He may, however, after a partition of the usufruct has been made, let his share to some other person.

Article 430. The existence of undivided shares of jointly owned property after the conclusion of a contract of hire does not invalidate such contract.

*Example :-*

A lets his house and after doing so a half share is seized by a person entitled thereto. The lease relating to the other undivided share remains in force.

Article 431. Two joint owners may simultaneously let property jointly owned to some other person.

Article 432. One particular thing may be let to two particular persons. Each one must pay the amount of the rent which falls to his own share. The share of one may not be obtained from the other unless they are guarantors of one another.

## CHAPTER II

### QUESTIONS RELATING TO THE CONTRACT OF HIRE.

#### SECTION I.

*The fundamental basis of the contract of hire.*

Article 433. As in the case of sale, the contract of hire is concluded by offer and acceptance.

Article 434. In a contract of hire, statements made indicative of offer and acceptance are such expressions as "I have given on hire", "I have let", "I have taken on hire" and "I have accepted".

Article 435. As in the case of sale, the contract of hire is concluded by the use of the past tense. It cannot be concluded by the use of the future tense.

*Example:-*

A says "I will give on hire" and B says "I have taken on 'hire'"; or A says "hire" and B says "I have hired".

In both cases no contract of hire has been concluded.

Article 436. A contract of hire may be concluded by word of mouth, or by writing, or by the use of generally recognized signs by dumb persons.

Article 437. A contract of hire may also be concluded by conduct. Thus, if a traveller boards a steam boat or a harbour rowing boat or rides a hired pony, the rate of hire of which is well known, without concluding any oral contract, the amount of hire involved must be paid. If such rate is not known, an estimated rate must be paid.

Article 438. In a contract of hire, silence is considered to indicate assent and acceptance.

*Examples :-*

(1) A leases a shop at a monthly rent of fifty piastres. After staying there for a few months, the lessor informs him that if he agrees to pay sixty piastres on the first of the month he can remain, but if not, he must leave. A refuses to pay sixty piastres and remains in the shop. He is only obliged to pay fifty piastres as hitherto. If, however, he remains silent and continues to reside in the shop without interruption, he must pay a monthly rent of sixty piastres.

(2) An owner of a shop proposes a rent of one hundred piastres and the lessee a rent of eighty piastres. The owner leaves the lessee, who remains in the shop. The rent is eighty piastres. If the two parties persist in their contention, and the lessee remains in possession, an estimated rent must be paid.

Article 439. If fresh negotiations are commenced after the conclusion of the contract with regard to any change, increase or decrease of the rent, the second contract takes the place of the first.

Article 440. A contract of hire may validly be concluded to take effect at some future date. It is irrevocable, although it may not yet have come into force. Consequently, neither of the contracting parties may cancel such contract merely on the ground that it has not yet come into force.

Article 441. If after the conclusion of a valid contract of hire, some other person offers a higher rent, the contract of hire may not be cancelled by the lessor by reason of that fact alone. If a guardian or trustee of a pious foundation, however, lets the real property of an orphan or of a pious foundation for a rent which is less than the estimated rent, the contract of hire is voidable and the rent must be increased to the estimated rent.

Article 442. If the person taking the property on hire becomes owner of the hired property in any manner, such as by way of inheritance or gift, such property loses its quality of hired property.

Article 443. If any event happens whereby the reason for the conclusion of the contract disappears, so that the contract cannot be carried out, such contract is cancelled.

*Examples :-*

- (1) A cook is hired for a wedding feast. One of the spouses dies. The contract of hire is cancelled.
- (2) A person suffering from toothache makes a contract with a dentist to extract his tooth for a certain fee. The pain ceases. The contract of hire is cancelled.



(3) A person seeking a wet-nurse dies. The contract of hire is not cancelled. But upon the death of the child or the wet-nurse, such contract is cancelled.

#### SECTION II.

#### *Conditions relating to the conclusion and execution of the contract of hire.*

Article 444. To conclude a contract of hire, the two contracting parties must possess the requisite capacity, that is to say, they must be of sound mind and perfect understanding.

Article 445. In a contract of hire offer and acceptance must agree and the parties must meet together at the same time and place, as in the case of sale.

Article 446. The person letting a thing on hire must be the owner of the thing he lets on hire, or the agent of the owner, or his tutor or guardian.

Article 447. If any unauthorized person lets anything on hire, such letting is dependent upon the ratification of the owner, and if the owner is a minor or is mad, and a contract of letting on hire has been concluded for an estimated rent, such contract is dependent upon the ratification of the tutor or guardian. There are four essentials to the validity of such permission, which remain constant: the two contracting parties; the property; the subject matter of the contract; and the rent, should it be payable from merchandise. If one of these essentials is lacking, the permission is invalid.

#### SECTION III.

#### *Essentials to the validity of a contract of hire.*

Article 448. The consent of the two contracting parties is essential to the validity of a contract of hire.

Article 449. The subject matter of the contract of hire must be specified. Consequently, if one of two shops is let on hire, without the particular shop in question being specified, and the lessee being given an option as to which one he will take, such contract is invalid.

Article 450. The rent must be clearly ascertained.

Article 451. In a contract of hire, the advantage to be derived from the subject matter of the contract must be specified in such a manner as to avoid any possibility of dispute.

Article 452. In the case of the hire of such things as houses, shops and a wet-nurse, the advantage to be derived therefrom is defined by stating the period of hire.

Article 453. In the case of hire of a horse, it must be stated whether such horse is to be used as a draught horse, or a riding horse, and if so, who is to ride it: or it may be stated in general terms that whosoever wishes may ride such horse, and the period for which the contract is concluded, or the distance, must also be stated.

Article 454. In the case of hire of land, the period of hire must be stated; the purpose for which such land is to be used; and, if it is to be used for cultivation, the nature of the things to be planted; or, if the person taking such land on hire so desires, a statement in general terms must be made to the effect that he may plant whatever he likes.

Article 455. In the case of hire of the services of skilled workmen, the advantage to be derived from the services of such workmen may be specified by stating the nature of the work, that is to say, what work is to be done and how it is to be performed.

*Example :-*

When clothes are to be dyed, they must be shown to the dyer, the texture thereof must be specified, and the colour stated.

Article 456. In the case of transport of goods, the advantage to be derived therefrom is specified by indicating them, and by stating the place to which they are to be transported.

*Example :-*

A instructs B to carry a certain load to a certain place. The advantage to be derived therefrom is specified by such load being inspected and the distance being made known.

Article 457. The advantage to be derived from the thing hired must be capable of enjoyment. Consequently, a contract of hire in respect to a runaway animal is invalid.

## SECTION IV.

*Nullity or voidability of the contract of hire.*

Article 458. If one of the conditions essential to the conclusion of a contract of hire is absent, such contract is void.

*Example :-*

A contract of letting or taking on hire entered into by a madman or by a minor of imperfect understanding is void. But if the person giving or letting on hire becomes mad after the conclusion of the contract, such contract is not cancelled.

Article 459. If a contract of hire which is void is carried out the amount of the hire need not be paid. But if the property is dedicated to pious purposes, or belongs to orphans, an estimated rent must be paid. A madman is treated on the same basis as an orphan.

Article 460. If the conditions requisite for the conclusion of a contract of hire are present, but one of the conditions essential to the validity of the contract is absent, the contract of hire is voidable.

Article 461. A voidable contract of hire is executory. But in a voidable contract of hire, the person giving on hire is not entitled to the fixed rent, but to the estimated rent only.

Article 462. The voidability of a contract of hire sometimes arises from the amount of the hire not being known and sometimes owing to the absence of other conditions essential to the validity of the contract. In the first case, the estimated rent must be paid, whatever the amount thereof may be. In the second case, the estimated rent is payable, provided that it does not exceed the fixed rent.

### CHAPTER III.

#### QUESTIONS AFFECTING THE AMOUNT OF THE HIRE.

##### SECTION I.

##### *Rent.*

Article 463. A thing which is valid as the price in a contract of sale, may be the rent in a contract of hire. On the other hand, a thing which is not valid as the price in a contract of sale may nevertheless be valid as the rent in a contract of hire.

##### *Example :-*

A garden may be taken on hire in exchange for an animal, or in exchange for the right of dwelling in a house.

Article 464. If the rent is cash, the amount thereof must be clearly ascertained, as in the case of the price of a thing sold.

Article 465. If the rent consists of merchandise, or things estimated by measure of capacity, or by measure of weight, or things estimated by enumeration and which closely resemble each other, such rent must be made known by stating both the amount and description thereof.

In the case of things which require loading and entail expense on account of transport such things must be delivered at the place agreed upon for delivery. If no place has been designated for delivery and the thing hired consists of real property, delivery of such real property must be given at the place where such real property is situated, and if it consists of labour, delivery thereof must be given at the place where the person hired performs his work; if it consists of loading, delivery thereof must be given in the place where the hire becomes payable.

In the case of things which do not require loading and do not entail expense on account of transport, however, delivery thereof must be given at any place that may be required.

#### SECTION II.

*Necessity for rent: right of the person giving on hire to take rent.*

Article 466. Rent does not become payable irrevocably by the conclusion of an unconditional contract: that is to say, there is no necessity to hand over the rent immediately, owing to the mere conclusion of a contract of hire.

Article 467. Rent which is payable immediately is irrevocable: that is to say, if the person taking the thing on hire pays the rent in advance, the person letting the thing on hire becomes the owner thereof, and the person taking the thing on hire cannot demand the return thereof.

Article 468. Rent with a condition for immediate payment is irrevocable; that is to say, if it is stipulated that rent must be paid in advance, the person taking the thing on hire is bound in any case and first of all to hand over the rent, whether the contract of hire is for the use of some specific thing, or for the performance of any piece of work.

In the first case, the person letting the thing on hire may refuse to hand over the thing hired until the rent has been paid. In the second case, the person giving his services on hire may refuse to perform the work until his wages have been paid.

In both cases, if the person letting the thing on hire demands payment of the rent in advance and the person taking the thing on hire refuses, the contract of hire may be cancelled.

Article 469. Rent becomes payable when the thing is put to the use for which it is hired.

*Example :-*

A the owner of a horse, lets such horse on hire to B in order that he may ride it to a certain place. Upon arrival at that place, A is entitled to the amount of the hire.

Article 470. In a valid contract of hire, the rent is also payable when there is ability to put the thing to the use for which it was hired.

*Example:-*

A takes possession of a house which he has taken on hire by means of a valid contract of hire. A is obliged to pay the rent, even though he does not inhabit such house.

Article 471. In a voidable contract of hire, mere ability to put the thing to the use for which it was hired is not enough. The rent is not payable unless the thing is actually put to the use for which it was hired.

Article 472. If a person uses the property of another person without the conclusion of a contract and without such person's permission, and if it is property prepared for hire, an estimated rent must be paid, but not otherwise. But if the owner of the property has previously demanded payment of rent, and such person uses such property, rent is payable, even though no benefit can be derived from such property. The reason for this is that by using the property, such person is deemed to have agreed to pay the rent.

Article 473. Effect is given to any condition agreed upon by the two contracting parties regarding immediate or deferred payment of the rent.

Article 474. If a stipulation is made for a deferred payment of the price of the hire, the person giving the thing on hire must first of all deliver such thing; and a person giving his services on hire, must perform his work. The price of the contract of hire is not payable until after the expiration of the period agreed upon.

Article 475. If an unconditional contract of hire is concluded for the use of some specific object, or for the performance of any piece of work, and no stipulation is made as to immediate or deferred payment, the person giving the thing on hire must in any case first of all give

delivery of the thing hired, and the person giving his services on hire must perform the work.

Article 476. If the rent is payable by some specified period, such as monthly or yearly, such rent must be paid at the expiration of that period.

*Example :-*

Rent payable monthly must be paid at the end of the month. Rent payable yearly must be paid at the end of the year.

Article 477. When the rent falls due, delivery must be given of the thing hired; that is to say, rent falls due as from the time of delivery. Thus, the person giving the thing on hire is not entitled to rent in respect to the period expiring prior to delivery. If the period of hire terminates prior to delivery, no part of the rent is payable.

Article 478. If the benefit to be obtained from the thing hired is entirely lost, no rent is payable.

*Examples:-*

(1) A bath is in need of repairs. If it cannot be used during that period, the portion of the rent corresponding to such period is deducted.

(2) The water of a mill is cut off and the mill remains idle. No rent is payable from the time at which the water was cut off. But if the person hiring the mill uses it for any purpose other than that of grinding corn, such person is bound to pay a portion of the rent corresponding thereto.

Article 479. If a person takes a shop on hire and is given delivery thereof and alleges that on account of slackness of business his trade has stopped and his shop has been shut, such person cannot refuse to pay rent for that period.



Article 480. If a boat is taken on hire for a certain period, and the period of such hire expires while on the journey, the period of hire is extended until the shore is reached. The person taking the boat on hire must pay an estimated rent in respect to such excess period.

Article 481. If one person gives his house to another person in order that the latter may repair it and live in it rent free, and such person does in fact effect such repairs himself and dwells in such house for a certain period, the expenses occasioned by such repairs fall upon such person, since the giving of the house is in the nature of a loan for use. The owner of the house cannot claim anything from him by way of rent in respect to such period.

SECTION III.

*Right of lien of a person to whom a thing has been entrusted to work upon.*

Article 482. A person hired to do work, and whose work causes a change in the thing given to him to work upon, such as a tailor, a dyer, or a cleaner, and who has made no contract whereby his work is to be done on a credit basis, has a right of retention over the thing entrusted to him to work upon, for payment of his wage. If he exercises such right of retention and the property is destroyed while in his possession, he cannot be called upon to make good the loss. He cannot, however, claim his wages in addition.

Article 483. A person hired to do work, and whose work causes no change in the thing upon which he works, such as a porter or a sailor, has no right of retention over the thing upon which he is working, for payment of his wage. Thus, if he exercises a right of

retention and the property is destroyed while in his possession, he is liable to make good the value thereof.

The owner of the property has an option either of claiming compensation on the basis of the value of the thing destroyed, plus cost of transport and of paying the wages, or of merely claiming the value of the thing destroyed, without paying the wages.

#### CHAPTER IV.

##### THE PERIOD OF HIRE.

Article 484. A person may give his property on hire, whatever the form of ownership, for a fixed period, whether of short duration, such as a day, or whether of long duration, such as a period of years.

Article 485. The commencement of the period of hire is deemed to be the time named when the contract was concluded.

Article 486. If no time is mentioned as the commencement of the period of hire when the contract is concluded, such time is deemed to be the time when the contract was concluded.

Article 487. Real property may validly be let on hire for a period of a year, either at a rent of so much per month, or of so much for the year, without stating the rent per month.

Article 488. If a contract of hire is made at the beginning of the month for a period of one month, or for any period in excess thereof, such contract is a monthly contract. In such a case, if the month is less than thirty days, a full month's rent must be paid.

Article 489. If a contract is made for a period of one month and a portion thereof has expired, the period of one month is considered to consist of thirty days.

Article 490. If a portion of the month has expired and a contract has been concluded for a period of months, and the first month is not complete, such month is completed by the payment of rent at so much per day, from<sup>d</sup> days taken from the last month, so as to make thirty days. The intervening months are calculated as from the first day of each lunar month.

Article 491. If a portion of the month has expired and the number of months is not expressed, and a certain sum is agreed upon as being payable as rent for each month, the first incomplete month is considered to consist of thirty days in the same manner as the other months.

Article 492. If a contract of hire is concluded for a period of one year at the beginning of the month, the year is considered to consist of twelve months.

Article 493. If a portion of the month has expired and a contract of hire has been concluded for a period of one year, the first month is calculated according to days, and the other eleven months as from the first of the lunar month.

Article 494. If real property is hired at a rent of so much per month and the number of months is not mentioned, a valid contract has been concluded. Upon the completion of the first month, however, both the person giving and the person taking such real property on hire may cancel the contract of hire on the first night and day of the second and subsequent months. If the first night and day, however, have expired, such contract cannot be cancelled. If one of the two contracting parties alleges that he has cancelled the contract during the course of the month, such contract is cancelled as from the end of the month. If during the course of the month one of the parties states that he has cancelled the contract as

from the beginning of the following month, such contract is cancelled as from the beginning of the following month. If payment is made in advance for two or more months, neither party may cancel the contract of hire in respect to those months.

Article 495. If a person hires another to work for a day from sunrise to the time of evening prayer or till sunset, the conditions prescribed by local custom must be observed as regards the performance of the work.

Article 496. If a person is hired to work for a period of days, as for example, a carpenter for a period of ten days, the contract is presumed to be concluded with reference to the days following. If he is hired to do ten days work during the summer, the contract of employment is invalid unless the month is stated and the day from which the work is to commence.

## CHAPTER V.

### OPTIONS.

#### SECTION I.

##### *Contractual options.*

Article 497. A contractual option exists in the case of hire, as in the case of sale. Either or both of the parties may give or take on hire, subject to an option of a certain number of days.

Article 498. The person having the option may cancel the contract of hire during the period of the option or may ratify such contract.

Article 499. Both cancellation and ratification may be by word of mouth, or in writing, or by conduct, as is set forth in Articles 302, 303 and 304. Consequently, if

the person giving on hire possesses an option and performs any act with regard to the thing hired indicative of the exercise of a right of ownership, the contract of hire is cancelled by conduct. If the person taking on hire possesses an option and performs any act with regard to the thing hired indicative of the exercise of the right of a lessee, the contract of hire is ratified by conduct.

Article 500. If the person possessing an option allows the period of the option to expire without cancelling or carrying out the contract, the option is lost and the contract of hire becomes irrevocable.

Article 501. The period of option is presumed to run from the time of the conclusion of the contract.

Article 502. The commencement of the contract of hire is presumed to run from the time when the option was lost.

Article 503. If a piece of land taken on hire and said to consist of so many yards or donums proves to be of greater or smaller extent, the contract of hire is valid and the fixed rent becomes payable. Should it prove to be smaller, however, the person taking the land on hire has the option of cancelling the contract of hire.

Article 504. If a piece of land is taken on hire at so much per donum the rent is payable at so much per donum.

Article 505. If a wage is fixed as payment for work to be performed by a given period, the contract of hire is valid and the condition effective.

*Examples:-*

- (1) A gives cloth to a tailor to be cut up and made into a shirt to be ready on the same day.

(2) A hires a camel from B to carry him to Mecca in so many days.

In both cases the contract of hire is executory, and if the person giving the thing on hire fulfils the condition, he can claim the fixed wage. If he fails to do so, however, he is entitled to an estimated wage, provided such wage does not exceed the fixed wage.

Article. 506. The wages may validly be fixed alternatively in two or three ways as regards the work, the workman, the load, the distance, the place and the time, and the wages must be paid according to whichever way the work is carried out.

*Examples:-*

(1) A contract is made for back-stitching a thing for so much, and for over-stitching it for so much. The wages must be paid according to the way in which it is sewn.

(2) A contract is concluded for so much in respect to a shop to be used as a perfumery and for so much as a forge. The person taking the thing on hire must pay the fixed rent according to the way in which he uses the shop.

(3) A contract is concluded to load corn on a draught animal for so much and iron for so much. The hire agreed upon must be paid according to the load used.

(4) A muleteer states that he has let a particular animal on hire to go to *Chorlu* for one hundred piastres and to *Adrianople* for two hundred piastres and to *Philippolis* for three hundred piastres. The person taking the animal on hire must pay a sum corresponding to the place to which he goes.

(5) A states that he has let one particular house on hire for one hundred piastres and another house for two hundred piastres. The person taking the house on hire agrees. Such person must then pay the fixed rent according to whichever house he lives in.

(6) A hands a cloak to a tailor stating that he will pay fifty piastres if it is stitched on the same day, and thirty piastres if it is stitched on the following day. The contract is executory and the condition is valid.

## SECTION II.

### *Option of inspection.*

Article 507. The person taking the thing on hire has an option of inspection.

Article 508. An inspection of the thing hired is equivalent to an inspection of the advantage to be derived therefrom.

Article 509. If a person takes a piece of real property on hire without seeing it, he may exercise an option as soon as he sees it.

Article 510. If a person takes on hire a house which he has seen previously, he has no option of inspection in respect to such house. However, if the place is dilapidated and unfit for habitation to such an extent that its original form is changed, such person may exercise an option.

Article 511. A person hired to do a piece of work which changes in accordance with any change in the subject-matter of such work, has an option of inspection.

#### *Example :-*

An agreement is concluded with a tailor to stitch a cloak. Upon seeing the cloth or the cloak, the tailor may exercise an option.

Article 512. There is no option of inspection attaching to a thing which is not changed in accordance with any change in the subject-matter of such work.

*Example :-*

A contract is made to clean a certain amount of cotton seed for a certain sum of money. Although the person so employed has not seen the cotton seed, he has no option of inspection.

## SECTION III.

*Option for defect.*

Article 513. There is an option for defect in the case of a contract of hire, as in a contract of sale.

Article 514. In a contract of hire, the circumstance which creates an option on account of defect is something which causes the complete loss of or interference with the benefits sought to be obtained.

*Example :-*

A house is entirely destroyed; the utility of a mill is negatived by the water being cut off; the frame of the roof of a house sinks; a place is knocked down so as to be unsuitable for habitation; the back of a horse which is hired is injured by galling. In all these cases there is an option for defect if they are taken on hire, on account of the benefits sought to be obtained, being destroyed. But defects which do not interfere with the benefits sought to be obtained give no right to an option for defect in the case of a contract of hire, as where the plaster of a house falls off, but not to such an extent that rain and cold can enter; or where the mane or tail of a horse is cut.

Article 515. If a defect occurs in the thing hired before such thing has been put to the use for which it was hired, such defect is considered to have existed at the time the contract was concluded.

Article 516. If a defect occurs in the thing hired, the person taking the thing on hire may exercise an option. He may either put the thing hired to the use



for which it was hired in spite of the defect, in which case he must pay the whole of the rent, or he may cancel the contract of hire.

Article 517. If the person giving a thing on hire removes a defect of recent origin before the cancellation of the contract of hire by the person taking such thing on hire, the latter has no right of cancellation. And if the person taking the thing on hire wishes to take possession thereof for the remainder of the period, the person giving such thing on hire cannot prevent him from doing so.

Article 518. If the person taking a thing on hire wishes to cancel the contract of hire prior to the removal of a defect of recent origin which prevents the thing hired being put to the use for which it was hired, such person may cancel the contract in the presence of the person giving the thing on hire. He may not do so in his absence. If he cancels the contract in the absence of the person giving the thing on hire, that is to say, without giving him notice thereof, such cancellation is of no effect, and the rent continues to be payable as heretofore.

If the benefits sought to be obtained are entirely lost, however, the contract may be cancelled in the absence of the person giving the thing on hire.

Whether the contract is cancelled or not the rent is not due, as is set forth in Article 478.

*Example:-*

A place collapses and destroys the use to which a house taken on hire can be put. The person taking the house on hire may cancel the contract of hire. The cancellation, however, must take place in the presence of the person letting the house on hire. If he fails to give notice and leaves the house, he is bound to pay rent as though he had not left the

house. If the house is entirely destroyed, however, the person taking the house on hire may cancel the contract without the necessity of doing so in the presence of the person giving the house on hire. In any case the rent is not due.

Article 519. If a room or a wall of a house collapses and the person taking the house on hire does not cancel the contract of hire, but dwells in the rest of the house, no portion of the rent is remitted.

Article 520. If a person takes two houses on hire together for a certain sum of money and one of them collapses, he may leave both of them together.

Article 521. If a house taken on hire as containing so many rooms proves to contain fewer rooms than the stipulated number, the person taking the house on hire has the option of cancelling the contract of hire or of agreeing to the contract of hire and of paying the fixed rent. If he carries out the terms of the contract of hire, however, he is not entitled to any reduction in the rent.

## CHAPTER VI.

### TYPE OF THING HIRED AND MATTERS RELATING THERETO.

#### SECTION I.

##### *Matters relating to the hire of real property.*

Article 522. A person may validly take a house or shop on hire without stating who is to live therein.

Article 523. If a person lets his house or shop on hire containing his goods or effects, the contract of hire is valid, but the person letting such house or shop on hire is bound to deliver the house or shop after taking out the goods or effects.

Article 524. If a person takes a piece of land on hire without stating what he will sow therein or without making a stipulation of a general nature to the effect that he may sow whatever he likes, the contract of hire is voidable. But if such matter is defined before cancellation, and the person giving the land on hire agrees thereto, such contract becomes a valid contract of hire.

Article 525. If a person takes a piece of land on hire with a right of sowing what he likes, he may cultivate such land more than once in a year with a view to winter and summer crops.

Article 526. If the period of the contract of hire expires before the crops are ripe, such crops may remain on the land until they are ripe, the person taking such land on hire paying an estimated rent.

Article 527. A person may validly conclude a contract of hire for a shop or house without stating the use to which it is to be put, which matter is settled according to custom.

Article 528. A person who takes a house on hire without stating the use to which it is to be put, may dwell in it himself or let some other person dwell therein, and may place his effects therein. He may perform any kind of work therein, provided it is not of such a nature as to weaken or damage the building. He may not perform any work of such a nature as to damage the building unless he receives the permission of the owner. Local custom is followed as regards the tethering of animals. The same stipulations are in force as regards shops.

Article 529. The person giving the thing on hire must put right anything likely to interfere with the benefits sought to be obtained from the thing hired.

*Examples :-*

(1) The owner must clean the water channel of a mill.

(2) Repairs and improvements to the house and water courses and pipes, the repair of things detrimental to habitation and other matters relating to the building must all be performed by the owner. If the owner refuses to do these, the person taking the house on hire may leave the same. If, however, such person was aware that the house was in that state when he took it on hire, he is considered to have agreed to the defect. He cannot later make this a pretext for leaving the house. If the person taking the house on hire does these things himself, such act is in the nature of a gift and he cannot claim the expenses incurred thereby from the person giving the house on hire.

Article 530. If the person taking property on hire does repairs with the consent of the person giving such property on hire, and such repairs are for the improvement of the property, such as changing the tiles of the roof, or preventing any harm being done thereto, the person taking the property on hire may call upon the person giving the property on hire to make good the expenses incurred by such repairs, even though no stipulation has been made to that effect. However, if such repairs are purely in the interest of the person taking the property on hire, such as repairing the oven of the house, the person taking the house on hire cannot claim the expenses from the person giving the house on hire, unless a stipulation has been made to that effect.

Article 531. If the person taking real property on hire erects buildings or plants trees thereon, the person giving such real property on hire has the option, on the expiration of the period of hire, either of having such building pulled down, or of having such trees uprooted, or of keeping them upon payment of the value thereof, whatever that may be.

Article 532. Dust, earth and sweepings which have accumulated during the period of the contract of hire must be cleaned and removed by the person taking the thing on hire.

Article 533. In the event of the person taking the thing on hire damaging such thing, the person giving such thing on hire, may, if he is unable to prevent such damage, apply to the Court for an order cancelling the contract of hire.

#### SECTION II.

##### *Hire of merchandise.*

Article 534. A valid contract of hire may be concluded for a definite period and for a definite rent with regard to movable property such as clothing, weapons and tents.

Article 535. If a person takes clothing on hire to go to any particular place, and fails to go to such place and wears them in his house, or does not wear them at all, he must nevertheless pay the hire thereof.

Article 536. A person who takes clothes on hire to wear himself may not give such clothing to another person to wear.

Article 537. Jewellery is treated on the same basis as clothing.

#### SECTION III.

##### *Hire of animals.*

Article 538. A contract may validly be made to take a specific animal on hire and a valid contract may also be made with an owner of animals to be carried to a specific place.

Article 539. If a specific animal is taken on hire to proceed to a certain place, and such animal becomes fatigued and stops on the way, the person taking such animal on hire has the option either of waiting till the animal gets better or of avoiding the contract of hire, in which case he is obliged to pay a portion of the fixed hire proportionate to the distance he has been carried.

Article 540. If a bargain has been struck to carry a certain load to a certain place and the animal becomes fatigued and stops on the way, the owner of the animal is bound to charge such load on to another animal and carry it to the place in question.

Article 541. A contract to take an unspecified animal on hire is of no effect. If such animal is specified after the conclusion of the contract, however, and the person taking such animal on hire agrees thereto, such contract is valid. But if it is customary to take an animal of no particular type on hire, such hire is valid, and is governed by such custom.

*Example :-*

A horse is hired from a horse-owner to take a person as far as a particular place, in accordance with custom. The owner is obliged to transport that person to such place by horse in accordance with the particular custom.

Article 542. In a contract of hire it is not enough to designate the end of a journey by mentioning the name of a particular territory, such as a *sanjak* or vilayet. On the other hand, this may validly be done if by custom the name of such territory is applied to a town.

*Example :-*

A valid contract of hire cannot be concluded to take an animal on hire to go to Bosnia or Arabia. The name of the town, township or village to which such person is going must be mentioned. The word *Sham*,

however, the name of a certain territory, is by custom applied to the town of Damascus, and therefore a valid contract may be concluded to hire an animal to go as far as *Sham*.

Article 543. If an animal is taken on hire to proceed to a certain place, and it so happens that there are two places of that name, an estimated sum by way of hire must be paid in respect to whichever place the person taking the animal on hire goes.

*Example:-*

An animal is taken on hire to proceed from Constantinople to *Chekmeje*, and it is not specified as to whether the animal is to go to Greater or Lesser *Chekmeje*. An estimated sum by way of hire must be paid according to the distance to the place in question.

Article 544. If an animal is taken on hire to proceed to a certain town, the person taking such animal on hire must be taken to his house in such town.

Article 545. A person who takes an animal on hire to proceed to a specified place may not go beyond that place without the permission of the owner. If he does in fact go beyond such place, the person taking such animal on hire is responsible for handing over the animal safe and sound, and if such animal is destroyed either on the outward or return journey, he must make good the loss.

Article 546. If an animal is taken on hire to go to a specified place, the person taking such animal on hire cannot go with him to another place. If he does so and the animal is destroyed, he must make good the loss.

*Example:-*

If an animal is taken on hire to go to *Tekfar Dagħ* but instead goes to *Islīmiyeh* and the animal is destroyed, the loss must be made good.

Article 547. If an animal is taken on hire to go to a specified place, and there are several roads leading thereto, the person taking such animal on hire may proceed by whichever road he prefers which is commonly used by the public. If the owner of the animal prescribes the road which is to be taken, and the person taking such animal on hire proceeds by another road and the animal is destroyed, the loss must be made good if the road taken is more winding or difficult than that prescribed by the owner of the animal. But if it is of equal length or easier, the loss need not be made good.

Article 548. The person taking the animal on hire for a specified period may not use it for longer than that period. If he does so, and the animal is destroyed while in his possession, he must make good the loss.

Article 549. A valid contract may be made to take an animal on hire to be ridden by a specified person. A valid contract may also be made in general terms to take an animal on hire to be ridden by anyone.

Article 550. An animal which is taken on hire for riding may not be used as a draught animal. If it is so used and the animal is destroyed, the loss must be made good. In this case, however, no hire need be paid. (See Article 86).

Article 551. If an animal is hired to be ridden by a certain person, no other person may ride such animal. If he does so, and the animal is destroyed, the loss must be made good.

Article 552. A person who has taken an animal on hire in order that it may be ridden by any person he likes, may either ride such animal himself, or allow some other person to do so. But whether he rides it himself



or allows some other person to ride it, once the particular person to ride such animal is known, no other person may ride it.

Article 553. If an animal is taken on hire for riding and it is not stated who is to ride it, nor laid down in general terms that any particular person who wishes may ride it, the contract of hire is voidable.

But if this is made clear before the contract is cancelled, such contract becomes valid. In this case also, once a particular person has been named no other person may be allowed to ride the animal.

Article 554. If an animal is taken on hire as a draught animal, local custom is binding as regards the saddle, rope and sack.

Article 555. If the amount of the load is not stated or made clear by signs, the amount of such load is determined by custom when an animal is taken on hire.

Article 556. The person taking an animal on hire may not beat such animal without the owner's permission. If he does so, and the animal is destroyed as a result thereof, he must make good the loss.

Article 557. If the owner gives his permission for an animal taken on hire to be beaten, the person taking the animal on hire may only beat such animal on a place where it is usual to do so. If he beats him on any other place, as for example, on the head, instead of the quarter, and the animal is destroyed as a result thereof, such loss must be made good.

Article 558. An animal hired to carry loads may also be used for riding purposes.

Article 559. When an animal is taken on hire and the nature and quantity of the load is stated, a load of

another nature equal to or lesser than such load may also be placed upon such animal. But no greater load may be placed thereon.

*Examples:-*

(1) A takes a horse on hire to carry five *kilés* of wheat. A may load five *kilés* of his own wheat, or of anybody else's wheat of whatsoever sort upon such horse. He may also load five *kilés* of barley. But he may not load five *kilés* of wheat on an animal hired to carry five *kilés* of barley.

(2) A hundred *okes* of iron may not be loaded upon an animal hired to carry a hundred *okes* of cotton.

Article 560. The owner of the animal taken on hire must unload such animal.

Article 561. The person giving the animal on hire is responsible for feeding such animal.

*Example:-*

The feeding and watering of an animal taken on hire fall upon the owner. If the person taking the animal on hire, however, feeds it without the permission of the owner, such feeding, is an involuntary gift and the value thereof cannot later be claimed from the owner.

SECTION IV.

*Hire of personal services.*

Article 562. A contract may validly be made for the hire of personal services or the performance of skilled labour for a specified period or in some other way, as by specifying the nature of the work, as is set forth in Section III of Chapter II.

Article 563. If a person works for some other person at the latter's request without entering into any contract in regard to the wage to be paid, he is

entitled to receive an estimated wage if he is of the class of persons who work for a wage. If he is not of such class, however, he is not entitled to receive anything.

Article 564. If a person requests some other person to do a certain piece of work for him and promises him something in return without mentioning the amount thereof, and such person does that work, he is entitled to an estimated wage.

Article 565. If a person employs workmen without fixing the amount of the wage to be paid, and if the daily wage of such workmen is known, they are entitled to receive the daily wage. If it is not known, they are entitled to an estimated wage.

The work performed by skilled workmen is also of this type.

Article 566. If a contract of hire is entered into with an employee whereby payment is to be made by giving a thing the like of which cannot be found in the market, and the nature of which has not been defined, an estimated wage must be paid.

*Example :-*

A calls B and asks B to work for him for a certain number of days in return for which A promises to give B a pair of oxen. There is no need to give the pair of oxen, but an estimated wage must be paid. It is customary, however, when a wet nurse is taken on hire for clothes to be made for her. If the nature of the clothes has not been defined beforehand, they are to be of medium quality.

Article 567. Tips given to servants from outside cannot be included in wages.

Article 568. If a teacher is employed to teach any science or art and the period is defined, the contract of

employment is concluded in respect to that particular period. Such person is entitled to his fee if he is ready and willing to teach, whether the pupil studies or not. If the period is not defined, the contract of hire is voidable. If the pupil studies under these circumstances, the teacher is entitled to his fee. If not, he is not entitled to his fee.

Article 569. If a person sends his son to a master to learn a trade and no agreement is made between the two as to the fee to be paid, and they both claim a fee after the boy has learnt the trade, the question is decided in accordance with local custom.

Article 570. If the inhabitants of a village hire the services of a *khoja* or an *imam* or a *muezzin*, and such persons perform their duties, they are entitled to receive their wages from the inhabitants of that village.

Article 571. When a person has been employed to do work personally, he may not employ anyone to do the work in his place.

*Example :-*

A contracts with B for B to sew him a cloak with his own hand for so many piastres. The tailor may not have it sewn by any other person. It must be sewn by B himself. If B has it sewn by any other person and it is destroyed, he must make good the loss.

Article 572. If an unconditional contract has been made, the employee may employ another person in his place.

Article 573. If the employer gives a definite order to the employee to do a certain piece of work, such order is unconditional.

*Example :-*

A instructs a tailor to sew a cloak for so much money without binding him to do the work personally.

After the conclusion of the contract, the tailor has the cloak sewn by his assistant or by another tailor. The tailor is entitled to the fixed price. If the cloak is destroyed without his fault, he may not be called upon to make good the loss.

Article 574. Matters connected with the work done are settled in accordance with local custom when there is no specific condition binding the person employed. Thus, custom has it that the thread shall be the tailor's thread.

Article 575. A porter must carry the load inside the house, but he is not bound to put it in position.

*Example: -*

It is not the duty of the porter to take the load up to the top floor; nor to put grain into a barn.

Article 576. The employer is not bound to feed the employee unless local custom is to that effect.

Article 577. If a broker hawks property round but cannot sell it, and the owner sells it at some later date, the broker is not entitled to a fee. If another broker sells such property, such second broker takes the whole of the fee, and the first broker is not entitled to anything.

Article 578. If a person gives his property to a broker, instructing him to sell it for so many piastres, and such broker sells it for more than the stipulated sum, the owner of the property is entitled to the whole of such sum in excess, and the broker is not entitled to anything more than the brokerage fee.

Article 579. In the case of a sale, where the broker has received his fee, and some person appears who is entitled to the thing sold and takes possession of the same, or if the thing sold is returned on account of some defect, the return of the brokerage fee cannot be claimed.

Article 580. If a person employs reapers to reap crops in his field for a certain sum of money, and after such reapers have reaped a portion thereof, the rest is destroyed by a fall of hail or by some other accident, the reapers are entitled to a share of the fixed wage proportionate to the quantity reaped, but not to the balance.

Article 581. If a wet nurse falls sick she is entitled to cancel the contract of employment. The employer may also cancel the contract of employment if she becomes sick or pregnant, or if the child refuses to take her breasts, or if it brings up the milk.

## CHAPTER VII.

### RIGHTS AND OBLIGATIONS OF THE PERSON GIVING AND THE PERSON TAKING ON HIRE AFTER THE CONCLUSION OF THE CONTRACT.

#### SECTION I.

##### *Delivery of the thing hired.*

Article 582. Delivery of the thing hired consists of permission being given by the person giving the thing on hire to the person taking the thing on hire to enjoy such thing without let or hindrance.

Article 583. Upon the conclusion of a valid contract of hire for a particular time or for a particular journey, the thing hired must be delivered to the person taking the thing on hire to be continuously in his possession until the expiration of such period, or the end of such journey.

##### *Example :-*

A takes a cart on hire for a certain period, or in order to go to a certain place. A can use the cart

during such period or until he has arrived at his destination. The owner may not use it for his own purposes during that period.

Article 584. If a person who owns real property in absolute ownership containing other property of his own, gives such real property on hire, no rent is payable until it is delivered free from all such encumbrances, unless they have been sold to the person taking the property on hire.

Article 585. When the lessor of a house hands the house over minus a room in which he has stored his goods, the proportion of the rent represented by such room must be deducted. As regards the rest of the house the lessee may exercise an option. If the lessor evacuates the house entirely and hands it over before cancellation of the contract, such contract is irrevocable; that is to say, the right of the lessee to cancel the contract is lost.

#### SECTION II.

##### *Right of the contracting parties to deal with the thing hired after the conclusion of the contract.*

Article 586. If the thing hired consists of real property, the person taking such real property on hire may give it on hire to some third person before taking delivery thereof. He may not do so, however, if it is movable property.

Article 587. The person taking the thing on hire may let such thing on hire to some third person if it is not changed by use or enjoyment.

Article 588. In the case of a voidable contract of hire the person taking the thing on hire may validly give it on hire to some third person after taking delivery thereof.

Article 589. If a person who has given his property on hire to some other person for a definite period in accordance with the terms of an irrevocable contract of hire, again gives such property on hire to some third person, the second contract of hire is ineffective.

Article 590. If the person giving the thing on hire sells the thing hired without the permission of the person taking the thing on hire, the sale is not executory as regards the latter, but is executory as regards the vendor and the purchaser, and on the expiration of the period of hire, the sale is irrevocable as regards the purchaser and he may not refuse to take delivery thereof. However, if before the expiration of the period of hire the purchaser asks the vendor to hand over the thing sold, and it is impossible to do so, the Court shall cancel the contract of sale. If the person taking the property on hire ratifies the sale, the sale becomes executory in respect to each party. If the person taking the thing on hire, however, has made payment in advance, the thing hired cannot be taken from him until he has received payment of the amount of the rent paid by him in respect to the unexpired portion of the lease. If the person taking the thing on hire hands it over without receiving payment, he loses his right of retention.

#### SECTION III.

##### *Return of the thing hired.*

Article 591. On the termination of the contract of hire, the person taking the thing on hire must give up the thing hired.

Article 592. The person taking the thing on hire may not use the thing hired after the termination of the contract of hire.



Article 593. If the person giving the thing on hire asks for the return of his property upon the termination of the contract of hire, the person taking the thing on hire is bound to return it to him.

Article 594. The person taking the thing on hire is not bound to return the thing hired, but the person giving the thing on hire is bound to take over the thing hired on the expiration of the contract of hire.

*Examples :-*

(1) Upon the termination of the lease of a house the owner must come and take delivery thereof.

(2) An animal is taken on hire to go to a certain place. If the owner is in that place, he must take over his animal. If he arrives and does not take it over, and it is destroyed while in the possession of the person hiring the animal without such person's fault, or neglect, such person may not be called upon to make good the loss. If, however, the animal is hired to leave and return to a definite place, it must be brought to that place. If it is not brought to such place, but is brought to the house of the person taking the animal on hire and is destroyed while there, the loss must be made good by such person.

Article 595. If the return of the thing hired involves expenditure for transport, such expenses fall upon the person giving the thing on hire.

## CHAPTER VIII.

### COMPENSATION

#### SECTION I.

#### *Compensation in respect to use.*

Article 596. If a person uses any property without the permission of the owner thereof, this amounts to wrongful appropriation, and he is not obliged to

pay for the use thereof. If, however, the property has been dedicated to pious purposes, or is the property of a minor, an estimated rent must be paid in any case. If it is property prepared for hire and is not claimed to be property owned in absolute ownership, nor as a result of contract, payment for use must be made; that is, an estimated rent must be paid.

*Examples :-*

(1) A lives in B's house for a certain period without concluding a contract of hire. He is not obliged to pay rent. But if the house has been dedicated to pious purposes or is the property of a minor, an estimated rent must be paid in respect to the period during which it has been inhabited, whether it is claimed to be property held in absolute ownership, or as a result of contract.

(2) In the case of a house for hire, an estimated rent must be paid if it is not claimed to be property held in absolute ownership nor as a result of contract.

(3) A takes B's horse, which B lets out on hire, and uses it for a certain period without the permission of B. An estimated sum by way of hire must be paid.

Article 597. If property is used which is claimed to be property owned in absolute ownership, even though it is prepared for hire, nothing need be paid in respect to such use.

*Example :-*

One of the joint owners of a piece of jointly owned property uses such property for a certain period independently and without the consent of the other joint owner, asserting that it is his own property owned in absolute ownership. The other joint owner cannot claim rent in respect to his share, even though it is property prepared for hire.

Article 598. If use is made of property which is claimed to be owned as a result of contract, even though it is prepared for hire, nothing need be paid in respect to such use.

*Examples:-*

(1) A is joint owner of a shop and sells such shop to B without the permission of the other joint-owner. B holds such shop for a certain period. The other joint-owner does not give his assent to the sale and seizes his share. He cannot claim rent in respect to his share, however much the shop may have been prepared for giving on hire, because the purchaser, having asserted that he has used it as an owner, his ownership being claimed to be based upon a contract, that is to say, upon a contract of sale, is not obliged to pay for the benefit received.

(2) A sells and delivers his mill to B which he asserts is his own property held in absolute ownership. After having held it for a certain period, another person appears claiming the mill and after proving his case and obtaining judgment, takes it from the purchaser. Such person cannot claim anything from B in the way of rent in respect to that period, since this is claimed to be based on a contract.

Article 599. If any person employs a minor without the consent of his tutor, such minor is entitled to receive an estimated wage for his services upon his reaching the age of puberty. If the minor dies, his heirs may claim an estimated wage from the employer in respect to the period of the employment.

SECTION II.

*Compensation by the person taking the thing on hire.*

Article 600. Whether the contract of hire is valid or not, the thing taken on hire is on trust while in the possession of the person taking such thing on hire.

Article 601. If the thing taken on hire is destroyed while in the possession of the person taking such thing

on hire, the latter may not be called upon to make good the loss, unless he has committed some wrongful act, or negligence, or performed any act which he is not authorized to do.

Article 602. If the thing hired is destroyed by reason of the wrongful act of the person taking the thing on hire, or the value thereof is diminished, such person must make good the loss.

*Example :-*

The person taking an animal on hire beats it and it dies, or is destroyed by reason of his brutal and violent driving. Such person must make good the loss.

Article 603. If the person taking the thing on hire acts in a way contrary to what is customary, such act is wrongful and he must make good any damage or loss resulting therefrom.

*Examples :-*

(1) Clothes which are taken on hire are used in a way contrary to what is customary and become tattered. The loss must be made good.

(2) A fire breaks out in a house which has been hired by reason of a fire being lighted which is larger than what is customary and the house is burnt. The loss must be made good.

Article 604. If the thing hired is destroyed owing to the failure of the person taking the thing on hire to take proper care, or the value thereof is decreased, the loss must be made good.

*Example :-*

A person takes an animal on hire and drives it into a deserted place so that it is lost. He must make good the loss.

Article 605. If the person taking the thing on hire goes beyond what he has agreed to do, acting in

contravention of what he has been authorized to do, he must make good any loss caused thereby. But if his act in contravention results in something equivalent to or less than what he has agreed to do, he incurs no liability.

*Example :-*

A takes an animal on hire to load so many *okes* of oil and instead loads the same number of *okes* of iron upon it and the animal is destroyed. A must make good the loss. But if a load equal to or lighter than oil is loaded and the animal is destroyed, there is no liability to make good the loss.

Article 606. On the expiration of the contract of hire, the thing hired remains on trust in the possession of the person taking the thing on hire for safe keeping. Consequently, if the person taking the thing on hire uses such thing on the expiration of the period of hire and such thing is destroyed, he must make good the loss. Again, if the person giving the thing on hire asks for his property to be returned on the termination of the contract of hire, and the person taking the thing on hire fails to do so, he must make good the loss if such property is destroyed.

SECTION III.

*Loss caused by employees.*

Article 607. If the thing entrusted to an employee to work upon is destroyed by the wrongful act or negligence of such person, the latter must make good the loss.

Article 608. A wrongful act of an employee consists of any act or conduct contrary to the express or implied order of his employer.

*Examples:-*

(1) A instructs his shepherd who is his private employee to pasture his flock in a certain place and no other. The shepherd takes the flock to another place. He has committed a wrongful act, and if the animals are destroyed while in that place, the shepherd must make good the loss.

(2) A hands cloth to a tailor instructing him to cut it and make him a long coat therefrom, if the cloth is sufficient. The tailor tells him that it is sufficient. If it turns out after the cloth is cut up that it is not sufficient for the purpose, A can claim to have the loss made good by the tailor.

Article 609. Negligence of the employee consists of any fault of his of which he is guilty without excuse in the preservation of the thing entrusted to him on account of his employment.

*Example :-*

An animal strays from the flock and is lost purely on account of the neglect of the shepherd to come and catch such animal. The shepherd must make good the loss. He is not liable, however, if his failure to go after the animal arose out of the probability that in so doing he would lose the other animals.

Article 610. A private employee is a trustee. Consequently, he is under no obligation to make good any loss arising out of the destruction of property in his possession not caused by any act of his. Similarly, if property is destroyed by his own act without his fault he is not liable to make good the loss.

Article 611. A public employee is liable to make good any damage or loss incurred by his own act, whether resulting from any wrongful act or negligence of his or not.

BOOK XII.

SETTLEMENT AND RELEASE.

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