PORTUGUESE CODE OF CIVIL PROCEDURE, 1939

Official Translation with notes

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Fax : 918322436837

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INTRODUCTORY NOTE

The Portuguese Code of Civil Procedure, 1939, covers a wide range of topics which are procedural and more. True to the Civil Codification system it also has the pattern of defining a concept and then expounding the rules regulating it.

The Portuguese Code of Civil Procedure, 1939, initially survived by virtue of Section 5(1) of the Goa, Daman and Diu Administration Act, 1962. Thereafter, the Code of Civil Procedure of 1908 was extended to Goa by the Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration Act) Act, 1940 (*Official Gazette, Series I, No. 9, dated 02/06/1966)* of which Section 4 (1) provided:

"4 (1). So much, of any law in force in Goa, Daman and Diu as corresponds to the Civil P. C. of 1908 shall stand repealed as from the coming into, force of this Act in Goa, Daman and Diu.

Provided that the repeal shall not affect -
(a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or
(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or
(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid,
and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if this Act had not been passed.
Provided further that, subject to the preceding proviso notifications published, declarations and rules made, places appointed, agreements filed, awards made or filed, scales prescribed, forms framed, appointments made and powers conferred under any law so repealed shall, so far as they are consistent with the said Code or as the case may be, the said Act have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under the said Code or the said Act and by the authority empowered thereby in such behalf.

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(2) In every law or notification passed or issued before the commencement of this Act in which reference is made to or to any Chapter or Section or provision of any law hereby repealed, such reference shall, so far as may be practicable, be taken to be made to the said Code, or, as the case may be, to the said Act, or its corresponding part, order, section or rule".

 Sub-section (1) of Section 1 provided that the Act shall come into force on such date as the Central Government may by notification in the official Gazette appoint. Accordingly, by notification No. S.O. 1597 dated May 24, 1966 published in the Gazette of India, dated June 10, 1966, the Central Government appointed the 15th June, 1966 as the date on and from which the Civil P. C., 1908 and the Arbitration Act, 1940 came into force in the territory of Goa, Daman and Diu.

It is needless to point out that once the Civil P. C., 1908 and the Arbitration Act, 1940 came into force as from 15th June, 1966 all suits and executions were filed under the Civil P. C., 1908 with the result that the Portuguese Code of Civil Procedure, corresponding to the provisions of the Indian Civil P. C. stood repealed.

 Some of the matters in which the Portuguese Code of Civil Procedure, 1939 remained in force are the following:-

1. Inventory Proceedings – Articles 1369 – 1447, now incorporated in the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.
2. Children and Spouses – Articles 1452 – 1470
3. Division and Separation by mutual consent – Divorce by mutual consent – Articles 1471 – 1474
4. Consent through Court – Articles 1477 – 1479
5. Council of family and guardianship – Articles 1490 – 1499 6. Verification of pregnancy – Articles1500 – 1501

7. Assets of Absentee – Articles 1502 – 1506
8. Notice of preemption – Articles 1511 – 1518
9. Estate in abeyance – Articles 1519 – 1522 10.Executorship – Articles 1523 – 1530

11.Rendering of accounts – Articles 1012 – 1022
12.Valuation – Articles 607 – 612
13.Amendment of pleadings – Article 278
14.Stay of proceedings – Article 284
15.Permission through Court – Articles 281 – 291
16.Appeals – Articles 677 – 782

This is only an illustrative, not an exhaustive list. All these topics need a full legislative revision and updating; in particular most of them would need to be specifically incorporated in a new statute.

- In this translation to guide and facilitate the use of the Code as to which articles are in force or not, notes have been inserted wherever possible below the articles or as footnotes all over the text of this translation.
- In various areas of law although corresponding Indian Acts have been extended to Goa, there are provisions in the Code of Civil Procedure, 1939 which do not have a corresponding provision in the equivalent Indian legislation. Therefore it is often an open arguable question whether a provision of the said Code of Civil Procedure is in force or not.
- A comprehensive re-codification of the Code of Civil Procedure, 1939 alongwith the substantive Civil Code 1867, (including in it also the Family Laws, Succession and Inventory), the Civil Registration Code, 1912 and Notarial laws into one unit is the need of the hour.
- Article 348 of the Constitution provides for an English translation of legislation which is in a language other than English. Such a translation is to be published in the Official Gazette and shall thereafter be deemed to be the authoritative text thereof in the English language.
- The High Court of Bombay at Goa by Order dated 24/03/2017, observations dated 26/09/2018 and a subsequent Order dated 17/10/2018 in Public Interest Litigation (Suo

Moto) No.1 of 2017 also ordered that an official translation of this Code in English be prepared.

- In this Code, each provision is referred to as an article which corresponds to what we call section in Indian legislation
- In the said Code, the word Section is a part of a chapter and consists of a number of articles.
- Brief titles/ headnotes have been inserted for each Article of the Code so as to facilitate its use.
- Many concepts in the Code of Civil Procedure do not have a synonymous expression in Indian or English Law. Hence various legal concepts and expressions have been translated to the nearest possible meaning.
- Pure Civil Procedure itself is laid down in extreme detail which perhaps we would find excessive and unnecessary in view of the pattern to which we are used.

Dr. F.E. Noronha

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Internal Organization of the Portuguese Code of Civil Procedure, 1939

The Code is divided into four Books. Each Book is divided into Titles, each Title into Sub-titles, each Sub-title into Chapters, each Chapter into Sections, each Section into Sub Sections, each Sub Section into Divisions and each Division consists of Articles :-

Book I – Action – has two Titles

Book II – Jurisdiction and prevention of bias – consists of a single Title

Book III – Proceedings – consists of four Titles

Book IV – Arbitral tribunal – consists of two Titles

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Preliminary Law

(Decree Law No. 29637, of 28th of May 1939)

In exercise of the powers granted by the 2nd part of No.2 of Article 109 of the Constitution, the Government decrees and I enact the following to operate as law:

Article 1

(Promulgation)

The Code of Civil Procedure, which is part of present law, is approved.

Article 2

(Commencement and extent of operation)

The Code shall come into force in the entire continent and adjoining islands on the 1st day of October of the current year.

Article 3

(Revocation of previous law)

With effect from the date of the commencement of its operation, all previous legislation on civil and commercial procedure is repealed, and specifically the Code of civil procedure of 8th November 1876, the decree No.4618 of 13th July 1918, the decree No.21287 of 26th May 1932, the Code of commercial procedure of 14th December 1905 and the Code of Bankruptcies, approved by decree No.25981 of 26th October 1935.

§ Sole Paragraph: exception is made for procedural legislation contained in the Labour Code and in the Code for roadways, as well as special legislation on procedure in liquidation of banking houses and expropriations for public purpose.

Article 4

(Regime for subsequent alterations)

All the modifications which are made in future on matter contained in the Code of civil procedure shall be considered as being part of the same and inserted at appropriate place, such modifications

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being always effected by means of substitution of the modified articles, elimination of articles not in use or by the addition of those which are necessary.

Article 5

(Improvements to the Code)

It is for the office of the Attorney General of the Republic to receive all the representations suggesting improvements to the Code and to submit to the Government all the measures which are deemed appropriate for this purpose.

Article 6

(Extension to the colonies)

The Government is hereby authorized to extend the Code of Civil Procedure to the Colonial Empire, with modifications which the special circumstances of the colonies demand.

To be published and carried out in the manner contained therein.

Palace of the Government of Republic, 28th May, 1939. ANTÓNIO ÓSCAR DE FRAGOSO CARMONA - António de Oliveira Salazar - Mário Pais de Sousa - Manuel Rodrigues Júnior -Manuel Ortins de Bettencourt - Duarte Pacheco - Francisco José Vieira Machado - António Faria Carneiro Pacheco – João Pinto da Costa Leite - Rafael da Silva Neves Duque.

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Decree Law No.29950 of 30th of September, 1939.

Article 1

Articles 60th, 471st, 474th, 791st, 792nd, 806th and the sole Paragraph of Article 933rd of the Code of Civil Procedure shall now have following wording:*

Article 2

In between Articles 1162 and Article 1164 of the Code of Civil Procedure one article having following text is inserted:*

Article 3

The pecuniary jurisdiction of the High Courts is of 20000$ and that of the Courts of judicial division is 6000$, whatever may be the nature of the assets.

§ 1.Appeal shall always lie to the Supreme Court of Justice:

1st. From decisions appealed from on the ground of absolute lack of jurisdiction of the court or violation of *"res judicata*".

2nd. The order which fixes for the suit, the incidental proceeding or for the preventive and conservatory proceeding the value within the pecuniary jurisdiction of the court of judicial division or the High Court, if the appeal is preferred on the ground that the value exceeds the pecuniary jurisdiction;

3rd. Any other actions or incidental proceedings for which by a special law such appeal is admissible.

§ 2. The subject of pecuniary jurisdiction is regulated by law in force at the time of the institution of the action.

* the amended text has been inserted at the appropriate places.

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Article 4

The collective court shall have jurisdiction to decide cases of value above 6000$, excepting only the suits where special procedure is prescribed which excludes the intervention of the same collective court.

In the incidental proceedings, in the preventive and conservatory proceedings and in the executions, the collective court shall intervene only where ordinary and summary procedure of declaration is to be followed and when the value exceeds that limit.

§ Sole Paragraph: The questions of fact of the jurisdiction of the collective court are those which are to be finally decided.

Article 5

Until the new Judicial Statute is not published, the provisions of Article 46 to 68, both inclusive, shall continue in force as well as of Code of Bankruptcy approved by Decree No.25981 dated 26/10/1935, with respective table annexed.

Article 6

The fines to be imposed in civil proceeding shall be fixed, unless provided to the contrary, between 50$ and 1000$ and from such amount 50% goes to the account of the court and of the Bar organization, in equal parts, and the balance 50% shall be income of the Government.§ Sole paragraph: The fines to be imposed to the litigants in bad faith shall be between 500$ and 50000$ and shall revert, in equal parts to the State and other half to the account of the court and the Bar organization.

Article 7

As and when they fall vacant, the posts, one of Judge of the Supreme Court in the cadre of the Supreme Court of Justice and two of Judges in each of the High Courts of Lisbon and Porto are extinguished.

Article 8

The 10th criminal court at Lisbon is extinguished and the judicial circle no.48 to be formed by the judicial divisions of Almada and Montijo, and the respective collective courts shall be constituted

xv

of the Judge of the judicial division where the proceeding is pending, by his substitute and by the Judge of other judicial division.

Article 9

The proceedings pending in the No. 10th criminal court, now extinguished, shall be distributed amongst the remaining criminal courts, and the books of registration shall be in the custody of the office of the General Distribution of Criminal Courts.

§ Sole Paragraph: The disposed files shall be sent to judicial archives.

Article 10

The heads of office and of section, their assistants and officials of extinct - 10th Criminal Court of Lisbon, shall be additional receiving 5/6th of their salaries and shall be placed in the corresponding category in the vacancies which occur in the judicial division of respective class, and preferably of the Lisbon.

§ Sole Paragraph: The officers mentioned in this article, until they continue to be additional may be directed by the Minister of Justice to render service, in the Secretariat of Criminal Court of Lisbon, upon the proposal made by the Chief Justice of the respective High Court.

Article 11 This

decree law comes into force on the 01st of October.

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Ministerial Order No. 9677 of 30th October 1940

The Government of Portuguese Republic, through the Minister of Colonies, in consultation with Superior Judicial Council of the colonies and in terms of Article 91st of the Organic Charter of the Portuguese Colonial Empire and Article 6 of Decree No.29637 of 28th May 1939 directs that in all the

Colonies the Civil Procedure Code, approved by same decree, and the Decree Law No.29950 of 30th September 1939 which modified the said Code, be published in order to come into force on 01st of January 1941, in its application the following shall be observed:

1st

Whenever in any judicial division there is no advocate or solicitor* and the law requires his intervention, the judicial mandate may be exercised by a judicial attorney or by someone who is appointed by the Judge for such purpose.

2nd

If the party does not find anybody who voluntarily agrees to represent him in court, he may apply to the Judge to appoint a representative, who may act as such without any other formality. The appointment shall be done without delay with notice to the appointee, who may plead inability within 48 hours. In the absence of such excuse, or if such excuse is found not justified, the appointee shall represent the client, on the pain of being suspended for six months or fine, if the appointee refuses to act as advocate or attorney.

3

Wherever the expressions like “Court of Lisbon” “Diario do Governo” (Gazette of the Portuguese Central Government in Lisbon) and “General Bank of deposits” are used, the same expressions shall mean and stand substituted respectively by “judge of the judicial division of the capital of the colony”, “Official Gazette” and “establishment where the judicial deposits are made”.

* There were two categories of qualified and registered lawyers who could represent parties in court: Advocate and Solicitor, the latter with more limited powers; and being however quite different from the solicitor in the English or Indian Legal system. The distinction between Advocate and Solicitor is brought out in Article 33 of the Portuguese Code of Civil Procedure, 1939.

4

The jurisdiction conferred in article 95 is given solely to special municipal judges. When the case is of not special municipal judge, such jurisdiction is limited to 2000$.

5

When the Code uses the expression “heads of the secretariat office”, “staff of secretariat office”,“secretariat office” and “sections” and it does not deal with acts done in the High Court, the same expression shall mean clerk of the court (“*escrivães*”), assistant to the clerk of the court,“accountant: and “Court office”, as the case may be.

6

What is provided in Article 139 is applicable to all who do not know Portuguese language.

7

It is the judge that shall receive the pleadings and issue the summons upon them being subscribed by the clerk of the court (*escrivao*).

8

The disciplinary action by the Bar Council and Chamber of Solicitors shall be exercised by the judge, to the extent applicable.

9

The expression “*regedor*” shall always be understood as “*local administrative authority”*

10

The periods of the extension of the time limit, as provided in Article 180 and all the procedural steps to which the party has to attend personally, may be altered by the judge, as he deems fit, taking into consideration the distance, facility of communication and the nature of the procedural steps.

xix

Article 209 and its Paragraph is not attracted and the distribution is to be done in the High Court by the judges and in the judicial divisions by the clerks of the court.

The expression continent or adjacent islands and country is to be understood as "Colony".

The proceeds of the fines referred to in the Article 6 of the Decree Law No.29950 shall revert to the State and the account of the Court in equal shares.

The provisions referring to Collective Court are not attracted and the function continues to be exclusive jurisdiction of the judges who will decide on law and facts.

The category No.7 of Article 222 shall have following divisions:

1st. Pauper proceedings and inventory upto l000$.

2nd. Inventories of more than 1000$00 to 5000$00

3rd. " " "5000$00 to 10000$00.

4th. " " "10000$00 to 50000$00.

5th. " " "50000$00 to 100000$00.

6th. " " "100000$00 to 500000$00.

7th. " more than 500000$00

The inventories included in Nos. l and 2 and proceedings of estate upto 10000$00 are exempted from costs and stamp duty; and in No.3 there shall not be rise in the percentage of 30% and on the sole enrolment of 10$00 for the accountant.

The jurisdiction conferred on to "Tutoria da infancia" (Children Court) is exercised by the judge

xx

and the "council of tutelage" continues to be as per the legislation in force.

17

The notices, summons and public notices shall be done by the post when such services are available; otherwise they will be done by writ under the order of the Court.

18

The pecuniary jurisdiction of High Court shall of 20000$ and of the judges shall be 3000$, whatever may be the nature of the assets.

19

The provisions relating to unions are not attracted and such powers shall be exercised by the judge and fiscal curators as per previous legislation.

20

The publication referred to be done in the newspaper shall be done through the Gazette when there is no newspaper in the colony.

21

In the summary proceeding, the evidence shall always be recorded in writing unless the parties have renounced the right to appeal.

22

The decision by High Court shall be taken by 3 unanimous votes, and if there is no unanimity, the matter shall go with endorsement to as many judges as may be necessary to obtain the majority and if still there is no majority, the matter shall be sent to the High Court of Lisbon.

23

In the colonies of Timor, Macau and India, the values in escudos are converted into local currency, as per prevailing exchange rate:

(a) of the plaint, execution or other proceeding, for the purpose of pecuniary jurisdiction of the

xxi

court and costs.

(b) Towards fulfilment of obligation, the value will be as per quantum of liability.

(c) Of the distribution, regarding inventories, inheritance and similar proceedings.

(d) Of the doing of an act when the law directs to consider it.

In the remaining colonies, the “escudos” will be calculated as per the rate prevailing in the main land.

24

What is provided in Article 140 shall be applicable to the documents written in the language or dialect spoken in the region, which are not simply variation of Portuguese language.

25

The provision of Article 180 is applicable to the letters issued by the colonies mentioned in clause (c), (d) and (e) which are to be executed in the main land or in the adjacent islands, because of the extended period of limitation is the same referred to in the clauses for opposite case.

26

The rule prescribed in the previous number is applicable with analogy to the case foreseen in Article 181.

27

In the certified copy referred to in Article 232, the bailiff shall identify the witnesses by their names, status, profession and residence.

28

The information which by the said Code are collected from parish priest and local administrative authority (*regedor*) in the colonies shall be obtained from parish priest or missionary or from any other local administrative authority.

29

To the article 588, following addition to be made:

xxii

Governors General;
Governors of Colony;
Governors of Province;
Governors of District.

30

To the No.6 of Article 588 shall be added following words: - “Save in the cases foreseen in first part of Article 595, in the third part of the same Article and second part of Article 604”.

31

In the No.2 of Article 589, following words are to be added: “and the Portuguese Catholic missionaries.”

32

What is provided in Article 631 is extended to:
Governors General;
Governors of Colony;
Governors of Province;
Governors of District;
Chief Justices of High Courts;
Procurators of the Republic,
Dealing with the President of Republic, the communication referred to in Paragraph shall be done through Ministry of Colonies, which will transmit to the Ministry of Justice, followed by other formalities. Dealing with governors or “judges”, paragraphs 2 and 3 of the same article shall be applicable.

33

The exchanges referred to in articles 882, 883 and 884 shall be of the continent and for that purpose necessary letters of requests shall be sent.

xxiii

34

In the notices and publications required by article 890, the moveables shall be identified in such a manner to indicate precisely their quality, nature, substance, type and other details convenient for its individuality; and it will be declared what is the value for which each of them will go on for auction.

35

In the judicial divisions of the State of India, whenever the judgment debtor uses of the power conferred by second part of Article 894, as well as in the case of Article 904, the claimant or the bidder shall deposit half of the price offered, and deposit of the amount shall be made: as to the bidder, at the time of the conclusion of the bid and as to any claimant, within the period of 5 days from the date of the offer made by the judgment debtor.

36

In the judicial divisions of Judicial District of Nova Goa, as far as agrarian Comunidades are concerned, the following shall be observed:
a) The service of summons shall be made on the person of Administrator or the person who substitutes him;
b) The Comunidades may use against key holders and watchman, debtors and their sureties or against those who, by any other manner, are constituted as Receivers of moneys, of the shares and privileges which by law belong to the National Exchequer (Fazenda) to take steps for the recovery of their credits, in accordance with Code of Comunidades, approved by legislative Diploma No.651, of the State of India dated 30/03/1933;
c) The Comunidades are represented in the Court in accordance with Article 12 of the said Code of Comunidades.
d) The attachments for recovery of the debts payable by the Comunidades, may be done on their credits, liquid income, as per their estimate, receipts and expenditure and any other income but never on their immobile assets.

The attachment always will be done in the hands of the treasurer of the Comunidade, with the assistance of the respective clerk, who on his own responsibility shall bring to the notice such attachment to the Administrator, within 24 hours, for the necessary purposes; the clerk entrusted

xxiv

with the file shall declare in the report of the attachment the amount to be recovered and accessories;
e) The proceeds of the "jono" of the components of the Comunidades and of rights to the future proceeds may only be seized or attached for their debts to the Comunidade and their subrogates; Besides this, it is permissible to seize or attach only the amount of the said proceeds already accrued to which they have right at the time of the attachment.

37

In the judicial division to which reference is made in No.36, following shall be observed, in the case of families of gentiles.

a) The personal summons to be served on the person of any member of a gentile family, may be made on the person of the head of the family or on the administrator of the same, or of any substitute as per the usages and customs directed to be observed by the civil law.
b) The gentile families who reside in the same house and live under common domestic economy are considered for the purposes of the Code of Civil Procedure, as family societies, governed and administered in accordance with respective usages and customs, by the head of the family or administrator lawfully constituted, who shall be competent to represent them in the Court.

38

Articles 770, 771 and 772 of the Code of Civil Procedure approved by Charter of Law dated 08/11/1876 are maintained.

This government order substitutes for all purposes, the Government order No.9605 published in the Government Gazette dated 20/07/1940.

Ministry of Colonies, 30th October 1940

The Minister of Colonies, Francisco Jose Vieira Machado

Note: The text of this decree required official updating since the expression colony was replaced by overseas province by article 134 of the Portuguese Constitution.

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Representation of persons without legal capacity Articles 10 – 16	Consent or agreement by persons under disability– S.147 Suits by or against minors and persons of unsound mind – O.XXXII C.P.C.
Representation of the State Article 21	Suits by or against Government – S.79 Notice – S.80 Exemption from arrest and personal appearance – S.81 Suits by or against the Government or Public Officers in their official capacity – O.XXVII, C.P.C.
Representation of collective persons Articles 22 – 25	Suits by or against Corporations – O.XXIX and Suits by or against firms and persons carrying on business in names other than their own – O.XXX
Parties Locus standi – Proper, necessary parties, joinder of parties Articles 27 – 29 & 31	Joinder of parties – Order I, CPC
Joinder of causes of action Consolidation of suits Articles 30 & 280	Joinder of causes of action – O.I, rr. 3-7 Saving of inherent powers of Court – S.151; Consolidation /Joint Trial of suits.
Representation by Advocates Articles 32 – 44	Recognized agents and pleaders – O.III C.P.C; Powers of Attorney Act 1882; Contract Act, 1872 Ss. 182-238, Advocates Act 1961.

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Execution Articles 45 – 61 Articles 801 – 943	Execution Ss. 36-74. Execution of Decrees and Orders – O.XXI C.P.C.

Jurisdiction Articles 62-121	Jurisdiction of the Courts and res judicata Ss. 9-21A
International jurisdiction Article 65	Subject of Conflict of Laws / Private International Law
Assurances of impartiality, Conflict of interest of judges, Suspicion. Articles 122 – 137	These in our law are dealt with in case law under *"bias"* in natural justice normally in administrative law.
Allotment and distribution of cases Articles 209 – 227	Civil Manual, by the Civil Courts and High Court Appellate side rules.
Summons and notices Articles 228 – 263	Issue and Service of summons Ss. 27 -32 – O.V C.P.C.
Proceedings Articles 264 – 279	Pleadings – O.VI
Amendment of pleadings Articles 277 and 278	Pleadings – O.VI Amendment of pleadings – r. 17 of CPC
Stay of proceedings Articles 281 – 289	Stay of Suit S.10 of C.P.C.
Abatement Articles 290 – 306	Abandonment, Withdrawals, Compromise – O.XXIII Admission of claim - O.XII Written Statement, Set-Off and Counter Claim O.VIII Appearance of parties and consequence of non-appearance – O.IX Examination of parties by the Court – O.X
Valuation of the cause Articles 310 – 324	Suits Valuation Act 1887 and Court Fees Act 1870.

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Joinder of parties Third Party Party procedure Articles 325 – 364	Third party procedure – Bombay High Court, Amendment to CPC; O. VIII, r. 23 to 36. Parties to suit – Suit in name of wrong plaintiff – O.I, r.10
Forgery of documents in judicial proceedings Articles 365 - 375	Is not part of Civil Procedure in our system.
Bringing heirs on record is part of a wider title (substitution of parties) and includes successors of legal persons also. Articles 376-382	Death, Marriage and Insolvency of parties – O.XXII

Liquidation i.e. quantification of relief is not exactly statutory law in our midst. Articles 383 – 385	
Preventive and Conservatory proceedings. Articles 386 – 435	Specific Relief Act, 1963 – Ss. 38 – 42 Temporary injunctions and interlocutory Orders - O.XXXIX of C.P.C Supplemental proceedings – S. 94(e)
Provisional restoration of possession Article 400	This embodies the principle of temporary mandatory injunction (AIR 1990 SC, AIR 1990 SC 867, Dorab Cawasji Warden vs. Coomi Sorab Warden)
Seizure Articles 409 – 419	Execution of Decrees and Orders - O.XXI Attachment - r. 41-57
Compensation, for wrongful attachment Article 425 Sole para	Compensation for obtaining arrest, attachment or injunction on insufficient grounds – S.95 CPC
Seals, Enlisting and Receiver Articles 429 – 435	Appointment of Receiver – O.XL Supplemental proceedings – S.94(d)

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Security - Furnishing, reinforcing security is much more detailed. Articles 436 – 452	Supplemental proceedings – S.94(a) & (b) Arrest and attachment before judgement – O.XXXVIII, Security for costs – O.XXV
Cost, fines and damages are in much greater detail. Articles 456 - 468	Costs – S. 35, Compensatory costs in respect of false or vexatious claims or defences – S.35A, Costs for causing delay – S.35B Payment into court – O.XXIV Costs – O.XXA Security for costs – O.XXV
Plaint – Articles 480 – 486	Plaint - O.VII
Absence – Articles 487 – 489	Appearance of parties and consequence of non-appearance – O. IX
Written Statement Articles 490 – 505	Written Statement, Set-Off and Counter Claim – O.VIII
Admissions Articles 491 – 494	Written Statement, Set-Off and Counter Claim – Denial to be specific – O.VIII, r. 3-5
Counter claim Article 506	Written Statement, Set-Off and Counter Claim - Particulars of set-off to be given in written statement – O. VIII, rr. 6, 6A to 6G.

Rejoinder & Sur Rejoinder Articles 507 – 511	Written Statement, Set-Off and Counter Claim - Subsequent pleadings – O.VIII, r.9

First hearing Articles 512- 516	Admissions – Judgement on admissions– O. XII, r. 6, Disposal of the suit at the first hearing – O.XV

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Questionnaire = Specification Article 515	Issues – O. XIV
Evidence Article 517 – 646 Proof of facts in general Articles 517 – 526 Documentary Evidence Articles 527 – 646	Indian Evidence Act, 1872; C.P.C. O.XIII, XVI, XVIA, XVIII and XIX. Evidence Act, S. 3 onwards till S. 58; S.101 to 117. Evidence Act, S. 61 to 100; Production, impounding and return of documents - O.XIII, Summoning and attendance of witnesses –O.XVI Attendance of witnesses confined or detained in prisons – O.XVIA Hearing of the suit and examination of witnesses – O.XVIII
There is also evidence by Arbitrament. Articles 581 – 606	Much more detailed than our provisions of appointment of commissioner, inspection, experts etc.
Valuation rules Articles 607 – 612	Valuation rules would be applicable for Inventory Proceedings but they would need to be amended and updated to our circumstances.
Judicial inspection Articles 616 – 619	O. XVIII, r. 18 – Power of Court to inspect.
Oral evidence – witnesses Articles 626 – 657	Evidence Act, S.118 to 167; C.P.C. O.XVI, XVIA and XVIII.
Judgment Articles 658 – 676	Judgement and Decree - O.XX

Appeals Articles 677-778 There is a wider variety of appeals than ours. Articles 677 – 782	Appeals Ss. 96-115, O.XLI, XLII, XLIII This matter has been dealt with by Judgment dated 22/12/2015, the full Bench, Bombay High Court, Goa in Misc. Civil Application no. 926/2013, Mrs. Bharti Parkar v/s. Mr. Vilas Mahadev Pilankar & ors. but some types of appeals are not mentioned even in that judgement.
Special proceedings – Interdiction due to mental unsoundness. Articles 944 – 958	Covered by Mental Health Act 1987, earlier the Lunacy Act 1912.
Rendering of accounts Articles 1012 – 1022	These accounts would be relevant in the case of Inventory proceedings.
Payment in the court Articles 1023 – 1031	Payment into Court O. XXIV rr. 1-4
Possessory remedies Articles 1032	Corresponds to Specific Relief Act, 1963.
Reconstruction of Credit Instrument, files and books Articles 1068 – 1081	Not a matter of civil procedure in our midst.
Appeals against Orders passed by conservators, notaries etc. Articles 1082 – 1088	is peculiar to the Code.
Suits for compensation against judges. Articles 1089 – 1099	is totally unknown in our legal system.
Review and confirmation of foreign judgments Articles 1100 to 1106	When foreign judgement not conclusive - S. 13, Execution of decrees passed by Courts in reciprocating territory - S. 44A and Execution of Decrees and Orders – Notice to show cause against execution in certain cases – O.XXI, r.22(1)(b) of CPC.
Justification of the absence and of the status of heir. Articles 1107 – 1118	This is a procedure unknown to our system.
Liquidation of assets – winding up. Articles 1122 – 1157	This is subject matter of Companies Act.

Insolvency is a large portion of the code. Articles 1158 – 1368 (210 Articles)	Broadly corresponding to the Insolvency and Bankruptcy Code 2016.
Inventory Proceedings Articles 1369 – 1447	Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.
Voluntary jurisdiction, Provisions regarding children and spouses are matter of Family law and would be by and large in force. Articles 1448 – 1501	
Protection of absentee is also peculiar to this Code. Articles 1502 – 1506	
Preemption is peculiar law Articles 1511 – 1518	
Estate in Abeyance Articles 1519 – 1522	
Executorship Articles 1523 – 1530	all part of Succession Law.
Right of shareholders of companies are subject matter of the Companies Act. Articles 1531 – 1554	Companies Act 2013.
Ships and Cargo Articles 1555 – 1560	Dealt by specific legislation.
Agreement and Arbitration clause. Articles 1561 – 1580	Covered by Arbitration & Conciliation Act 1996. Settlement of disputes outside the Court - S.89 C.P.C.

BOOK I

ACTION

(Articles 1 – 61)

PORTUGUESE CODE OF CIVIL PROCEDURE, 1939

(Code of 1939 enforced in the colonies with effect from 01/01/1940, in replacement of previous Portuguese Civil Procedure Code of 1876, but saving only articles 770, 771 and 772 dealing with emancipation)

BOOK I

ACTION[1]

TITLE I

ACTION IN GENERAL

CHAPTER I

BASIC PROVISIONS

Article 1 – **Bar on restitution by force** - No one is permitted to restitute for himself the exercise of his rights by his own force and authority, except in the cases and within the limits prescribed by law.

- There is a similar provision under Article 2535 of the Portuguese Civil Code. In Indian Law we have this type of provision only on the Criminal side as Right of private defence under Sections 96 to 106 of the Indian Penal Code 1860.
- Self-defence is exceptionally permitted in the circumstances and on the terms mentioned in Articles 486, 2354 and 2367 of the Civil Code.

Article 2 - **Co-relation between right and remedy** - For every right there is a corresponding action meant to protect the same or have it judicially declared and to render it effective, except

1 *The word Action ("acção") corresponding to Latin "actio" means a legal proceeding to enforce or protect a right and in a wider sense includes both civil and criminal proceedings.*

It is a basic term used practically throughout, in this Code of Civil Procedure and requires explanation. It is often translated as suit but it has a wider meaning. In Article 2, for example, it means remedy or legal means to enforce a right. At times it means the right itself to avail of a legal remedy. It also means claim, proceeding, judicial proceedings, judicial means; in its wider sense it can include both civil or criminal judicial proceedings. It means an action, right, a claim, a law suit, a right of action. It also means litigation for redress of a grievance. It means the act of resorting to authority to vindicate one's right, or, metaphorically the right to such resort, or the form or mould of such resort.

Sometimes it is even extended to appeal or even second appeal but whether counter claim is included is doubtful.

In this Code, it includes suits and other civil proceedings.

Action meant to protect the same or have it judicially declared and to render it effective, except when the law specifically lays down the contrary.

- This is a statutory enactment of the maxim '*Ubi jus ibi remedium*'.
- Certain rights are expressly declared unenforceable like right to an amount loaned to a minor, without adequate permission (Art. 1535 of the Civil Code) and right to an amount owed in gambling (Art.1542 of the Civil Code).

Article 3 - **Necessity of petition and defence** - The court shall not resolve a conflict of interest which an action presupposes unless the relief is prayed for by one of the parties and the other is duly called upon to oppose the same. But in exceptional cases envisaged by law, measures may be taken against a person without the said person being heard.

- The first part of this Article requires that relief should be specifically stated as in O.VII, r. 7 C.P.C, 1908.
  The next portion of the article deals with the basic rule of natural justice of hearing the other side ("*Audi alteram partem*") which is found in Section 27 to 29 and entire Order 5 as also O. 39, r.3, first part of C.P.C. 1908.

  Further ex-parte Order is also contemplated which we have by way of interim relief eg. under O. 39 r. 3, proviso.
- Examples of exceptional cases in which measures can be taken against a specified person without hearing the same are; Provisional restitution of possession (Art. 400), Preventive orders (Art. 406), Attachment (Art. 410), Injunction against new construction (Art. 423), Enlistment of assets (Art. 431(3)), Interdiction for lunacy (Arts. 947 / 951), Interdiction for prodigality (Art. 960) and Declaration of insolvency (Art. 1142).

Article 4 - **Types of actions and their purpose** - Actions are of plain appreciation or declaration, mandatory orders, injunctions, restoration and executions. The purpose is as follows:-

(a)Those of plain enquiry, are solely for obtaining the declaration of the existence or inexistence of any right or fact.

(b)Mandatory orders to direct the delivery of anything or the performance of any act.

(c)Injunctions, to prevent a damage which is apprehended.

(d)Restoration, authorizing a change in the existing juridical relations.

(e)Executory to render effective a right already declared.

- Clauses (a), (b) and (c) as translated corresponds to declaratory, mandatory and to suits for preventive injunction. Clause (d) relating to change of juridical relations includes suits for divorce, declaration of paternity; on the property side, proceedings for acquisition, easement, partition of property and so on, clause (e) refers to execution proceedings. cf. Alberto Dos Reis, '*Comentario ao Codigo de Processo Civil*', Vol. 1, Coimbra Editora, Lim, Coimbra 1960, pgs.19-22 and '*Codigo de Processo Civil Anotado*', Vol. 1, Coimbra Editora, Lim, Coimbra 1948, pgs.21-24.

CHAPTER II
PARTIES

SECTION I
JUDICIAL PERSONALITY AND JUDICIAL CAPACITY

Article 5 - **Concept and measure of judicial personality** - Judicial personality consists in the aptitude to be a party. One who has juridical personality has judicial personality.

Article 6 - **Judicial personality without juridical personality** - An inheritance, whose title holder has not yet been decided and similar autonomous estates, legally existing associations, and societies of civil nature, not being family societies, may be parties, even though they do not have juridical personality.

Article 7 - **Judicial personality of branch offices** – Branch offices, agencies, affiliated commercial units or delegations may sue or be sued when the action is based on an act or fact done by them.

§ Sole Paragraph: If the principal administration has a head office or domicile in a foreign country, the branches, agencies, affiliates or delegations established in Portugal, may sue or be sued, even though the action arises from an act or fact done by former, when the obligation has been contracted with a Portuguese national.

- Article 85, Paragraph 4 of this Code.
  "Act" is defined as "something done or performed, especially voluntarily, a deed, an occurrence that results from a person's will being exerted" ('*Black's Law Dictionary'*, Thomson Reuters, 10th Edition 2014, pg.29).
  "Fact" is a thing done or performed, an action, deed. Also action in general. ('*The Shorter Oxford Dictionary, on historical principles',* Clarendon Press, 1990, Vol. 1, pg. 717).

Article 8 - **Personality of irregular societies** - The societies and associations, which are not legally constituted, but are acting as if legally constituted, are not entitled to raise the plea of irregularity of their constitution; but the action may be filed against the persons who, according to the law, have liability arising from respective act or fact.

§ Sole Paragraph: When a society or associations are sued, they are permitted to raise a counterclaim in defence.

Article 9 - **Concept and measure of judicial capacity** - The judicial capacity consists of the capacity to appear in person before the court and has as its basis and measure the capacity to exercise rights.

- Note to Articles 5 & 9 :-
  The Code distinguishes between Judicial Personality and Judicial Capacity. Judicial Personality is the susceptibility or ability to be a party as Applicant, Petitioner or Respondent, and the second is the susceptibility to be a party as Petitioner/Plaintiff (called active judicial capacity) or as Respondent/Defendant (passive judicial capacity).
  This distinction runs parallel to the one made in the Civil Code between capacity for rights (Civil Capacity) or Juridical Personality (Civil Code, Art. 1) and the capacity to exercise the rights (Civil Code, Arts. 5, 98, 314, 337, 340).
  In principle, juridical personality and judicial personality (Art. 5) coincide, so also capacity for exercise of rights, civil capacity and judicial capacity (Art. 9) also coincides. For example, a minor or a person interdicted for lunacy have juridical personality and for this reason have judicial personality; but since they do not have the capacity to exercise rights (Civil Capacity) they are also without judicial capacity (Art. 10).
  However, juridical and judicial personality, as also capacity to exercise rights (Civil Capacity) and judicial capacity are not always the same thing. There are exceptions; in which judicial personality is recognized in entities which do not have juridical personality (Art. 6, 7 & 8), and in which a certain judicial capacity is attributed to persons otherwise incapable to exercising their rights (Art. 13) – cf. A. dos Reis, *op. cit.* 1960, pg. 23-25 and 'A. dos Reis, *op. cit.* 1948, pg. 26-27.

Article 10 - Representation of persons without legal capacity - The incapables[2] may appear in the court only through their representatives, except in the acts which they are permitted to act in person.

§ Sole Paragraph: If there is conflict of interest between an incapable and his representative, or the spouse, or ascendants, or descendants of the latter, such an incapable shall be represented in the proceedings by a special curator. The same shall be followed when there is a conflict between several incapables who have the same representative. In such case, to each group of the interested parties in conflict, there shall be appointed one curator.

The appointment of the curator shall be done by the court after hearing the Public Ministry.

- See Civil Code Articles 59, 71,138, 139, 153, 155,185, 243, 321, 339, and 349.
- This article is in wider terms and includes what is provided in Order XXXII of the C.P.C. 1908.
- **Articles 10-16** - Representation of persons without legal capacity - Corresponding provisions in C.P.C. 1908: -
  - Consent or agreement by persons under disability – S.147
  - Suits by or against minors and persons of unsound mind – O.XXXII C.P.C.

Article 11 - Appointment of representative - Where an incapable has no representative, it is permissible to apply to the competent court for such representative. It is also permissible to apply to the court to appoint a provisional curator, where there is urgency in filing of the action. In the latter case, immediately after the action is filed, the competent court shall move to seek the appointment of the general representative, who shall take the place of the provisional curator in the action.

2 *"incapable" means devoid of legal capacity or legally disabled.*

§ Sole Paragraph: The appointments referred to in this article and the sole paragraph of the preceding article shall be applied for, by the Public Ministry[3] or by any relative up to the sixth degree where the incapable is the applicant. Where he has to figure as a respondent, the application shall be moved by the applicant.

Article 12 - Powers of the guardian and the curator - For filing of actions, the guardian requires permission of the family council, and the curator requires judicial permission except if the action is purely of protective nature or the delay in filing the same may result in the extinguishment of the right or of any security.

- See Civil Code Articles 9, 17, 59, 224, 243 and 351.
- Action of protective nature means preventive relief like injunction.

Article 13 - Judicial capacity of minors of more than 14 years and those interdicted for prodigality - Minors, not emancipated, more than 14 years of age, and those interdicted on account of prodigality, shall be permitted to intervene in actions in which they are parties and they shall be summoned when they are defendants.

§ Sole Paragraph: In the event, if the minor completes 14 years of age during the pendency of the matter and after his representative has been summoned, he need not be summoned again, though he may be a respondent, but he may intervene on his own initiative.

Article 14 - Representation of persons disabled from receiving summons or notice - Persons who in any of the circumstances mentioned in Paragraphs 1, 2 and 3 of Article 236 are infact unable to receive the summons or notice, shall be represented by a curator appointed in the terms of the said article.

3*Public Ministry – The expression "Ministerio Publico" found all over the Portuguese Civil Procedure Code has been translated as Public Ministry. It is a function of the State on the civil side whereby the State intervenes in various proceedings in the interest of the public, of the citizens particularly persons without legal capacity like children. This function was performed by State law officers attached to the Courts.*

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(1) This representation shall cease when found unnecessary or when a document is submitted which proves that the interdiction was legally established. The lack of need for curatorship shall be summarily decided on the application of the person under curatorship who may produce any proofs.

(2) Where interdiction has been legally ordered, the tutor shall be immediately notified to come to take the place of the curator in the proceedings.

- This is related to Art.236 of the Civil Code.

Article 15 - Defence of the absentee and the legally disabled by the Public Ministry - If the absentee at unknown place or his representative or the representative of a legally disabled person does not raise any objection, it will be for the Public Ministry to take up the defence of the legally disabled or the absentee, for which purpose it shall be duly notified and given fresh time limit for defence. When the Public Ministry represents the applicant, a special defence lawyer shall be appointed.

§ Sole Paragraph: The representation by the Public Ministry or the appointed defence lawyer shall cease as soon as the absentee person appears or his representative or the representative of the legally disabled persons appoints an advocate.

Article 16 - Representation of uncertain persons - When the action is filed solely against uncertain parties, they shall be represented by the Public Ministry. In the event the Public Ministry represents the applicant, the assigned counsel shall be appointed to serve as special agent of the Public Ministry to represent the uncertain parties.

§ Sole Paragraph: Such representation shall cease as soon as any person whose locus standi has been acknowledged by judgment appears to intervene as respondent.

Article 17 - Husband's capacity to institute proceedings - The husband may, without the written consent from the wife, file any actions, except those, which are meant to acknowledge the ownership, absolute or limited of the immobile assets, whether common or exclusively of the wife.

- The word used here is *"Outorga"* as in Civil Code Article 1191 which means *"to declare by public deed"*4.

4 *Dicionario de Portugues, J. Almeida Costa, 3.ª edicao, Porto editor, LDA, Porto Portugal; Diccionario Contemporaneo da Lingua Portugueza, F. J. Caldas Aulete, 2.ª edicao actualisada, 1925, Parceria Antonio Maria Pereira, Lisboa*

Article 377 of Portuguese Civil Code, 1867 – Immobile things and mobiliary things – When in the civil law or in the acts or contracts, the expression - immobile assets or things - is used, without any other qualification, it shall include not only those which are immovable by nature or human action as also those which are so by operation of law. When the expression- "immovables", "immovable things or assets" – is used simply, this shall mean only those which are so by nature or by human action.

§ Sole paragraph - In the same way the expression - mobiliary assets or things shall include not only movables by nature as those which by operation of law and by the words - movable, movable things or assets shall be meant only physical objects which are movables by nature.

Article 18 - Capacity of wife to institute proceedings - The wife has the same active judicial capacity as the husband, when on account of absence or impediment of the latter, she holds the

administration of the matrimonial assets.

During the time the husband exercises the power of administration, the wife may only institute actions meant to enforce her own and exclusive rights of extra-patrimonial nature, for which she does not require permission of the husband.

§ Sole Paragraph: In the cases foreseen in the previous article and in the first part of the present article, the consent from the wife or authorization from the husband, wherever necessary, shall be made up for judicially when it is refused without just motive or cannot be applied for.

- Civil Code Articles 1190 and 1192; Article 44 of Decree no. 2 of 25/12/1910; Article 1477 of this Code.

Article 19 - Judicial capacity of spouses to be proceeded against – The following may be instituted against the husband and against the wife:

1. Actions arising from the acts done by both the spouses;

2. Actions arising from an act done by one of the spouses, in which it is proposed to obtain judgment to be executed against common assets of both the spouses or against exclusive properties of the other spouse;

3. Actions relating to immobile assets and all other actions where it is desired to acknowledge or create encumbrances over immobile assets of one or both the spouses or to extinguish the encumbrances created over the same assets.

- Articles 824 and 1041 of this Code.
- Note: Active judicial capacity is what we call capacity to sue or file proceedings and passive judicial capacity is what we call the capacity or susceptibility to be sued or to be proceeded against.

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Article 20 - Judicial capacity of spouses after separation - Upon separation of person and assets, being decreed, each of the spouses acquires full judicial capacity, as if the marriage has been dissolved.

In case of simple judicial separation of assets, the wife may sue and be sued, without consent or intervention of the husband provided that the actions relate to the exercise of her administration. In the rest, whatever is provided in articles 17 and 19 shall be followed.

- Civil Code Articles 1215, 1216, 1219 and subsequent articles.

Article 21 - **Representation of the State** - The State shall be represented by a Law officer of the cadre of the Public Ministry, who functions before the Court having jurisdiction for the matter.§ Sole Paragraph: However, where the subject matter of the case are assets or rights of the State, but under the administration or enjoyment of autonomous entities, they may appoint an advocate who may intervene in the proceedings, along with the Public Ministry for which purpose they will be summoned when the State is the party. When there is a difference between the Public Ministry and the advocate, the opinion of the former shall prevail.

- Articles 85, Paragraph 4 of this Code;
- Article 21 - Representation of the State - Corresponding provisions in C.P.C. 1908: -
  - Suits by or against Government – S.79
  - Notice – S.80
  - Exemption from arrest and personal appearance – S.81
  - Suits by or against the Government or Public Officers in their official capacity – O.XXVII, C.P.C.

Article 22 - Representation of collective persons - The representation of other collective bodies shall be done through the agencies designated in the law or in the respective memorandum of association. In the absence of any provision, the representation shall be done by the person who is entrusted with the administration of the collective entity.

§ Sole Paragraph: If there is a conflict of interest between the collective entity and its representative or if the collective entity does not have any representative, whoever substitutes the latter in his absence and impediments, may institute or defend proceedings in the name of the collective entity. If there is no substitute, the judge shall appoint amongst the members of the collective entity, one special representative, whose function will come to an end as soon as representation is assumed by the person designated by the collective entity.

Such appointment will be immediately publicized by affixation of a notice at the door of the court

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and at the door of the Head Office of the Administration of the collective entity, whenever it is known, and by publishing a notice in two issues of the newspaper most widely read in the locality where the same Head Office is located.

- **Articles 22 - 25** - Representation of collective persons - Corresponding provisions in C.P.C. 1908: -
  - Suits by or against Corporations – O.XXIX
  - Suits by or against firms and persons carrying on business in names other than their own – O.XXX

Article 23 - Representation of entities without judicial personality - Autonomous estates are represented by their administrators, except in cases where the law provides otherwise.

The societies and associations which do not have juridical personality, dependencies, the agencies, branches or delegations shall be represented by the persons who are acting as directors, managers or administrators.

Article 24 - Effect of absence of judicial personality, capacity and of irregular representation - Lack of judicial personality, judicial incapacity and irregularity in the representation has the same effect as lack of standing to institute proceedings; but the last two may be cured by the intervention or summoning of the legal representative or spouse.

If these ratify the acts previously done, the proceedings will proceed as if there was no defect; if not, whatever steps have been taken from the time of absence or irregularity, shall be of no effect.§ Sole Paragraph: The judge may on his own, or on the application of the party, fix the period within which the incapacity or irregularity may be cured. If no time is fixed, the defect may be cured at any time.

- Articles 293(3), 499 (c) of this Code.

Article 25 – Lack of authority or resolution - If the party is duly represented but the permission or resolution required by law is lacking, time shall be fixed within which the required permission or resolution shall be obtained, and the proceedings in the meantime shall be stayed.

If the defect is not cured within the time, the action shall be of no effect where the permission or resolution had to be obtained by the petitioner; if it was to be produced by the respondent, the action shall proceed as if the respondent has not filed the defence.

- Article 499 (d) of this Code.

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Article 26 – Absence of marital consent - The provision of the preceding article is to be followed, where one of the spouses requires consent or authorization from the other, or of the respective Court for curing of such defect, to appear before the Court as Petitioner or Plaintiff.

- The above provisions deal with the following:-
  - Absence of permission: like a guardian filing a suit without permission of the family council u/A 224(17) of the Civil Code and Art.12 of the Civil Procedure Code.

- Absence of resolutions: in the case of a corporate body if an office bearer institutes a suit without the support of a resolution of a said body.
- Non-impleadment: a husband in violation of Art.17 files a suit without impleading the wife or obtaining judicial consent for the same.

SECTION II
LEGAL STANDING TO SUE OR TO BE SUED

Article 27 - Concept of legal standing – Right to sue or be sued – A Petitioner has the legal capacity to claim a relief where he has direct interest in filing the proceedings; the Respondent has legal capacity to defend, when he has direct interest in opposing the case.

The interest in claiming the relief is disclosed from the benefit derived as a result of the relief being granted; the interest in defending is derived from the prejudice caused by reason of granting the said relief.

- Articles 499 (b), 293 (4) of this Code.
- **Articles 27 – 29 and 31** – Parties Locus standi – Proper, necessary parties, joinder of parties - Corresponding provisions in C.P.C. 1908: -
  - Joinder of parties – Order I

Article 28 - Joinder of parties : voluntary and necessary - Necessary and proper parties -When the interest relates to more than two persons, the question of legal capacity to file proceedings shall be decided in accordance with following rules:

a) Where the law or contract expressly requires the intervention of all the interested parties, absence of any of them shall be the case of non-joinder of necessary parties.

b) Where the law or contract allows that the joint interest may be exercised by one party alone or that joint obligation may be demanded from one party alone, the participation of one party alone will be sufficient.

c) Where the law or contract does not make any stipulation, the action may be filed, out of several

parties by one party alone or against one party alone, the Court, however, shall take cognizance only of the part of the interest or part of liability of those parties alone, even though the prayer is for the totality.

The first part of this clause will, however, cease to apply where considering the nature of the juridical relation, the joining of all the parties is necessary to enable the decision to produce its regular practical effect.

§ Sole Paragraph: Any sharer, heir or joint holder of a common or undivided thing, may seek the totality of the thing, in possession of a third party, and the latter shall be not entitled to raise objection that it does not belong to the Plaintiff in its entirety.

- Civil Code Article 2016.

Article 29 - Joinder of Petitioners/Plaintiffs and of Respondents/Defendants - Joinder of petitioners/plaintiffs against one or several respondents/defendants is permitted and one Petitioner/Plaintiff may file an action jointly against different Respondents /Defendants for different reliefs, when the cause of action is one and the same and the reliefs are depending on each other.

§ Sole Paragraph: The provision of this article shall not apply when to the different reliefs, different forms of procedure are applicable or the cumulation may violate the rules of jurisdiction as to subject matter or as to the hierarchy, but the cumulation shall not be barred if different type of procedure arises solely on account of valuation.

- Article 66, 67, 70, 72, 469, 470, 502 and Paragraph 3 of this Code.

Article 30 - Joinder of causes of action -Several petitioners/plaintiffs may sue or petition together and several respondents/defendants may be together sued or proceeded against, though cause of action

is different when the principal relief depends essentially on the appreciation of same facts or on the interpretation and application of same rules of law or on completely analogous contractual clauses.

§ Sole Paragraph: If the Court, *suo moto*, or upon the application of any of the respondents/defendants is of the view that even though there is commonness of the requirements as said above, it is advisable that separate proceedings be filed, argued and decided it shall be so declared in the preliminary order and the main proceedings will be of no effect. In such case if the new proceedings are instituted within 30 days from the day of the preliminary order directing the

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separation becomes res judicata, the effects of new proceedings and notice issued to the respondent/defendant shall retract to the date which gave rise to the original proceedings.

Articles 267 and 485 of this Code.

- **Articles 30 and 280** – Joinder of causes of action, Consolidation of suits - Corresponding provisions in C.P.C. 1908: -
  - Joinder of causes of action – O.I, rr. 3-7
  - Saving of inherent powers of Court – S.151;
  - Consolidation /Joint Trial of suits.

Article 31 – **Joinder of parties in relation to an action** - In the case of joinder of necessary parties, it-is understood that there is only one action with several subjects.

In the case of joinder of proper parties, it is understood that there is joinder of the actions and each of the litigating parties maintains independence in relation to the other parties.

- Articles 28 (b) and part l(c) of this Code.

SECTION III
REPRESENTATION OF PARTIES BEFORE THE COURT

Article 32 - Who can represent in Court - The authority for the purpose of appearance in the Court may be given to advocates and solicitors. When it is given to the persons not belonging to any of such categories involves necessarily the obligation of sub delegation in favour of advocates or solicitors.

- Judicial organization articles 513 and 514. Parties could be represented in Courts by advocates or solicitors.
  It is clarified that they are not solicitors as per the British or Indian system. The distinction between advocate and solicitor is brought out in Art.33 of the Portuguese Civil Procedure Code, 1939.
- **Articles 32 - 44** – Representation by Advocates - Corresponding provisions in C.P.C. 1908: -
  - Recognized agents and pleaders – O.III C.P.C;
  - Powers of Attorney Act, 1882;
  - Contract Act, 1872 Ss.182-238;
  - Advocates Act, 1961.

Article 33 - Cases in which appointment of advocate is compulsory - The appointment of an advocate is mandatory when the judgment passed is appealable. But the legal advisors and the parties themselves are permitted to make applications where no questions of law are raised. If the party has not appointed an advocate, the first pleading shall not be received and in the event it is received the court on its own or on the application of the adversary shall notify the party to,

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within a specified period appoint an advocate, failing which the plaint or defence will be of no effect.

§ 1: In the inventories, whatever may be the nature and valuation, the intervention of the advocate is necessary only to raise and argue the question of law.

§ 2: When in the judicial division there is no advocate, the mandate may be exercised by the legal advisor

- Articles 60, 678, 499 (e) and Paragraph 1 of this Code.

Article 34 - Cases in which appointment of advocate is not necessary - In matters which are not appealable the parties may argue by themselves and be represented by legal advisors.

Article 678 of this Code.

Article 35 - **How authority to represent in Judicial proceedings is to be granted** - The power of attorney for judicial purposes may be given:

1. By way of Power of Attorney of public nature or deemed as public;

2. By way of signature of the party followed by signature of the advocate in the plaint or in the written statement. In that case signature of the party is required to be done before the public notary who has to verify the identity of the grantor of the power of attorney.

- Civil Code Articles 1320 and 1322.

Article 36 - **Contents and scope of Judicial mandate** - When the party signs the first pleading as per the preceding article, it is understood that he gives powers to the advocate who represents him in all the acts and steps of the main proceedings and respective incidental proceedings even in the higher courts.

§ Sole Paragraph: Powers referred to in this article includes power of sub delegation.

Article 37 - **Scope of power of attorney** - When the party declares in the power of attorney that he grants powers for the purpose of court matters or to represent him in any action, this power of attorney will have extent as specified in the preceding article.

Article 38 - **Specific powers required for admitting, relinquishing or settling claim** -Authorized representatives in Judicial proceedings (advocate or legal advisors) may only admit

the claim in the proceedings, compromise the matter or withdraw the proceedings when they are authorized by power of attorney which specifies the proceedings and expressly authorizes them to do any of these acts.

- Articles 298 and 300 of this Code.

Article 39 - **Binding effect of admission by representative** – The express assertions and admissions of facts made by the power of attorney bind the party, unless they are rectified or withdrawn within five days.

The admissions made during the hearing cannot be withdrawn but may be rectified before the conclusion of the trial.

- Article 562, 565, sole paragraph of 570 of this Code.

Article 40 - **Revocation and relinquishment of mandate** - An application for revocation and renunciation of the Power of Attorney shall be made in the same proceedings and notified, as much to the grantor or to the holder of the power of attorney as to the opposite party.

The revocation and renunciation takes effect from the date of notice, except in proceedings in which appointment of an advocate is compulsory, because in such case the renunciation takes effect after the appointment of the new mandatary.

§ Sole Paragraph: If a party, after being notified of the renunciation, delays the appointment of the new advocate in the cases where appointment is mandatory, the attorney may apply to the court for fixing time for such purpose. After the expiry of time without the party making provision to appoint new advocate, the appointment already done is considered as extinguished and the party will remain ex-parte.

- Article 33 and 263 of this Code.

Article 41 - **Absence, insufficiency and irregularity of mandate** - The absence, insufficiency or irregularity of the Power of Attorney may be raised at any stage by the opposite party and the court may take suo moto cognizance of the same. The judge shall fix the time within which the lack or defect shall be cured and whatever is recorded be ratified. After such time is over without

regularization, whatever has been done by the attorney shall be of no effect and the latter should be directed to pay respective costs and compensation for the damages already caused.

- Article 449 (e) and paragraph 1 of this Code.

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Article 42 - Legal representation as part of administration of affairs - In case of urgency, one advocate or legal advisor may act as attorney and the manager of the business of the party. However, in the event such party does not ratify the acts within the period stipulated, the manager shall be directed to pay costs and damages which might have been suffered by the opposite party or to the party whose management he assumed.

- Civil Code Article 1723

Article 43 - Expert assistance to lawyers - Where in the course of the proceedings questions of technical nature arise for which the advocate does not have necessary preparedness, he may take the assistance, at the time of leading evidence and submission of arguments, of a person who possesses special knowledge to deal with the said questions.

Upto eight days before the hearing the advocate shall indicate the person chosen by him and the question or questions for which he finds necessary to have his assistance; immediately notice of this shall be given to the advocate of the other side who within five days may exercise identical right.

The intervention may be refused when it is found unnecessary.
§ Sole Paragraph: In relation to questions which are to be addressed, the expert shall have same rights and duties as the attorney, but he shall give his assistance under the direction of the respective advocate.

- Articles 76 and 650 of this Code.

Article 44 - Provision of legal aid - If the party does not find anybody who voluntarily agrees to be his advocate, he may approach the President of the Bar Council of the district or its delegation that they appoint an advocate for him.
The appointment shall be made without delay and notified to the appointee, who may plead excuse within 48 hours. In the absence of any excuse or if the same is not found justified by the appointer, the advocate should accept the appointment, failing which he shall be subject to disciplinary proceedings.
§ Sole Paragraph: Whatever is provided in this article is also applicable to legal advisor. However, the functions of the president of Bar council of the District or his delegate shall be exercised by the judge. The judge also shall make the appointment when the president does not make the appointment of advocate within five days or in the case of urgency.

- Judicial organization Article 561.

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TITLE II

EXECUTION

CHAPTER I

EXECUTABLE DOCUMENT

Article 45 - Need for an executable document - Any execution shall be founded on a title document by which the purpose and limits of the execution are decided. The execution may be for payment of specified amount, or delivery of a certain thing, or performance of a fact. - Articles 811, 928, 933 of this Code.

- **Articles 45 - 61** – Execution - Corresponding provisions in C.P.C. 1908: - o Execution - Ss. 36-74

Article 46 - **Kinds of executable documents** – The following documents may be the basis for execution:

(l) Judgments granting mandatory relief; like delivery of something, doing or abstaining from doing something based on a right.

(2) Records of conciliation proceedings;

(3) Public deeds;

(4) Bills of exchange, promissory notes, cheques, invoices, money orders, counterfoils and any other private documents Signed by the debtor evidencing the liability of payment of specified amount.

(5) Title deeds which by special law makes them executable.

Article 47 - **Requirement for execution of judgement** - In order that the judgment becomes executable, it is necessary that it becomes res-judicata or that appeal is admitted without stay of operation of the judgment.

§ Sole Paragraph: The execution initiated pending the appeal comes to an end or stands modified in accordance with the final judgment proved by certified copy. While the appeal from the judgment is pending the executor or any creditor may not be paid without furnishing security.

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Article 48 - **Execution of Orders** – From the point of view of executory force, orders and any other decisions or acts of a judicial authority directing the payment of certain amount or doing of certain act or fulfilment of any obligation are equated to a final judgment.

Article 49 - **Execution of arbitration awards** - The decisions passed by an arbitral tribunal are executable in the same manner as decisions of the civil courts.

- Article 1574 of this Code.

Article 50 - **Execution of Foreign Judgement** - Decisions passed by courts or arbitrators in a foreign country may be used as basis for execution only after revision and confirmation by the High Court.

§ Sole Paragraph: The title deeds drawn in foreign country do not require confirmation for the purposes of execution.

Article 51 - **Execution of public deeds** - Public deeds are executable when they are the instrument constituting any obligation.

§ Sole Paragraph: The public deed of opening of a credit, contract of delivery of goods and any other document in which future installments are stipulated may serve as the basis of execution, provided it can be shown by a document issued in accordance with the said instrument or having probative force in accordance with the law that, in pursuance of the contract, money was advanced, a supply was made or an installment was paid.

Article 52 - **Executability of negotiable instrument and private writings** - The signature of the debtor on the bills of exchange, promissory notes, cheques and other private writings, excepting an invoice, must be identified by the notary.

However, if the amount of the debt does not exceed 10,000$ (ten thousand escudos) simple identification on the basis of comparison of the signature is sufficient; where the amount is more than 10000$ (ten thousand escudos), it is necessary that the notary certifies, that the signature was made in his presence and recognizes the identity of the signatory.

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Article 53 - **Cumulation of executions** - As against same debtor, the creditor may join together executions founded on different documents, irrespective of their value, except:-

1. Where the competent court for all the executions is not the same;
2. Where the execution are for different purposes;

3.

Where for any of the executions the procedure to be followed is different from that employed for others;

§ 1: Where one or some of the executions attract summary or very summary procedure and others ordinary procedure, in such case the ordinary procedure shall be followed for all. When there is a cumulation of the summary or very summary executions, the procedure to be adopted shall be decided by the totality of the reliefs;

§ 2: Where all the executions are based on judgments the execution shall be proceeded with in the file of the larger value, to which other files shall be appended;

Where there are other documents for execution they must be incorporated in the file as per the earlier clause. But if any of them is of greater value, the files in which the judgements have been passed shall be appended to the file of larger value.

§ 3: When an execution has not been closed, the executor may apply for execution of another document provided that there are no obstacles as provided in clauses 1 to 3 and to the new execution corresponds, on the point of the value the form of procedure employed to the pending execution.

- Article 58 and 813 (2) of this Code.

Article 54 - **Executablity of certificates extracted from inventories** - Certified copies issued from inventories shall be executable, provided that they contain:

(a) Identification of the Inventory by naming the deceased and the applicant for inventory; (b) Indication that the respective interested party had the position of heir or legatee;

(c) The text of the chart of partition to the extent it relates to the same interested party, with the declaration that the partition has been homologated by the judgment of the court;

(d) The description of the properties which were described from amongst those which were allotted to the applicant.

§ 1: In the event the order of partition by the lower court had been modified in appeal and the modification had effect on the share of the interested party, the certified copy shall reproduce the

decision to the extent it relates to the same share.

§ 2: Where the certified copy was meant to prove the existence of a credit, it shall only contain, besides the requirement of clause (a), that which is found in respect of the approval or verification of the credit and manner of its payment.

- Vide Article 192 of Code of Property Registration (“Codigo do Registo Predial”)

CHAPTER II
PARTIES

Article 55 - **Legal standing (locus standi) of decree holder and judgement debtor** -Execution is to be instituted by the person who appears in the document as judgment Creditor and it should be instituted against person who in the same document has the position of the judgment debtor, except as provided in subsequent two articles.

- Article 813 (1) and sole paragraph, 815 of sole paragraph of this Code.
- As per our Indian usage in Civil Procedure, the applicant for execution has been referred to in this translation as ‘Decree Holder’ (the successful creditor who holds the judgement) and the opponent as ‘Judgement Debtor’ even where the decree is not for money.

Article 56 - **Habilitation of judgement debtor and decree holder** - In the event there is succession in the right or obligation, in the application for execution, the heirs of the party shall be brought on record. The person or persons summoned may contest the application, and in the rest article 378 shall be followed.

If the application to bring on record the heirs is contested, all the limitation periods and steps of the execution shall remain suspended, till the application to bring on record the heirs is decided.§ 1: The execution based on mortgage shall always be pursued against the possessor of the mortgaged assets, whoever he may be and without the need to bring heirs on record.

§ 2: The execution based on judgment shall not be instituted against the transferee, if the act was subject to the registration and the transmission was registered before the registration of the action.

Article 271 and sole paragraph 2 of this Code.

Article 57 - Executability of Judgement against third parties -If the judgment has the effect of res judicata not only against the debtor but also against another person, the execution may be filed against the said person independently of the bringing of heirs on record.

Articles 326, 346, 354 etc, of this Code.

Article 58 - Joint application for execution -Several creditors may join together against the same debtor when the purpose of the execution is to demand payment of specific amount and the exceptions envisaged in no. 1 and 3 of Article 53 do not obtain.

In the event any of the amounts is not ascertained, the joinder may take place only after liquidation of the claim.

§ Sole Paragraph: What is provided in Paragraph 2 of Article 53 is applicable in this case.

Article 813 (2) of this Code.

Article 59 - Legal standing of Public Ministry as executor - The Public Ministry has legal standing to seek execution for payment of fines in any proceedings as well as execution for costs or any amounts due to the State, coffers, Bar Council or Body of legal advisors.

Article 6 of Decree no. 29.950

Article 60 - Compulsory representation through advocate - The parties have to compulsorily appoint an advocate when execution exceeds the pecuniary jurisdiction of the High Court; and in cases where value is less than that but it exceeds the pecuniary jurisdiction of the Civil Court when there is an objection to the execution or there is marshalling of the creditors.

Article 33 of this Code; Article 1 of Decree no. 35:978. 1

Article 61 - Powers of privileged or preferred creditor -The creditor who has privilege or preference over the attached properties, even though based on attachment or judicial hypothecation may prosecute the execution when the executor is not diligent in prosecuting the regular steps of the proceedings.

Articles 676 and 847 of this Code.

BOOK II

JURISDICTION AND PREVENTION OF BIAS

(Articles 62 – 137)

BOOK II

JURISDICTION AND PREVENTION OF BIAS

CHAPTER I
GENERAL PROVISIONS AS TO JURISDICTION

Article 62 - International Jurisdiction and internal jurisdiction – requisite conditions - The Portuguese courts have international jurisdiction when any of the circumstances mentioned in Article 65 is satisfied.

In internal matters, jurisdictional power allotted to different courts, as a rule, as per the subject matter and the value of the action, the judicial hierarchy, and the territory. In exceptional cases, the type of respondent is also taken into consideration.

- Portuguese Civil Procedure distinguishes doctrinally between the concepts of Jurisdiction and Competence. Lack of Jurisdiction means, that the matter cannot be filed in any Court in the land. Competence refers to the allotment of jurisdictional powers amongst different Courts, all of which otherwise have jurisdiction. Unfortunately, this theoretical distinction is not clearly maintained in the Code itself, jurisdiction being covered by Article 65 as international jurisdiction and competence under Article 66 onwards (chapter 3 under the title internal competence). In this translation also, strict adherence to the distinction has not been possible.
- **Articles 62 - 121** – Jurisdiction - Corresponding provisions in C.P.C. 1908: - o Jurisdiction of the Courts and res judicata - Ss. 9-21A

Article 63 - Law regulating jurisdiction -Competence is fixed with reference to the time when the action is instituted. The factual modifications which occur subsequent to the said time are irrelevant; so also changes in law are not relevant, except where the Court in which the case is instituted is extinguished or the same court ceases to have jurisdiction as to the subject-matter and the hierarchy.

- Article 267 of this Code.

Article 64 -Change of forum prohibited -No matter may be transferred from the competent court to the other, except in cases specially foreseen in the law.

CHAPTER II
INTERNATIONAL JURISDICTION

Article 65 - Requisites for international jurisdiction - The circumstances on which the international jurisdiction of the Portuguese courts depends are as follows:
(a) The action is to be instituted in Portugal following the rules of territorial competence provided by the Portuguese law;
(b) The act or fact from which the action emerges has been done within the Portuguese territory; (c) It is intended to protect any Portuguese citizen, on the principle of reciprocity;
(d) The right cannot be rendered effective unless the action is instituted in Portuguese courts.§ 1: When as per the Portuguese law for the purpose of the action, the court of the domicile of the defendant is competent, the Portuguese courts may exercise their jurisdiction provided the defendant resides in Portugal for more than 6 months or he is found accidentally in the Portuguese territory, provided that, in the latter case, one of the parties to the obligation is a Portuguese subject.

§ 2: Foreign collective bodies are deemed to be domiciled in Portugal provided that they have a branch, agency, unit or delegation in Portuguese territory.

- Article 65 – International jurisdiction
- Subject of Conflict of Laws/ Private International Laws

CHAPTER III
INTERNAL COMPETENCE

SECTION I
JURISDICTION AS TO SUBJECT-MATTER

Article 66 - Jurisdiction of ordinary courts - The cases, cognizance of which has not been assigned, by the law to any special jurisdiction, are of the competence of the regular court. Article 116 of the Portuguese Constitution.

Article 67 - Court of judicial division is the ordinary court - The regular court is the civil court. Plenary civil jurisdiction in the first instance, belongs to the court of the judicial division.

Note : Judicial Divisions or "Comarcas" under the erstwhile High Court of Goa were as follows:-

Judicial Division	Head Quarters	Territorial Area
Ilhas of Goa	Panjim or Nova Goa	Island of Tiswadi or Goa and the adjoining islands excepting the parishes of Sant Estevao and Naroa, Reis Magos, Nerul, Pilerne, Penha de Franca and Salvador do Mundo, and Ponda Taluka except village Orgao.
Bardez	Mapusa	Bardez Taluka excepting villages of Revora, Assonora, Tivim, Reis Magos, Nerul, Pilerne, Penha de Franca, Salvador do Mundo and Pernem, Taluka excepting villages of Alorna and Ibrampur.
Salcete	Margao	Salcete Taluka except the parishes of Paroda, Assolna, Cuncolim and Velim.
Bicholim	Bicholim	Sanquelim Taluka, villages of Alorna and Ibrampur, of Pernem Taluka, village Orgao of Ponda Taluka, parishes of Sant Estevao and Naroa of Ilhas Taluka and villages of Revora. Assnora, Tivim of Bardez Taluka.
Quepem	Quepem	Quepem, Sanguem, Canacona Taluka and the parishes of Paroda, Assolna, Cuncolim and Velim, of Salcete Taluka and the island of Angediva.
Daman	Daman	Full territory of Daman, Pragana of Nagar – Aveli and the island, fort and city of Diu with the villages of Gogola and Simbor.
Macau	City of Macau	Territory of Macau.
Timor	City of Dili	Territory of Timor.

SECTION II
PECUNIARY JURISDICTION

Article 68 - Pecuniary jurisdiction of subordinate courts - The subordinate courts take cognizance of cases which the law assigns to their jurisdiction up to the limit of the value expressly designated.

Decree No. 35.915 dated 24/10/1946 ministerial legislative diploma no.4 dated 08/05/1952.

Article 69 - Pecuniary jurisdiction of Court of judicial division - The court of judicial division takes cognizance of all the cases irrespective of the valuation when there are no inferior courts and of the causes which exceed the value fixed, whenever there may be.

Judicial Statute Article 58

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SECTION III
COMPETENCE WITH REFERENCE TO THE HIERARCHY (SUBORDINATION OF COURTS)

Article 70 - Appellate and hierarchical court - The courts of judicial division take cognizance of the appeals arising from lower courts, from notaries, from Registrars and of others which by law are to be filed before them; they decide the actions for losses and damages instituted against the courts, and officers of the Public Ministry and against the judicial officers of the same judicial division for acts done in the exercise of their functions; and they resolve conflicts of competence arising between the judicial authorities of the division.

Judicial Statute Article 58 (4) and (7).

Article 71 - Jurisdiction of High Court - The High Court takes cognizance of the appeals and of the matters which, by law, are within their competence, and in particular :-

(a) Of appeals from the courts of judicial division;

(b) Actions for compensation and damages against the judges and respective officers of the Public Ministry, in connection with the exercise of their functions

(c) From conflicts of competence between the courts of different judicial division of the same district;

(d) Revision of the judgments passed by foreign courts or foreign arbitrators.

- Judicial Statute article 56.
  Articles 1089 and subsequent of this Code, Articles 115 and subsequent of this Code, Articles 1100 and subsequent of this Code.

Article 72 - Jurisdiction of the Supreme Court - The Supreme Court of Judicature takes cognizance of the appeals and the matters by which law fall within its competence, and in particular :

a) Appeals from the courts of judicial division and from High Court;

(b) Actions for damages against the judges of the High Court, and of the Supreme Court and against the officers of the Public Ministry attached to any of those courts, in connection with the exercise of their functions.

(c) Conflicts of competence between the High Courts and between courts of different judicial districts.

- Judicial Statute Article 53.

  Article 1089 and subsequent of this Code, Articles 115 and subsequent of this Code.

SECTION IV
TERRITORIAL JURISDICTION

Article 73 - Local jurisdiction for immovables (*"Forum rei sitae") - An action for enforcement of property rights over immovables shall be instituted in the court where the properties are situated.

In the same court, actions may be instituted for possession, for delivery of judicial possession, sundry actions in the nature of arbitrament, actions for eviction, for pre-emption in respect of immovables, actions for reinforcement, reduction and redemption of mortgages.

But the actions for reinforcement, reduction and redemption of mortgage over the ships, automobiles and aircrafts shall be instituted where the respective registration has been done. If the hypothecation includes moveables registered in different divisions, the plaintiff may select any of them.

§ Sole Paragraph: If the action has, as its subject-matter, several assets, or moveables and immoveables, situated in different divisions, the action may be filed in the division where the immoveable properties of major value are located, and for that purpose, value at the "matriz"(Land Revenue Register) is to be considered; where the property is comprised of more than one division, the action may be filed in any of the divisions.

- Articles 446, 970, 999, 1032, 1043 and 1051.

Article 74 - Local jurisdiction for enforcement of contracts - If the action is meant to seek enforcement of obligations, it shall be filed in the court of the place in which, by law or written agreement, the concerned obligation was to be fulfilled.

However, if the action originates from an illicit act, the court where the illicit act was done shall have jurisdiction.

Article 75 - Divorce and separation - The court of domicile or of the residence of the plaintiff is competent to try suits for divorce and separation of persons and assets

- Decree dated 3-11-1910, articles 4 and 43.

Article 76 - Suit for fees - For the suit for recovery of fees of judicial attorneys or technicians and for recovery of the money advanced to the client, the court where the service was rendered shall have jurisdiction and this suit shall be appended to the suit in respect of which the service was rendered.

Article 77 - Inventory and Habilitation of heirs - The court of the opening of inheritance will have competence:

1) For the inventory proceeding;

2) For an application to bring a person on record as heir or representative of another.

§ 1: The inheritance of an individual who dies outside the country without having domicile therein nor immoveables, inheritance shall be considered to have opened where the major part of the moveables exist.

§ 2: When the inheritance opens in a foreign country, the application for bringing on record the heirs shall be presented in the place of the domicile of the applicant who is to be brought on record as an heir.

§ 3: The court where the inventory on the death of one of the spouses has taken place is competent for the inventory in case of inventory on the death of other spouse, except where the marriage was contracted under the regime of absolute separation of assets. When there was an inventory on the death of two or more spouses of the deceased, the competence shall be determined by the last of such inventories.

- Articles 117, 1431, 1369, 2009 of Civil Code.

Article 78 - Regulation and sharing of major ship repairs -The court of the port where the delivery of the goods of a ship which suffered a gross damage was to take place is competent to regulate and apportion the damage.

- Commercial Code Articles 635 Para 1 and 650.

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Article 79 - Losses and damages for collision of ships - The suit for losses and damages on account of collision of the ships may be filed in the court of the place of the accident, or at the court of domicile of the owner of the ship which has caused collision, or in the court of the place pertaining to or in which the ship is found, or in the place of the port where the ship which is hit, first enters.

- Commercial Code Article 675.

Article 80 - Salaries for salvaging or assistance to ships - The salaries due for salvaging or rendering assistance to the ships may be demanded in the court of the place where the fact occurred, or in the place of domicile of the owner of the objects salvaged, or in the place pertaining to or where the salvaged ship is found.

- Commercial Code Article 691.

Article 81 - Extinguishment of privileges over ships – An action to get the ship freed from any privileges, acquired with or without consideration, shall be filed in the court where the ship was found anchored at the time of the acquisition.

- Commercial Code Articles 578 and 579.

Article 82 - Declaration of Bankruptcy - For a declaration of bankruptcy, the court of the place of the main establishment shall have jurisdiction, and in the absence of such establishment, that of the place of domicile or of the head office of the delinquent shall be competent. The main establishment must be considered to be the place of major commercial activity of the delinquent.§ Sole Paragraph: What is said in this article is applicable to a foreign trader or society, having in Portugal any establishment, branch or representation. But the Portuguese court can only declare the bankruptcy which is a consequence of obligations contracted in Portugal and which were to be fulfilled in this territory; and also the liquidation is restricted to the assets existing in Portuguese territory.

- Article 1136 of this Code.

Article 83 -Preventive Injunctions, Injunctions to maintain status and anticipatory steps -In respect of preventive and conservatory proceedings, and procedural steps prior to the institution of the action, the following shall be observed:

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(a) The sealing, listing of the objects and other procedural steps of preventive nature in relation to

the objects likely to be diverted shall be applied for in the court where the objects are found, and if there are goods in various judicial divisions, then in any of them;
(b) For the purposes of prevention of a new construction, the court of the place of such construction shall have jurisdiction;
(c) The anticipated collection of evidence may be applied for to the court where the evidence has to be taken;
(d) For the purpose of other action for prevention and conservation, the competent court will be the court where the action is to be filed.
§ Sole Paragraph: The proceedings of the acts and steps referred to in this article shall be appended to the respective action for which purpose the same shall be transferred whenever becomes necessary to the court where the action is filed.

- Articles 393, 400, 403, 405, 409, 420, 429, 525, 1113, 1467 of this Code.

Article 84 - Sundry notices - Sundry notices shall be always applied for in the court in whose jurisdiction person to whom notice is to be given resides.

- Articles 257 and 261 of this code.

Article 85 - General rule for territorial jurisdiction – place of residence of the respondent -In all other cases not foreseen in the preceding articles or in special provisions, the jurisdiction lies with the court of the domicile of the respondent.

§ 1: If the respondent does not have fixed residence, he shall be proceeded against at the place where he is found. If he has more than one residence, in which he lives alternatively, and if he has not chosen one of them as his domicile, he shall be sued at the place in which he is found; if he is not found in any of them, he may be proceeded against at any of the above places at the choice of the petitioner.
§ 2: Where the respondent is uncertain or if he is absent at an unknown place, the action may be filed in the court of domicile of the petitioner. But the curatorship, provisional or permanent, of the assets of the absentee may be filed in the court of last domicile which the absentee had in Portugal.
§ 3: Where the respondent has domicile and residence in a foreign country, the action may be filed in the court where he is found; if he is not found in Portuguese territory, the action may be

filed in the court of domicile of the petitioner; when such domicile is in a foreign country, the court of the judicial division of the capital city of the overseas province shall have jurisdiction for the cause.
§ 4: Where the respondent is the State, the court of domicile of the respondent shall be substituted by the court of domicile of the petitioner. Where the respondent is any other collective body, action may be filed in the court of the location of the head office or at the location of the branch, agency, office or delegation, depending on whether the action is against the former or the latter. But an action against foreign collective persons which have an establishment, agency, branch or delegation in Portugal may be filed in the court of the place of the said subordinate establishment, agency, branch or delegation, even if service is sought against the head office.

- Civil Code articles 7, 41, 43, 45 and 1109 of the code.

Article 86 -More than one respondent -Where there is more than one respondent in the same action, they shall be proceeded against in the court of the domicile of the majority of the respondents. Where the number in different domiciles is the same, the petitioner may choose any of such domicile.

§ Sole Paragraph: The provision of the body of this article will not apply when there are multiple reliefs dependent on one another. In such case, the jurisdiction shall be with the court of the domicile of the respondent against whom the main reliefs is sought and on which other reliefs are dependent.

- Article 29 of this Code.

Article 87 - Appellate jurisdiction - Appeals are to be filed to the court which is hierarchically superior to the court from which appeal is filed.

Article 88 - Suits in which the civil judge, his wife or descendant or ascendant is party - For the suits in which the party is the judge, his wife, or ascendant or descendant by consanguinity, and the suit was to be filed in the court where the same judge is a party, the court of the nearest judicial division shall be competent, which means the judicial division of which the seat lies at the shortest distance from the seat of the other division.

§ 1: If the suit is filed in the judicial division wherein the inhibited judge is posted or he is posted there when the suit was already pending, the suit shall be transferred to the nearest judicial

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division by initiative of the judge or on application of the parties. The transfer may be applied at any stage of the suit till the judgment.

§ 2: The judge hearing the suit may direct and do in the judicial division of the judge who suffers from the impediment all the steps necessary for the prosecution of the suit, as if he is the judge of the said judicial division.

§ 3: Whatever said above does not apply when in the judicial division there is more than one judge.

- Article 122 of this Code.

Article 89 - Suits in which the lower court judge, his wife, descendant or ascendant are party - Where the judge of a lower court, his wife or ascendant or descendant by consanguinity is a party, the suit may be filed in the court of the respective judicial division or shall be transferred in accordance with paragraph 1 of the previous article, where the suits as per the normal rule of jurisdiction were to be entertained in the division where the judge of the lower court is posted.

SECTION V

SPECIAL PROVISIONS AS TO EXECUTIONS

Article 90 - Jurisdiction for execution based on judgment - For the purposes of execution based on judgment passed by the Portuguese Courts, the court of the first instance which decided the case has jurisdiction for the execution application. The execution is processed in the same file of the suit or by way of certified copy of the decree if the main file is pending before the Appellate Court.

Article 91 - Jurisdiction for execution of judgement pronounced by Superior courts - Where the suit is decided by the High Court or by the Supreme Court, the execution shall always be processed in the court of first instance of the domicile of the judgment debtor, save as provided in article 88.

The execution shall proceed in the same original file or its copy which for this purpose shall be returned to the lower court.

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Article 92 - Execution for costs, fines and compensation - Executions for costs, fines, and damages awarded in any matter shall be filed and further steps shall be processed in the same file. However, if an appeal was filed from any of the matters, then a certified copy of the judgment or order is to be annexed to the file.

Article 93 - Execution for costs, fine and compensation imposed by superior courts - When costs, fine or compensation have been awarded, by order passed by the High Court or the Supreme Court, the execution shall be processed on the basis the certified copy of the judgment and shall be taken up by the court of first instance, where the case had been filed except if the judgment debtor is employee of the High Court or the Supreme Court because in that case, the execution shall always be taken up by the court of judicial division to which the employee belonged.

Article 94 – Jurisdiction for execution founded on foreign Judgment or on document other than a judgment - Where there is an execution of the judgment of a foreign court, or it is founded on a document other than a judgment, the following shall have jurisdiction:
(a) The court of domicile of the Judgment debtor, where the execution is for payment of a specified amount, save where there is an execution for recovery of an amount secured by mortgage, in which case, the court of location of the mortgaged assets shall have jurisdiction; (b) The court of the place where the thing is found, in the event the execution is for the delivery of a specific thing.

(c) The court of the place where the act was to be performed if the execution is meant for performance of an act.
§ 1: Where the debtor does not have domicile nor residence in Portugal, but he is having properties, the court competent for the recovery of the specified amount shall be of the place where majority of the properties are located.
§ 2: Where the thing which had to be delivered no longer exist, then the rule of jurisdiction for execution proceedings for the delivery of the specific thing will be the same as for execution for payment of a specific amount.
§ 3: The execution founded in a foreign judgment, after revision and confirmation, shall be processed either in the file of revision or on the certified copy of the judgment which for this purpose shall be sent to the court of first instance having jurisdiction.

Article 95 – Jurisdiction of Subordinate Judges - If the execution is based on a document other than a judgment and it is necessary to start with ascertainment of the amount, subordinate judges shall have jurisdiction for the execution when the prayer does not exceed 5000$ (five thousand escudos).

CHAPTER IV
EXTENSION AND CONSEQUENTIAL JURISDICTION

Article 96 – Extension of jurisdiction : incidental questions raised by the respondent - The court having jurisdiction in accordance with the preceding provisions, is also competent to take cognizance of all the incidents arising in the course of the proceedings, and of all the questions raised by the defendant in defence.

The decision on those questions and incidents does not constitute res judicata beyond the respective proceedings, except:
(a) Where one of the party apply for judgment with such an extent and the court is competent to decide such question within its jurisdiction and hierarchy;
(b) Where the cognizance of the question or of the incident implies cognizance of the object of the suit.

Article 97 – Incidental questions of Criminal or Administrative nature – Where the cognizance of the object of an action depends upon the existence or inexistence of a criminal offence or appreciation of the validity and content of an administrative act, the judge may stay the decision until the criminal court or administrative tribunal decides the matter.

§ Sole Paragraph: Such suspension will be of no effect if the penal action or administrative action is not taken within one month, or if the respective file is pending due to the negligence of the parties during the same period. In such a case, the judge shall decide the prejudicial question, but his decision shall not have effect outside the proceedings in which it is passed.

Article 98 – Jurisdiction to decide questions raised in counter-claim - The court dealing with an action is competent to decide questions raised by way of counter -claim, provided it has jurisdiction as to subject matter and hierarchy, even though it may not have the jurisdiction with

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reference to the value or territory. If it has no such jurisdiction, the counter-claim shall be of no effect.

- Articles 279 and 506 of this Code.

Article 99 – Choice of Court by agreement - A private agreement depriving a Court of its jurisdiction when it has jurisdiction as per article 65, is void, except where parties to the agreement are foreigners and the obligation was to be performed in the foreign territory and was not referring to the assets situated in Portuguese territory.

Article 100 – Jurisdiction by agreement : when valid - The rules of jurisdiction for subject-matter and hierarchy cannot be altered by the will of parties, but it is permissible for parties to modify by express agreement the norms relating to jurisdiction in respect of value and territory. The agreement has to satisfy the requirements as to form of contract, source of obligation, provided that it is written and it must indicate the question or questions to which it refers and the court which shall have competence.

The jurisdiction founded on such a stipulation is as much obligatory as one derived from the law.§ Sole Paragraph: The indication of the questions covered by the agreement may be done by specifying the particular juridical act or fact which gives rise to such questions.

CHAPTER V
VIOLATIONS OF JURISDICTION

SECTION I
ABSOLUTE LACK OF JURISDICTION

Article 101 - Absolute Lack of Jurisdiction – Violation of norms in the matter of international jurisdiction and of the rules of jurisdiction as to subject and hierarchy gives rise to absolute incompetence of the Court.

- Articles 65, 66, 67, 70, 72 of this Code.

Article 102 – Objections as to jurisdiction – Suo moto cognizance - Absolute incompetence may be raised by the parties and must be, suo moto, raised by the court at any stage of the

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proceedings so long as on the merits of the case there is no judgment which has become res judicata.

§ Sole Paragraph: The case of a matter coming under the jurisdiction of a special tribunal and which has been filed before the court of general jurisdiction (civil court), stands excluded. In such case, the lack of jurisdiction may be argued and raised, ex-officio, only till the time of passing of the curative order.

- Article 514 of this code.
- Curative Order (*"despacho saneador"* = clearance order*)* was a preliminary order clearing the matter for further hearing after scrutinizing all preliminary aspects like jurisdiction, maintainability, limitation and technical requirements of procedure.

Article 103 – Stage for objecting to jurisdiction - If the objection to jurisdiction was raised during the stage of the pleadings, immediate cognizance thereof may be taken, or the same may be reserved till the time of passing of the Curative order.

If it was raised subsequent to such an order, cognizance of the same should be taken immediately. It is open to reserve the point of absolute lack of jurisdiction till the final judgment, only where the decision on the same is totally dependent on the trial and arguments in the action.

- Article 514 of this Code.

Article 104 – Decision on jurisdiction in the Curative Order – its binding force - If the point of absolute lack of jurisdiction was not argued before passing the Curative order, the judge shall ascertain that he has jurisdiction to take cognizance of the case in the question of nationality, of subject-matter and of hierarchy. But the order will operate as '*res judicata'* only to the extent of the specific questions concretely decided on the question of jurisdiction.

- Art. 514 no. 1 of this Code.

Article 105 – Effect of total lack of jurisdiction - If the court is satisfied that there is absolute lack of jurisdiction, the proceedings shall be of no effect.

However, if the lack of jurisdiction was decided after the conclusion of the pleadings, the pleadings can be made use of if the parties agree.
In such case, the Petitioner shall apply that the matter be sent before to the court where new action has to proceed.

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Article 106 – Binding effect of the decision on absolute lack of jurisdiction - The decision of a court that it has absolutely no jurisdiction, though it has become final, shall not be binding outside the proceedings in which it was pronounced. However, the petitioner may invite a judgment of the superior court which fixes, with finality, the jurisdiction of the court for the cause, in terms of the following article.

- Article 672 of this code.

Article 107 – Final determination as to Jurisdiction of Court - Where a court decides itself to be incompetent to take cognizance of a matter, by reason of subject matter or hierarchy-wise, and the decision is confirmed by the High Court, the Petitioner may apply, in the appeal filed to the Supreme Court, that it may be decided as to which court is competent. In such case, Public Ministry shall always be heard.

If the High Court has held that the civil court is incompetent because the matter has to be heard by the administrative side, the appeal has to be addressed to the court deciding conflicts between judicial and administrative authorities.
If the same action is pending, for the purpose of fixation of competent court, the regime of conflicts shall be applicable.

SECTION II
RELATIVE INCOMPETENCE

Article 108 – Technical lack of Jurisdiction - Irregularity in Jurisdiction - The violation of the provisions of Pecuniary jurisdiction, and of the provisions contained in articles 73 to 89, and the like, result the relative incompetence of the court (technical lack or irregularity of jurisdiction).

Article 109 – Procedure for raising technical lack of jurisdiction – Irregularity or technical lack of jurisdiction may be raised only by the respondent, within the period of limitation starting from the service of notice. Once the exception is raised, the judge shall direct notice to other party to reply. For the purposes of this article, the provisions contained in articles 307, 308, and 309 are applicable.

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§ Sole Paragraph: In the proceedings where there is no room for first summons, the period shall run from the first notice on the respondent.

Article 110 – Mere raising of objection to jurisdiction will not suspend proceedings -Objection as to jurisdiction does not suspend the regular course of the proceedings. But where the filing of

pleadings ends before the decision on the objection, all further steps will remain suspended till the question of jurisdiction is finally decided.

Article 111 – **Procedure where objection is not contested or contested** - Where the petitioner does not reply or accepts the objection, the plea of jurisdiction shall immediately stand allowed, and the file will be transferred to the court designated by the respondent as competent.

Where the petitioner contests, evidence shall be produced in the following ten days and it shall be decided which court has jurisdiction. After the decision becomes *res judicata*, the question of jurisdiction stands finally decided.

§ 1: Neither proof by experts, nor any step through letter of request, is admissible.

§ 2: If the objection is held maintainable, the file shall be transferred to the competent court.

Article 112 – **In case there are many respondents** - In case there is more than one respondent, the judgment shall produce effect in relation to all of them. But when the objection is raised by only one of them, others can also object, for which they will be notified on the same terms as the petitioner; in this case, it is necessary that none of the notified parties contest, in order to attract what is contained in the first part of the preceding article.

Article 113 – **Lack of jurisdiction based on an attempt to avoid forum** - The lack of jurisdiction may be founded on the fact that a party was joined who is a stranger to the cause to drag the actual defendant from the court which is territorially competent, In this case, the judgment which adjudges the court incompetent shall always penalize such a petitioner with fine and damages as a litigant in bad faith.

Article 114 – **Time limit for objection to jurisdiction in Appellate Court** - The time for objection to jurisdiction of a court of appeal shall run from the first notice the court issued or the

first intervention in the proceedings. The provisions of the previous articles are applicable to this case, with necessary adaptations.

SECTION III

CONFLICTS OF JURISDICTION AND COMPETENCE

Article 115 – **Distinction between conflict of jurisdiction and conflict of competence** - There is a conflict of jurisdiction when two or more authorities, belonging to the different functions of the State, or two or more courts, of different jurisdictions, claim or decline the power to take cognizance of the subject.

In the first case, the conflict is positive, and in the latter, it is negative.
There is a conflict, positive or negative, of competence when two or more courts of same kind consider themselves competent or incompetent to take cognizance of the same question. § Sole Paragraph: There is no such conflict, as long as the decisions passed with regard to competence are subject to appeal.

Article 116 – **Court of lowest grade to try** - The conflicts between two courts of civil jurisdiction shall be decided, by the court of the lowest grade which has jurisdiction over all the authorities in conflict, in the manner as provided in the following articles.

- Article 70, 71(c), 72 (c).

Article 117 - **Who may seek a decision on jurisdiction** - The decision on conflict may be solicited by any of the parties or by Public Ministry by way of an application in which the grounds are specified.

§ Sole Paragraph: With the application, the name of the witnesses is to be indicated when the party wants to make use of such form of proof.

Article 118 – **Suspension in limine or notice to reply -** If a judge or the member of judicial bench who prepares the judgement is of the opinion that there is no conflict, he shall immediately reject the application. In other case, he shall notify the authorities in conflict to suspend the progress of the respective proceedings, when the conflict is positive, for them to respond within the prescribed period.

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§ Sole Paragraph: The notice shall be sent by post by a registered letter. The period to file the reply shall commence three days after the letter has been dispatched, except where the notice has to be sent overseas, because in that case, the period will be extended depending upon the usual time for postal communications.

Article 119 – **Reply** - The authorities in conflict shall respond by official letter, to be sent by registered post, and may attach any certified copies of the proceedings.

§ Sole Paragraph: The reply delivered to the respective post office within the prescribed period, shall be considered to be filed on time.

Article 120 – **Production of evidence and subsequent stages -** After having received the reply or after being satisfied that the same cannot be accepted, the examination of the witnesses will start if their names have been tendered, the file will be forwarded for opinion of the Public Ministry and for the examination by the advocates appointed by the parties, and lastly the decision will be passed.

§ Sole Paragraph: In the event the conflict is to be resolved by the High Court or by the Supreme court, the proof by means of witness shall be carried out, by letter of request, at the judicial division where the fact which is required to be investigated has taken place; and after the conclusion of the file sent for opinion and examination, the conflict shall be decided as an appeal from order.

Article 121 – **Applicability to other conflicts to be resolved by the High Court or Supreme Court** -What is provided in article 117 and 120 is applicable to other conflicts which ought to be resolved by High Court or the Supreme Court and also:

(a) In case the same action is pending in different courts and the period of limitation to raise the objection to jurisdiction and defence of litispendence, has expired;

(b) In case the same action is pending in two different courts, and one of them finds itself to be competent and, therefore it is no longer possible to raise before the other court or courts, the plea of incompetence or of litispendence.

(c) To the case when one of the court finds itself incompetent and remits the matter to a different court and, therefore, it being no longer possible to argue before the latter court, either the defence of incompetence or that of litispendence.

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CHAPTER VI

ASSURANCES OF IMPARTIALITY

SECTION I

IMPEDIMENTS - DISQUALIFICATION DUE TO CONFLICT OF INTEREST

Article 122 – **Reasons for disqualification of judge** -No judge shall exercise his functions under contentious jurisdiction (adversarial matters) or voluntary jurisdiction:

1) Where he is party to the cause by himself or as a representative of another person, or when he is, in respect of the subject-matter in the same situation as any of the parties;

2) Where he is party to the cause himself or as representative of another person, his spouse, any of his descendants, ascendants, brother or sister or relative in the same degree;

3) Where he has participated in the cause as attorney or expert or when he has to decide question about which he had given opinion or has decided;
4) When his spouse or any descendant, ascendant, brother or sister or relative in the same degree has intervened in the cause as a judicial attorney;
5) Where it is an appeal from a decision passed by him or by any of his relatives, by consanguinity or affinity, in direct line or in the second degree of the collateral line;
6) Where the party in the suit is a person who had filed a civil suit for loss and damages against him or had filed criminal complaint against him, in consequence of the facts done in exercise of his functions or by reason of the same, or when the spouse of such person or any of his relations, by consanguinity or affinity, in direct line, or in second degree of the collateral line, is a party thereto, where the suit has been registered or the charge has already been framed;
7) Where he has already deposited or has to depose as witness.

§ Sole Paragraph: The impediment under clause (4) is only arises when the attorney had already begun to exercise his powers at the time when the judge was posted in the respective division or in the respective circle. In the contrary case, it is the attorney who is debarred from acting as attorney.
In the judicial divisions in which there is more than one sections or before the superior courts, the spouse, ascendant, descendant or brother or sister of the judge who by virtue of the assignment has to intervene in the decision of the cause cannot be admitted as attorney, but if such person has

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already filed applications or pleadings in the proceeding at the time of the assignment, it is the judge who shall be debarred from functioning.

- **Articles 122-137** - Assurances of impartiality, Conflict of interest of judges, Suspicion.
- These in our law are dealt with in case law under *"bias"* in natural justice normally in administrative law.

Article 123 – **Duty of disqualified Judge** - Where any of the circumstances foreseen in the preceding article are satisfied, the judge must soon, by order in the proceedings, declare himself as disqualified and pass the cause to his substitute, or in the superior courts to the judge immediately after him. If he does not do so, the parties may apply, until the judgment, for the judge to declare himself as disqualified. What is provided in Paragraph 1 of article 88 is saved.

Article 124 – **Cases of disqualification in Judicial benches -** The judges of a collective court who are relatives by consanguinity or affinity in a direct line or in the second degree of the collateral line are disqualified from simultaneously participating in the hearing in the collective court.

As regards a collective court of the judicial division, out of judges connected by family relation mentioned above, only the judge dealing with the case shall participate individually in the trial of the case; and if the impediment is in respect of only the assistant judges, the senior-most amongst them shall participate. With reference to the superior court, only the judge who is of the first rank in accordance with the order in which they must vote, shall intervene.

Article 125 – **Disqualification of officer of Public Ministry and of the staff of the Court -** To the officers of the Public Ministry, what is stated in Paragraph 1, 2, and 6 of article 122 is applicable.

They are also disqualified from participating in the matter when they have intervened therein as attorneys or appointed experts or appointed by the opposite party to represent him or to render assistance.
To the staff of the court office, what is stated in Paragraph 1, 2, and 3 of article 122 is applicable, and also they cannot function if they have been participating in the case as attorneys or experts of any of the parties.
§ Sole Paragraph: The officer of the Public Ministry or member of the court staff must disclose the impediment and ask for substitution, failing which they shall incur disciplinary liability.

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If he does not do so, the parties may apply for a declaration of the impediment while the officer or the functionary is in a position to intervene in the proceedings.

SECTION II

RECUSAL AND LACK OF CONFIDENCE

Article 126 – **Request for recusal by judge** - The judge cannot voluntarily declare himself to be a-suspect; but he can request for being dispensed from the participation in the case when any of the circumstances foreseen in the following article is satisfied, and besides this, when in any other circumstances he thinks that his impartiality may be suspected.

§ 1: The period for making such a request shall be counted from the date of the order by which notice was directed to the respondent or from the date of first intervention if it comes after the said order. When the request is based on supervening facts, such period shall start from the date on which these facts had come to his knowledge.

§ 2: The request shall, precisely, indicate the facts that justify it and the same shall be addressed to the Chief Justice of the respective High Court who shall have the power to collect any information and shall grant or refuse the request, without appeal. If the judge belongs to the Supreme Court, the request shall be directed to its Chief Justice.

§ 3: When the request is founded on any of the facts in the following article, the Chief Justice shall hear, if he thinks appropriate, the party which may oppose the suspicion, ordering to deliver to such party the copy of the statement of the judge.

§ 4: To this case, what is provided in article 132 is applicable.

Article 127 – **Grounds for suspicion against judge** - The parties may raise suspicion against a judge only on one of the following grounds:

1) If there exists any relationship, by consanguinity or affinity, in the third or the fourth degree of collateral line, between the judge or his wife and any of the parties;

2) If there is a case in which the judge or his wife, or any relative of any of them by consanguinity or affinity in direct line is a party and any party is a judge in the matter.

3) If there was or had been, in the preceding three years, any cause not contemplated in article 122, clause (6), between any of the parties or their spouses and the judge or his wife, or any

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relation of any of them, by consanguinity or affinity in direct line.

4) If the judge, his wife, or any relation of any of them, by consanguinity or affinity in direct line, is creditor or debtor of any of the parties;

5) If the judge is the pro-guardian, heir apparent, donor or employer of some of the parties and if the judge is the member of the management or administration of any collective body which is party in the suit.

6) If the judge has received gifts, before or after the institution of the suit, and for that reason if he has advised some of the parties on the subject of the suit, or if he has provided for the expenses of the proceedings.

7) If there is great enmity or intimacy between the judge and any of the parties.

§ 1: The provision in clause (3) covers criminal cases when persons therein are or had been offenders, participants or objectors.

§ 2: The cases foreseen under clause (3) and (4), the plea of suspicion shall be rejected when the factual circumstances suggest that the suit was filed or the credit was obtained to know the reason for refusal by the judge.

Article 128 – **Time limit for raising suspicion -** Suspicion may not be pleaded when the judge has exercised power given to him under article 126. If the judge has not made use of it, the period of limitation for raising the plea of suspicion shall be the period till the date up to which it was lawful for the judge to formulate the request for being excused, save in case where this period expires before five days from the date of service of summons upon the defendant, because in that case the defendant may argue the same within five days of the service of summons upon him.§ 1: If the judge of the first instance has not participated in the suit since its commencement, the period to raise the plea of suspicion shall never terminate before the lapse of five days after the notice of the first act in which the new judge participates.

§ 2: If the ground of suspicion or its cognizance is supervenient, the party shall complain the fact to the judge as soon as he gets knowledge of the matter, and raise the plea of suspicion if the judge does not use the power given by article 126. When the judge has not made the request to be excused, he shall be permitted to prove that the complainant was aware of the ground of suspicion for a long time and the complainant had no objection against the judge and, therefore, the objection is belated.

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Article 129 – **How to raise and pursue suspicion** - The person raising the plea of suspicion shall precisely indicate the grounds of such a suspicion, and the proceeding shall soon be handed over to the judge against whom the suspicion is raised for him to respond. The lack of reply implies admission of the facts alleged, and the incidental proceedings shall be immediately sent to the Chief Justice of the High Court.

If the judge contests the suspicion, the advocate of the party opposite to the party raising the plea of suspicion shall be authorized to examine the proceedings in order to give his say.

If there are witnesses to be produced, the file shall be handed over to the substitute judge who shall immediately proceed with the examination of the witnesses. Examination of witness by letter of request is not permitted.

§ 1: The incidental proceeding shall be appended to the main proceeding.

§ 2: The provisions contained in articles 307, 308, and 309 are applicable.

Article 130 – **Judgment on the question of suspicion** - Upon enquiry, or when there is no enquiry, the file of the incidental proceedings shall be detached and transferred to the Chief Justice of the High Court, who shall decide without any appeal being permissible.

The Chief Justice of the High Court may, before the decision on suspicion, call upon the parties or the judge, against whom the plea of suspicion is raised, to give clarifications which he finds necessary. Such a requisition shall be made by way of official letter directed to the judge against whom the suspicion is raised, or to the substitute judge when the clarifications need to be furnished by the parties.

§ Sole Paragraph: If the documents meant to serve as proof of the basis of suspicion or the reply cannot be immediately produced, the Chief Justice may admit them subsequently when the delay is justified.

Article 131 – **Suspicion against Judge of High Court or Supreme Court** - If the suspicion is against the judge of High Courtor of the Supreme Tribunal, the same shall be decided by the Chief Justice of the respective court, observing the applicable part of the provision contained in the preceding article. The witnesses, in this case, shall be examined by the Chief Justice himself.

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Article 132 – **Effect of the plea on the proceedings** - The main case shall follow its normal

course before the substitute judge; but neither the curative order nor the final decision shall be passed while the plea of suspicion has not been decided.
In the High Court or the Supreme Tribunal, when the suspicion is against the judge who prepares the judgment, the immediate joint judge shall prepare the judgment, and the proceedings shall be sent to the next joint judge immediate to previous joint judge; but no cognizance of the matter will be taken, nor any decision that-may prejudice this cognizance shall be taken, while the plea of suspicion is not decided.

Article 133 – **Consequence of recusal or suspicion being accepted** - Where the plea of excuse or suspicion is allowed, the judge who was, in terms of the previous article, called in substitution, shall continue to hear the proceedings.

If the plea of excuse or suspicion is rejected, the judge who sought to be excused or against whom suspicion was alleged shall participate in the matter, even if the proceedings was ready for judgment.
§ Sole Paragraph: When the Chief Justice of the superior court rejects the plea of suspicion, he shall always ascertain if the party whose plea was rejected, acted in bad faith.

Article 134 – **Grounds for suspicion against staff of Court** - The parties may also raise suspicion against the staff of the office on the grounds indicated under various clauses of article 127, with the exception of clause (2). But the facts contemplated in clauses (3) and (4) of the same article can only be invoked as the grounds of suspicion when the same are satisfied confirmed between the official or his wife and any of the parties.

Article 135 – **Time limit to raise suspension** - The period of limitation to raise the plea of suspicion is to be counted from the date of receipt of the initial petition in the office, or of its allotment when the plea is raised by the petitioner; and from the service of the notice or the allotment when the plea is raised by the respondent. Where the cause of suspicion is supervenient, the period of limitation shall run from the time when the fact came to the knowledge of the concerned party.

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Article 136 – **Processing of the plea** - The incidental shall be processed in accordance with article 129, with the following modifications:
1) The examination will be permitted solely to the judge. The advocate for the other side shall have no participation in the incident.
2) Until the incident of suspicion is decided, the judge shall not participate in the main proceedings.
3) The deciding judge shall take all the regular steps of the incident and shall decide the incident, without there being any appeal therefrom.

Article 137 – **Effect of plea being allowed** - Where the plea of suspicion is allowed the Judge against whom the plea of suspicion was raised shall remain precluded from participation.

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BOOK III

PROCEEDINGS

(Articles 138 – 1560)

BOOK III

PROCEEDINGS

TITLE I

GENERAL PROVISIONS

CHAPTER I

PROCEDURAL ACTS

SECTION I

PROCEDURAL ACTS IN GENERAL

SUB-SECTION I

COMMON PROVISIONS

Article 138 – **Bar on unnecessary acts and mode thereof** - It is not lawful to take futile steps in the proceedings.

The form of these steps, when not expressly regulated in the law, shall be adapted to suit the purpose in view and shall be limited to whatever is indispensable to achieve such purpose.

§ Sole Paragraph: The staff of the court who infringes what is provided in this article shall incur disciplinary liability.

Article 139 – **Court language** - In the judicial acts, always the Portuguese language shall be used. But when the foreigners are to be heard, they may express themselves in a different language if they do not know the Portuguese language, it being required to appoint for them an interpreter, when necessary, in order that they may depose on solemn affirmation

The intervention of the interpreter shall be confined to what is strictly necessary.

Article 140 – **Translation of documents written in foreign languages** - When the documents written in foreign language are produced without translation made by the notary, the judge may order, ex-officio or upon the application of the opposite party, that the witness produces a

translation authenticated by the diplomatic or consular official of the respective State, except where the court has an official translator.

In the absence of the diplomatic or consular official of the respective State, the documents shall be translated by the expert appointed by the court.

Article 141 – **Means of expression and communication of deaf and dumb** - Whenever a deaf, dumb or one deaf and dumb person is to be heard, the word shall be substituted by writing to the extent necessary and possible.

In the last case, there shall be intervention of an interpreter, who on oath shall transmit, by signals, the questions or the replies or some and others.

Article 142 – **Law regulating procedural acts** - The procedural acts are regulated by the law which is in force at the time when they are done.

Article 143 – **When judicial acts may not be performed** - Judicial acts cannot be performed on Sundays, holidays or during the vacations. From the above, are excluded, service of summonses, service of notices, holding of auctions, and the acts which are meant to avoid irreparable loss.§ Sole

Paragraph: When the date fixed for sittings or judicial acts falls on holidays, the same shall be carried out on the first working day following the holiday.

- Estatuto Judiciario (Judicial Statute), Art 48.

Article 144 – **Time limits for judicial acts** - The period of time for a judicial act is laid down by law or by order of the judge.

Article 145 – **Continuity of time** - The period of time for judicial act is continuous. It starts running irrespective of any notice or any other formality and runs continuously even during vacations, Sundays and holidays, save for special provisions of this Code.

Article 146 – **Dilatory or peremptory time limit – Just cause** - The period of time is dilatory or peremptory. The lapse of peremptory period of time extinguishes the right to do the respective act, except where the party was prevented from doing the same for just cause.

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§ 1: If the peremptory period of limitation expires during vacation or Sunday or any holiday and it is not possible to perform the act by its nature, the time stands extended to the first working day that follows.

§ 2: The party who pleads just cause shall immediately produce the proof. The judge, after hearing the opposite side, shall allow the applicant to do the act beyond the period of limitation if the judge is satisfied that the party was prevented by just cause, and further is satisfied that the party approached the court as soon as the cause ceased.

Only an unforeseen event, alien to the will of the party, which makes it impossible for the party to do the act by himself or through the lawyer, shall be considered as just cause.

- Note : Dilatory is the period which may be extended by the court considering the circumstances of the case.

Article 147 – **Time for Judicial acts cannot be extended** - The time for judicial acts cannot be extended except in cases specified by law.

Article 148 – **Counting of period** - For the purpose of counting the period for judgment, the day on which it commences, even if there are hours left, is not to be counted, but the day on which it ends, is to be considered.

§ 1: When the peremptory period of limitation is followed by dilatory period, both the periods are to be considered as one for the purpose of the present article.

§ 2: The period of a month is always thirty days. The period of a year ends on the same day and month of the following year.

Article 149 – **Where judicial acts are to be practiced** - The judicial acts are to take place at the site in which they can be more efficacious; however, they may take place at other places for reasons of deference or for sufficient cause.

When no reason is given for performance of the acts at other places, the acts are performed in the court.

- Article 599, 629 etc. of this Code.

SUB-SECTION II

ACTS OF PARTIES

Article 150 – **Who can apply** - Applications may be written and signed by the parties, except when law requires signature of the advocate or of the legal advisors.

If the parties are not known to the court, the court may demand production of identity card or, if that is not available, the identification of the signature by notary.

Article 151 – **Definition of pleadings** - Pleadings are the briefs in which the parties state, whether by numbered paragraphs or not, the grounds of their case or defence and seek reliefs corresponding to the same.

§ Sole Paragraph: Pleading by numbered paragraphs is mandatory when the law expressly so provides.

Article 152 – **Need for duplicate copies** - The pleadings shall be presented in the court office in duplicate without which they will not be received. When the pleading relates to more than one person, as many copies are to be supplied, as there are defendants living separate, except where all are represented by one advocate.

§ Sole Paragraph: Besides, where the copies which are to be handed over to the opposite party, the parties shall supply one more copy, without being on stamp paper, for the record of the court, and to be used in the event of reconstruction of the file in case it is misplaced.

Article 153 – **Purpose of arguments** - In the arguments, oral or written, the parties are to support their stand in the case.

Article 154 – **General rule as to judicial time limit** - In the absence of special provision, a period of five days is prescribed for the parties to move the court for any act to be done or step to be taken, plead nullities, apply for incidental proceedings, and take, in short, any procedural step; and also a period of five days is prescribed for the opposite party to give the answer to any such application.

- This is a very important provision when no time is fixed for the parties to exercise any procedural rights or to reply to anything raised by the other side, recourse to this article is taken; the time is of 5 days.

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Article 155 - **Misdemeanour by advocates or law officers** - The advocates and legal practitioners who, in writing or orally, show disrespect to the prevailing norms, to the laws or the court, shall be warned courteously by the Presiding Officer, who besides this may direct that any offensive expressions be expunged and prevent the right of being heard, without prejudice to the criminal prosecution. Where the advocate does not obey the decision which prevents the right of being heard, the president is empowered to expel him from the court hall or any other place where the judicial act is taking place.

When right of audience is withdrawn and in the case of expulsion, notice is given to the Bar Council specifying the excess committed so that the Bar Council takes its disciplinary action. Where there is any disregard on the part of the law officers of the Public Ministry, notice will be addressed to the Superior Judicial Council for it to take appropriate steps.

When the excess is committed by the parties or by other persons, the Presiding officer may apply same sanctions as imposed on the advocates, and even impose fine depending upon seriousness of the offence.

§ 1: The expressions and utterances necessary for the defence of the case are not to be considered offensive.

§ 2: In the proceedings pending before the higher courts, the expunction or imposition of fine may be imposed only by way of order of the collective court.

§ 3: An appeal lies from the decision of the court of first instance or second instance which directs expunction or imposition of fine, and it shall always operate as stay of the impugned order. Also from the decision to withdraw the right of audience or direct expulsion, appeal from order lies and the effect will be suspended till the decision of the appellate court.

§ 4: If the excess is committed in the arguments submitted before the lower court, it is for the superior court to exercise the disciplinary power, except in case of appeal from order, in which this power is to be exercised by the court appealed from.

The withdrawal or abandonment of the appeal does not prevent the excesses of the language committed in the arguments from being dealt with, and power is with the court before whom the file is pending at the time of withdrawal or abandonment.

§ 5: When fine is imposed, notice will be given to Public Ministry for the purpose of execution.

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SUB-SECTION III

JUDICIAL ACTS

Article 156 – **Duty to decide and carry out decisions of higher courts - Judgment** - The judges have the duty to administer justice, passing order or judgment on the matters pending before them and complying, in accordance with the law, with the decisions of the superior courts.§ Sole Paragraph: The act by which the judge decides the principal cause or any incidental proceeding filed which, according to law, has the characteristic of a cause is called a judgment. The judgments of the collective courts have a special designation of division bench judgment ("*acórdãos*")*.

Article 157 – **Formal requisites of judgment and order** - The orders, judgments and bench judgments ('*acórdãos')* shall be written by the respective judges and shall contain date, nature, and the name, in full or in brief, of the judge who has delivered them.

§ 1: Instead of writing the entire order or judgment in the file, the judge may deliver the same to the office to be reproduced in the record, a typed copy containing the original facts of the case and the grounds, and in this case, the judge shall take care that the revision is made carefully, noting below, the corrections, erasures, and initial all the pages. The decision and signature shall always be in the handwriting of the judge.

§ 2: The orders and judgments pronounced orally, in the course of the trial, should be recorded in the minutes and will be reproduced therein.

The signature of the judge on the records of the minutes of the hearing guarantees the authenticity of the judgment.

§ 3: The judgments and bench judgments ('*acórdãos')* are to be registered in a special book.

Article 158 – **Duty to pass speaking orders** - The decision passed on any controverted point or on any doubt raised in the proceeding shall always be supported by reasons whether in granting the prayer or refusing the same. Justification cannot be mere agreement with the points raised in the application or in the reply.

* At several places we have translated this as "collective judgment".

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Article 159 – **General time limit for orders** - In the absence of any special provision all orders which are not merely of administrative nature are to be pronounced within 5 days.

Such period does not run during the holidays of Christmas, Carnival and Easter. The orders of administrative nature shall be passed immediately.

Article 160 – **Time limit for say** - The say of the Public Ministry shall be given within a period of 3 days, unless otherwise provided by the law or by the judge.

SUB-SECTION IV

ACTS OF THE REGISTRY

Article 161 – **Who should write records and minutes** - The notings and minutes of proceedings in which the judge or the Law officers of the Public Ministry take part shall be written or typed by the head of the registry or under his direction.

§ 1: Where the minutes and notings are typed, the checking shall be made with all the care.§ 2: It is permissible to use the printed forms which shall be completed by the person on whom obligation to write the minutes and notings is cast.

Article 162 – **Formal requirements of records and proceedings** - The notings and minutes and certified copies issued by the court shall never contain open spaces, which are not crossed, nor interlineations, erasures or corrections which are not noted at the end as errata notes. No abbreviations shall be used and the dates and numbers connected with the rights or liabilities shall always be in figures and words.

Article 163 – **Comprehensiveness of records** - Every minute and noting should disclose by mere reading the text, without there being need to refer to any other portion of the file.

Article 164 – **Signature on records and proceedings** - The minutes and notings are valid provided they are signed by the judge and the concerned staff of the court. If in the act there is no intervention of the judge, the signature of the concerned staff of the court is sufficient, except where the record is of the expression of the will of any of the parties or they incur some liability

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themselves, because in such cases it is necessary that there should be signature of the party or its representative.

§ Sole Paragraph: Where it is mandatory for the party to sign and he is unable to do so or does not wish to do so or does not know how to sign, the minutes or notings shall be signed by two witnesses who identify the party.

Article 165 – **Initials on the pages of the file** - The head of the office is bound to initial all the pages of the file in which his signature does not figure; and the judges shall initial, the pages of the files wherever they have intervened, except when they have already affixed their signature.

§ Sole Paragraph: The parties and their agents shall have right to initial any pages of the file.

Article 166 – **General time limit for office to process matters** - The registry shall obtain orders of the judge in chamber on proceedings obtain on the file the say of the Public Ministry made it available for inspection, have warrants issued from normal acts, within a period of two days, except in the case of urgency.

Article 167 – **Inspection in the office of pending of closed files** - Pending files or those kept in records may be examined in the registry, by the parties, or by any advocate or legal advisor. But the files of annulment of marriage, divorce, separation of persons and assets and challenging legitimacy of paternity, may be examined only by the parties and their representatives; and the proceedings of interdiction by prodigality before the publication of the judgment, of the seizure, sealing and listing and similar, before the conclusion of the respective acts, may be permitted to be examined only by the applicants and their agents.

Article 168 – **Right of advocates to inspect files at their residence** - The advocates appointed by the parties may apply that they may be entrusted with files for examining them at their residence.

§ 1: In the application, the advocate shall make solemn affirmation that he undertakes to return the file within the time assigned to him by the judge and in failing to give such undertaking the application is liable to be rejected.

§ 2: The judge, after hearing the registry orally or in writing, may grant the request when there is no inconvenience to the office, fixing the period for examination which shall not be extended.

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Article 169 – **Register of handing over files to advocates** - The delivery of the file to the advocate shall always be registered in special book indicating the particulars of the proceeding, date and time of

the delivery and time granted for examination. The notings shall be signed by the advocate or his employee duly authorized in writing. When the proceeding is returned, the noting shall be done by doing the cancellation at the margin.

Article 170 – **Penalty for failure to return file within time** - The advocate who breaches his undertaking, shall not thereafter be entitled to get the benefit referred to in article 168 and without any notice incur penalty for suspension for 1 month and a fine, if he does not deliver it within 5 days, and if 10 days elapse, double the penalty will be leviable. If, at the end of 2 months he does not return the file, the matter will be reported to Public Ministry which will initiate criminal proceedings and seize the file.

Article 171 – **Special provision for inspecting file at home instead of in the Court office** -Whatever is provided in the preceding articles is applicable to the cases in which by provision of law, time limit is fixed for the advocates of the parties, to examine the file in the office; in such cases the application shall always be granted with the exception provided in the preceding article.§ 1: There being different periods fixed for each of the parties, the respective advocate may enjoy this facility granted in this article within time fixed for his client. If, when the period fixed is cumulative to all, the judge would divide it between the parties so that a defendant or the respondent is the last one to avail of the same.

§ 2: In the event the advocate does not return the file within 5 days subsequent to the period fixed, besides incurring the penalty prescribed in the preceding article, he shall also lose the right to submit written arguments.

- Article 648, 699, 716 of this Code.

Article 172 – **Examination of file by Public Ministry and Advocates appointed by Court** -The representatives of Public Ministry and the advocates appointed by the Court are also entitled to examine at their residence the pending proceeding in which they intervene, independent of the solemn affirmation referred to in Paragraph 1 of article 168. The request shall be rejected if the delivery of the file causes serious embarrassment to the progress of the case.

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§ Sole Paragraph: When the file is not returned within the time, the provisions of preceding articles shall apply to the appointed advocates.

Article 173 – **Inspection at home of closed proceedings** - With reference to closed proceedings, the advocates who could apply for inspection of the current files in the office may also apply for delivery as per article 168.

§ Sole Paragraph: The registry shall not refuse to the law officers of the Public Ministry the inspection or delivery of any closed proceedings. The delivery shall be made by simple requisition in writing independent of the order of the court.

Article 174 – **Duty to issue certificates -** The office shall, without need of any order from the court, issue certified copies, abstract or full text, of all the judicial acts and notings, when demanded by the respective parties or any advocates and legal advisers.

§ Sole Paragraph: In the cases referred to in the last part of the article 167, when they are at the confidential stage, certified copies may be issued only to the applicants or their agents. In relation to files which may be shown only to the parties or their representatives, no certified copies shall be issued without prior order in respect of the need on the written application giving reasons for the necessity to obtain such certified copies; the order shall fix the contents of the certified copies so that the parties are not deprived to enforce their right and at the same time the confidential character of the said file is protected.

- See Art 138 and 139 of Judicial Statutes.

Article 175 – **Time limit for issue of certified copies** - The certified copies shall be issued within a period of 5 days. When the office, refuses to grant it or delays the issuance of the certified copies, the party shall move the court for direction to be issued. If the court after hearing the concerned clerk, holds that the refusal is justified, it shall reject the application; where the court finds that the delay is justified, shall fix time within which the certified copy shall be issued; if the court finds the behaviour of the officer is irregular, the court shall admonish the officer or impose on him more grave punishment depending upon the circumstances of the case and direct him to issue the copy within time fixed.

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§ Sole Paragraph: In case of urgency the interested party may apply that the copy may be issued within less than 5 days.

- Art 139 of Judicial Statute.

SUB-SECTION V

NOTIFICATION OF JUDICIAL PROCEEDINGS

Article 176 – **Issuance of writ of summons, letter, official letter or telegram to requisition judicial acts** - The communication of the judicial acts may be directed or solicited by way of issuance of writ of summons, letter of request, official letter or telegram.

The writ is issued when the act has to be done within the territorial limits of the jurisdiction of the court who orders it.

The use of the letter of request is employed when the act is to be performed outside the jurisdictional limits of the court. The letter is precatory when the request has been made to a Portuguese court or consul and it is letter rogatory when the act is solicited to a foreign authority.

If the execution of the act is of urgent nature it may be ordered or solicited by way of telegram. The summons, notices and affixation of public notices may be solicited even to the foreign authorities by way of official letters.

Also by a simple official letter or telegram it is permissible to suspend the compliance of any letter of request already issued even though the compliance of the same was already commenced.§ Sole Paragraph: Whatever is said about the letter of request applies equally to the official letters and to telegrams.

Article 177 – **To whom the letters should be addressed** – **Duty to comply** - The letters shall be addressed to the court of the Judicial Division in whose jurisdiction the act is to be performed; but if it is found that the act is to be performed at any other place, the letter should be complied with by the court of the judicial division at that place. The courts of judicial division may direct compliance of letters, office letters, and telegrams for service of summons, notices and service by way publication of summons through justices of peace.

§ 1: It is permissible to solicit the summons, notices and service by way of publication of summons directly from the local subordinate court. It is also permissible to ask directly from the

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local court to comply with any other request provided that it is done through local subordinate judge or arises from proceedings in the jurisdiction of the local subordinate court.

§ 2: The letter for summons, notice, examination or deposition of the working judge, his wife or any ascendant or descendent by consanguinity shall be addressed to the court mentioned in articles 88 and 89. To the same court shall be addressed the letters for any other steps when they emerge from the proceedings where any of the said persons are parties.

For the purpose of compliance with the letter of request the court shall have the same powers as given by Paragraph 2 of the article 88.

Article 178 – **Content of letter -** The letter shall be drafted with all simplicity and shall contain only what is strictly necessary for carrying out the steps.

Article 179 – **Enclosing of autographs or other plan with letter** - If in the records there is any autograph, or any plan, drawing or chart which is required to be examined by the parties, experts or witnesses in the relevant act, such papers shall be sent or one photo copy of the same.

If the originals are sent, the letter of request shall be issued and returned officially. In such case before the issuing of the letter, any party may get the original photocopied, but without the file having to be given to him for this purpose.

Article 180 – **Time limits** - In the letters of request for summons, the extended time limit shall be indicated which shall not be extended.

In the letter of request for personal appearance the date on which the party shall appear in the court shall be indicated.
Keeping in mind the distance and the facility of communication the extended period shall be fixed within the following limits:
(a) Between 3 to 8 days when the proceedings are taking place in Continental Portugal and the service is also to be effected in the continent;
(b) Between 3 to 10 days when the court is in the adjacent island and the service is to be done in the same island;
(c) Between 8 to 30 days when one of the localities is in the continent and the other is in one of the islands or when the both localities are in different islands or when the summons is to be

served in foreign countries within Europe or in the colonies of Guiné, Cabo Verde and S. Tome; (d) Between 30 to 60 days when service of summons is to be effected in Angola;
(e) Between 3 to 4 months when the service is to be effected in any other colony or in a foreign country.

The same rules shall be followed for the fixation of the day for the appearance in person.

Article 181 – **Time limit for compliance with the letters** - In the letter of request for taking any other step in the proceeding time shall be fixed within which the request should be fulfilled. Such time starts from delivery or dispatch of the letter and the dates on which the judicial acts cannot be done, shall not be taken into account.

Considering the distance, the means of communications and nature of step to be taken to the court, shall fix time within the following limits:
(a) Between 10 to 40 days when the issuing court and the receiving court have their offices in the continental Portugal or in the same island;
(b) Between 30 to 90 days, when one of them has its office in the continent and other in any other islands or when the offices are in different islands or when step is to be taken in a foreign country of Europe;
(c) Between 60 days to 4 months when the step is to be taken in any of the colonies of the West Africa;
(d) Between 60 days to 6 months, when step to be taken in any other colony or other foreign country;
§ 1: Where it is seen from the certified copy that before the end of the period fixed, the letter cannot be complied with within the stipulated time, the time will be further extended. The time limit will not come in the way of the letter being received late if there is no decision on the factual merits of case.
§ 2: If within the time fixed it was found that the letter of request was lost, the duplicate copy of the same shall be sent for the compliance.

Article 182 – **Dispatch and delivery of letters -** The letter of request issued from the proceedings under orphans' jurisdiction shall be sent by the Office of the court. Those of the other proceedings shall also be issued by the Office of the court when they relate to leading evidence;

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in other cases shall be delivered to the party applying for it, except when the law demands that they may be issued officially or the interested party so applies.

The letter of request, whichever may be the purpose, shall be sent by the office of the court directly to the authority or to the foreign court unless there is a convention to the contrary. The papers will be sent through diplomatic agency or consular agency, as provided by the law of that country; where the country does not receive official communication, the letter of request shall be handed over to the interested party.

§ Sole Paragraph: The opposite party shall be given notice of the dispatch or delivery of the letter for leading evidence.

Article 183 – **Effect of letter of request on progress of proceedings** - The issuing of a letter does not come in the way of further steps in the matter, which are not absolutely dependent on the steps which have been asked to be taken by way of letter of request; however, the arguments and judgement shall not take place unless the letter of commission is provided or the time fixed for the compliance is over.

Article 184 – **Valid reasons to refuse compliance with letter of request -** The court to which the letter of request was addressed, may decline to comply with the same in the following cases: (1) If there is doubt as to the authenticity of the letter of request.

(2) If the court lacks competence on merits or hierarchy in relation to the subject of the letter of request.

(3) If the request has been made for the act which is absolutely prohibited by law.

Article 185 – **Legitimate reasons for refusal to comply with letters rogatory** – Compliance with letters rogatory shall be refused in the cases mentioned in the previous article and also in the following cases:

(1) Where the letter has not been legalized;

(2) Where the act is contrary to the Portuguese public order;

(3) If the execution of the letter threatens sovereignty and security of the State;

(4) If the act amounts to execution of the decision of the foreign court which is subject to revision and confirmation and the same has not been revised and confirmed.

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Article 186 – **Procedure for compliance with letters rogatory** -The letters rogatory issued by foreign countries shall be received by any route save treaty or convention to the contrary. Upon the receipt of the letter rogatory, the Public Ministry shall be heard and thereafter it will be decided whether the same is to be implemented.

The Public Ministry may appeal from the order directing the compliance and such appeal from order shall operate as stay of the impugned order.

Article 187 – **Powers of recipient Court** - It is the duty of the court recipient of the letter request or letter rogatory to give effect to the letter in accordance with the law.

In the event in the letter rogatory there is request which does not offend Portuguese law, the court will comply with the same.

Article 188 – **Return of letter of request after compliance** - After the letter of request has been complied with, without retaining its copy, it shall be returned or delivered and the office shall indicate

by noting the proceeding the distance between the remitting court and the recipient court when there is a requirement of such formality.

The cost shall be submitted to the remitting court at the proper time.
Upon the return of the letter, the same will be kept in the records of the case and the opposite party shall notify by post except in the case of issuance of summons or notice or by publication. The periods of time depending on compliance with the letter are counted from the date next to the receipt of the letter of request.

Article 189 – **Signature on the writs** - The writ shall be signed by the head of the registry by order of the court.

Article 190 – **Cases in which writ may not be issued** -No writ shall be issued: (1)
When act is drawn in ordinary paper.

(2) When the act has not been done by the bailiff.

Article 191 – **Contents of writ** -The writ shall contain besides the order of the court the indication which is absolutely necessary for the purpose of the implementation.

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Article 192 – **Performance of acts delegated to the subordinate judge or justice of peace** -The acts delegated to the subordinate judge or justice of peace shall be executed by the writ of the Senior judge of the respective judicial division. The delegate judge shall pass his order on the writ and shall return to the court of the judicial division after compliance.

SUB-SECTION VI
NULLITY OF ACTS

Article 193 – **Defective Petition** – The entire proceedings are null and void when the initial petition is defective.

The petition shall be considered defective:
(a) When it is not possible to know what the relief is;
(b) When it is not possible to know what the cause of action is; (c)
When the relief is in contradiction with cause of action; (d) When
inconsistent reliefs have been sought together.
§ 1: .Where the respondent raises the plea that the petition is defective on the grounds mentioned in clauses (a) and (b) and files his statement of defence, the objection raised is not to be held to be tenable when after hearing the petitioner it is found that the respondent interpreted the plaint correctly.
§ 2: In the case of clause d) nullity shall subsist even though one of the reliefs may become ineffective by reason of lack of jurisdiction of the court or error in the form of the proceedings.

Article 194 – **Cases in which the entire proceedings subsequent to petition are annulled** -The entire procedure after the initial petition is null and void retaining only the plaint;
(1) When the respondent has not been summoned;
(2) When the Public Ministry has not been summoned right at the commencement of the proceedings, in cases where it is the principal party;
(3) Where there is an error in the form of procedure and nothing can be saved except the petition in terms of article 199.

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Article 195 – **When the service is taken as not effected** - There is lack of service of notice; (1)
When the act has been completely omitted;
(2) When there is error in the identity of the party notified;

(3) When the notice by publication has been wrongly used;
(4) When service has been effected omitting essential formalities.
§ Sole Paragraph: Following are essential formalities:
a) In the service effected on the person of the respondent the delivery of the duplicate and signature of the summoned person or the intervention of 2 witnesses when the summoned person does not sign;
b) In the case of third part of article 235, the affixation of the note at the place and with the requisites which the text requires and issuance of the registered letter in terms of Paragraph 2 of article 243;
c) In the service made on a person other than the respondent: such person must be designated by the law; it should be a clear case where the law permits the substitution; the delivery of the duplicate; the signature of the same person in the certificate or intervention of 2 witnesses and remission of registered letters in terms of Paragraph 2 of article 243;
d) In summons through post in terms of article 244, signature on the acknowledgement due card and delivery of the duplicate;
e) In service by publication of the summons, the affixation of such notice on the door of the house of the village official or on the door of the respective court and if the law also demands publication of advertisements, the publication of such notice in the newspaper of the locality in which it ought to have been published.

Article 196 – **Curing of nullity for lack of service -** In the event the defendant or the Public Ministry intervenes in the proceedings, without raising immediately the point of lack of service on himself, the nullity is treated as cured.

Article 197 – **Consequences of lack of service where there are served respondents**- There being many respondents the lack of service on one of them has following consequences:
(a)In case of joinder of necessary parties, whatever has been processed after the service shall be annulled;

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(b)In the case of joinder of proper parties, nothing is to be annulled, but if the proceedings are not yet at the stage of fixing the date for the trial, the petitioners may pray that the respondent be summoned. In such case the trial shall not proceed, unless the respondent who is not served is allowed to take in the proceeds the steps of which he was deprived for lack of service in time.

- Art 28, (a) 2nd part of (c).

Article 198 – **Nullity of service** - The service is null and void when essential formalities are observed but other formalities prescribed by law are omitted.

The time to raise the plea of such a nullity starts from the date of service. However, the plea will be entertained only if the omission may prejudice the defence of the summoned party.
§ Sole Paragraph: If the irregularity consists in indication for the purpose of the defence of a period longer than that granted by the court, the defence should be admitted within the time limit indicated, unless the Plaintiff had taken steps for the Defendant to be served again as per the law.

Article 199 – **Consequences of error in the form of proceedings** - Error in the form of proceeding shall only cause nullity of the acts which cannot be made use of and the acts that are strictly necessary so that the proceedings are more or less in accordance with the form prescribed by law, shall be carried out. However, the acts done shall not be used if there is decrease in the guarantees available to the respondent.

§ Sole Paragraph: The initial petition shall always be used even though it does not agree with the legal form.

Article 200 – **Absence of file inspection by Public Ministry** - Absence of file inspection by the Public Ministry when the law demands its intervention as accessory party, is deemed as cured provided that the party who required assistance on the part of the Public Ministry, exercised its rights in the proceedings with the assistance of its legal advisor.

If the case is of proceeding ex-parte, as against the party which ought to have been represented by the Public Ministry, the proceedings shall be annulled from the time when Public Ministry should have been permitted to inspect or examine the file.

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Article 201 – **General rule as to nullity of procedural acts -** Besides the cases foreseen in the previous articles, the commission of an act which the law does not sanction and omission of an act or any formality which the law prescribes, gives rise to nullity only where the law expressly so declares or where the irregularity committed has bearing in the investigation or in the decision of the case. When one act is to be annulled, all the subsequent acts which absolutely depend on it shall also be annulled.

- Article 710, sole paragraph.

Article 202 – **Nullities of which Court may take cognizance on its own** -The court may take cognizance suo moto of the nullities mentioned in articles 193, 194, 199 and 200 unless they are deemed as cured. Of the others the court can take cognizance upon the complaint from the interested parties save in the special cases where the law permits suo moto cognizance.

Article 203 – **Who is precluded from pleading nullity -** A party is debarred from raising the point of nullity where that party caused the same, or waived such right expressly or impliedly.

Article 204 – **Time upto which nullity may be argued -** The nullities of article 193 and 199 may be raised till the filling of the defence statement or in the defence statement itself.

The nullities of Paragraph 1 and 2 of article 194 and 200 may be raised at any stage of the proceedings, as long as they cannot be considered as cured.

Article 205 – **General rule as to objection -** In respect of other nullities, where the party is present personally or through an agent, the irregularity may be pointed out at the time of commission of the irregularity but before the completion of the act; where the party is not present, the time limit to point out nullity is when, after the commission of the irregularity, the party was given notice of the proceedings or the party intervened in any act done in the same proceedings. When the irregularity is pointed out or noticed during the commission of the irregularity, presided over by the judge, the judge shall take necessary steps, so that the law is complied with.

§ Sole Paragraph: Where the proceeding has been sent in appeal before the end of the period fixed

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in this article, nullity may be raised before the higher Court and the period shall be counted from the date of the assignment.

- See also Article 154 of this Code.

Article 206 - **At what point the Court can take cognizance of the main nullities** - Cognizance of the nullities referred to in the articles 193, 194, 199 and 200 shall be taken in the curative order if their cognizance was not taken earlier; after passing the curative order, their cognizance can be taken upon an objection raised by the interested party whenever it is admissible.

If there is no curative order, the cognizance can be taken of the same nullities till the final judgment.

Article 207 – **General rule as to Judgment** - About other nullities cognizance can be taken as soon as objection is raised.

In the High Courts or in the Supreme Court, when objection is raised the judge preparing the judgment shall take the proceeding to the bench to be decided by a Bench judgment.

Article 208 – **Null acts cannot be reopened** - The act which is null shall not be reopened if the period within which should have been done had lapsed. But if the reopening is beneficial to the party who has no responsibility in the commission of nullity such case stands excluded.

SECTION II

SOME SPECIAL ACTS

SUB-SECTION I

ALLOTMENT OF CASES

DIVISION I

GENERAL PROVISIONS

Article 209 – **Purpose of allotment** - If in a court there is more than one section, it is by way of distribution that the section or bench of the court to which the proceeding will be allotted and who amongst the judges shall prepare the judgment, is designated.

§ Sole Paragraph: The distribution of the proceedings through the officials of the secretariat of the superior Courts or of the section in the courts of first instance shall be done by the head, as per internal regulation.

- **Articles 209-227** - Allotment and distribution of cases:-
- These are dealt with in Civil Manual, by the Civil Courts and High Court Appellate side rules.

Article 210 – **Rules as to failure, irregularity or error in distribution** - A mistake or irregularity in the distribution will not give rise to annulment of any judicial proceeding. The court of its own motion may or at the instance of the any interested party may supply the deficiency or correct the irregularity or any error till the final decision.

DIVISION II

PROVISIONS RELATING TO THE FIRST INSTANCE

Article 211 – **Papers subject to distribution in the Court of first instance** – The following papers are liable to be distributed in the Court of first instance:

1. The papers which relate to the commencement of the cause, except where the same is a dependence of another already distributed;
2. Papers coming from another court with the exception of letter of request, warrants, official letter, telegrams, for simple summons, notice or affixation of the publication.

§ Sole Paragraph: The cases which by law or by order of the court are to be considered dependent on others shall be appended to those on which they are dependent; but an inventory shall not proceed further after the declaration of the head of the family, without being registered in the respective section.

Article 212 – **Acts which do not depend on distribution** – The following documents are not dependent on distribution: sundry notices, the urgent collections, the judicial possessions, the preventive acts and preparatory acts and other urgent steps taken before the commencement of the cause or before the service of summons on the defendant. But if the act admits opposition, the file shall be distributed as soon as the objection is filed except when the main cause has been distributed of which such act is the preparation.

Article 213 – **Condition necessary for distribution** - No paper shall be admitted for the distribution without containing all the external requisites prescribed by the law.

§ Sole Paragraph: If the distributor had doubt in distributing any paper he shall present the same to the judge who presides over the distribution. The latter shall pass the order admitting or refusing such paper.

Article 214 – **Day and time of allotment – Persons who intervene** - The distribution shall be done on Monday and Thursday at 12.00 pm under the supervision of judge of the division or by the court in rotation in the division where there is more than one court. The distributor shall get assistance from the officials of the secretariat designated by the judge.

§ Sole Paragraph: When Monday and Thursdays are holidays the distribution shall be done on next working day.

Article 215 – **Classification and enumeration of papers** - The distributor shall make the classification and number of the papers which are meant for distribution, writing in each of them in words, the type of the class to which it belong and the serial number which corresponds to same, when within the same type there is more than one paper.

Article 216 – **Drawing of Lots** - Once the classification and numbering of the papers has been done, the drawing of lots shall be conducted which shall be made by use of numbered spheres, by putting in one box the numbers corresponding to the papers and in the other box the numbers of the section which are yet to be filled in the respective category and thereafter taking out the spheres, one by one from each box alternatively.

§ Sole Paragraph: Where the number of the sections to be filled is less than the number of papers to be distributed, firstly lots are to be drawn by sections which are in shortage, and the remaining papers shall be distributed by lots for all the sections.

Article 217 – **Definite Allotment** - When there is a single paper in any category and there is only one section to be filled, the same paper will be numbered and endorsement shall be done with certainty to the one to whom it is to be allotted.

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Article 218 – **Record of outcome** - When the papers have been distributed, the judge would write in full in the register of distribution the number of the paper distributed and the section to which it was allotted; the distributor shall write in the respective paper the number of the section and the date of the distribution.

Article 219 – **Signature, publication and registration** - After the papers of one type are distributed, the same procedure is followed for the distribution of other papers of different type. After ending the distribution of all the categories, the judge will sign the docket and distributor shall write the numbers written on the papers. Thereafter the distribution shall be published, in the list affixed at the door of the court with the specification of the section and the name of the parties. The distribution shall be registered in the respective book and the heads of the office shall sign in the book the receipt of the delivery of the papers given to them, without which the responsibility of the distributor for such papers shall subsist.

Article 220 – **Cancellation of distribution** - The distribution shall be declared without effect cancelling the same in the respective book:

1) When there is conflict of interest of the judge.
2) When it is found that before submission of the list of properties, the inventory was of a category different from that in which it was allotted.

§ 1: When case falls under clause no. 2, if the inventory, is to proceed after carrying out a distribution in the competent category, the acts and steps taken before the distribution which are useful shall be utilized.

§ 2: Head of the office shall cancel the distribution in subsequent 10 days from the date of occurrence.

Article 221 – **Correction of distribution** - Apart from the case, of number 2 of the preceding article, the distribution shall be rectified cancelling the type in which it was listed first and then changing it to new category where it is found that there is an error or there were supervening circumstances which give rise to alteration; but the file continues in the same section to which it was earlier allotted.

§ Sole Paragraph: Modifications which the inventory will suffer as to its category after

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presentation of the lists of assets or which were noted subsequent to that will give rise neither to cancelation nor rectification of the distribution.

Article 222 – **Kinds of proceedings in distribution** - In the distribution there shall be following categories:
(1) Suits of ordinary procedure;
(2) Suits of summary procedure;
(3) Suits of concise procedure;
(4) Special proceedings;
(5) Ordinary executions which do not arise from suit instituted in the court;
(6) Summary and concise execution proceedings, which do not arise from suits filed in the court; (7) Orphanological Inventories;
(8) Inventories amongst majors;
(9) Insolvency and Bankruptcy proceedings;
(10) Terms of Settlement / Compromise terms or Agreements between parties not depending of proceedings of bankruptcy or insolvency proceedings and extensions granted;
(11) Precatory letters, rogatory letters, obstructions to the judicial possession, collections, appeals from registrars / conservators, notaries and other functionaries, objections against reconstruction of books of the registration offices and any other unclassified papers.

DIVISION III

PROVISIONS RELATING TO SUPERIOR COURTS

Article 223 – **When distribution should take place – who intervenes -** In the High Court and the Supreme Court the papers shall be distributed in the first session following the receipt or presentation of the papers failing which penalty of suspension not exceeding 3 months is leviable. The distribution shall be done with the interventions of the Chief Justice, head of the registry, in the presence of the Judge and officers of the head office as directed by the Chief Justice.

§ Sole Paragraph: The Chief Justice shall indicate in each month the judge who will take part in the distribution. The head of the registry shall produce before the judge the paper for the purpose of classification, before they are distributed.

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Article 224 – **Categories in High Court** - In the High Court there shall be following categories: 1. Appeals from ordinary proceedings and special proceedings;
2. Appeal from summary proceedings and concise proceedings;
3. Appeals from orders;
4. Appeals in criminal matters;
5. Conflicts and revision of judgment of foreign courts;
6. Causes of which High Court takes cognizance in it's Original jurisdiction.

Article 225 – **Categories in the Supreme Court** - In the Supreme Tribunal of Justice there shall be following categories:
1. Appeals in general;

2. Appeals in which parties are exempted from costs or which enjoy the benefit of judicial assistance;
3. Appeals from orders;
4. Appeals in criminal matters;
5. Conflicts;
6. Appeals from final judgments;
7. Causes in which the Supreme Court takes cognizance at the first and sole instance. (Original jurisdiction of Supreme Court).

Article 226 – **How distribution is done -** In the distribution, the order of the precedence of the judges shall be taken into consideration as if there was only one section.

After the proceedings are numbered in each category, they are entered in a box with spheres with numbers corresponding to the files or papers which are yet to be distributed in lower category. The Chief Justice by taking one by one shall read in loud voice the number which is coming out, the head of the registry shall read in loud voice the surname of the judge to whom the proceedings are allotted, as per the order, and will write on front page of the proceeding the same surname of the judge and will make necessary entry to that effect.

The same steps will be followed successively in the subsequent categories.

§ 1: There being in any category only one proceeding for distribution, in the boxes four spheres

shall be put with the numbers corresponding to first four judges to fill up in this category and number which comes out shall indicate the judge to whom the proceeding is allotted.
§ 2: The judge of the turn shall take note of the numbers which are coming out and he shall revise the registration of the distribution which the head of the office will present along with the file after the distribution is over. If he finds that the notings are in accordance with the process of the distribution he will put the date and initial it.

Article 227 – **Second distribution** - If in the act of the distribution it is found that there is an impediment against the judge to whom the proceeding was allotted, soon a second distribution shall be done by the judge of the respective section. The same procedure will follow where the impediment was supervening. The judge to whom the proceeding papers were allotted in the second distribution shall follow the normal course and shall not return it back to the office the proceedings even though the impediment of first judge has ended and he has not given his opinion; but moment the impediment ceases, he will be competent to express his opinion in the proceedings and proceed with normal course after the proceedings had come back to the registry.

SUB-SECTION II
SUMMONS AND NOTICES

DIVISION I
GENERAL PROVISIONS

Article 228 – **Purpose of summons and of notice** - The service of summons is an act by which the defendant is informed that a suit has been instituted against him and is called upon to defend himself. By similarity the same procedure is followed to call upon for the first time any interested person in cause.

Service by notice is meant to, in any other cases, call upon a party to the court or to give him knowledge of any act or any fact.

- **Articles 228-263** - Summons and notices - Corresponding provisions in C.P.C. 1908: - o Issue and service of summons - Ss. 27-32 – O.V.

Article 229 – **Need for prior orders** - The service of summons and sundry notice shall not be effected, without prior order of the judge.

The notice in relation to pending suit is to be considered as a necessary consequence of the order which fixes date for performance of any act or any step in which specific persons should appear before the court or for which the parties have right to remain present; also notice should be served, independent of any express order of all the judgments and orders of which the law directs notice and those which may be adverse to the parties.

Article 230 – **Summons and Notices to Diplomatic Agents** - With reference to diplomatic agents whatever is provided in the treaties is to be followed and in the absence of such stipulation, the principle of reciprocity follows.

Article 231 – **Bar on summoning on certain days** - Nobody should be summoned or no notice to be given on the day of marriage, on the day of the death of the spouse, father, mother or son, even during subsequent eight days. In the event of the death of any other ascendant or descendent, brother or a keen in the same degrees in which the parents have been mentioned in this article, the prohibition includes day of death and subsequent three days.

Article 232 – **Need for witnesses -** If the person who has been summoned or notice is issued does not want to sign, does not know to sign or is physically unable to sign, two witnesses shall intervene; the same shall be followed when the bailiff does not know the person who was served and the letter does not produce identity card.

Witnesses shall sign the certificate if they know to sign.

DIVISION II

SERVICE OF SUMMONS

Article 233 – **On whom summons is to be served -** The service of summons is to be made on the defendant personally. It may be made on different person when the law expressly permits or when the defendant had appointed an attorney giving powers to receive the summons.

The incapable, the uncertain, the collective bodies and inheritances shall be summoned through

their representatives. Wherever the representation may be made by more than one person, it is sufficient that service be made in any one of them.

Article 234 – **Where should summons be served -** The service of summons may be effected at any place where the person to be summoned is found, but with care and discretion necessary to avoid unnecessary vexation.

Nobody may be served within places of worship or while busy in any act of the public service which is not to be interrupted.

The representatives of collective bodies shall be summoned at the house or place of their residence, when situated within the area of the administrative division where the suit is filed or where head office of the collective body is located. In any other case they shall be summoned in the head office of the body, if the competent representative is present or any other employee; same procedure will be adopted when after finding that they are not found at residence, or no entry of the official was permitted whichever may be the circumstances.

The service made in person of the employee or the circumstances, as above, has the same effect of service of summons on the person of the representative.

Article 235 – **Service in case of resistance to the entry of the official in the house of the party**- If the Bailiff having come to the residence of the party to be served finds resistance, which he cannot

overcome even by using violence, shall effect service on any other person who is the occupant of the house preferring always relatives of the person to be summoned, even if he is informed that he is absent.

When none of the persons at the house is ready to receive the summon, the same shall be effected on the neighbour.

If there are no neighbours or if they refuse to accept and transmit the service to the person concerned, they shall affix the notice at the door of the house of the person to be served in the presence of two witnesses, with one note with all the particulars to know what is the purpose of the summons, day on which it took place, the time during which the person summoned should present his defence and the consequences of default in submitted of the defence. In the note it will be further declared that duplicate is available in the registry to enable the person served to collect the copy at the office of the court with all particulars if there is only distribution. The note shall be

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signed by the bailiff and by witnesses if they know to sign.

§ 1: The summons effected as per this article shall have same effect of summons served on the defendant himself.

§ 2: The persons of the house or neighbours, who do not permit the entry for the service of summons or having received it is established that they did not hand over the duplicate to the person to be summoned shall incur penalty for offence of disobedience and when, after having received the papers, failed to deliver it to the concerned party. In case the notice is served on a neighbour who is unable to meet the person concerned, it is sufficient compliance on his part, if he hands over a copy to any person of the house who shall deliver the same to the person to be served.

Article 236 – **Summons where the party is unable to receive it** - When the official is unable to effect the service because the defendant suffers from dementia or any other grave reason unable to receive the summons, he shall issue the certificate to that effect. Notice of the same shall be given without any prior order of the court immediately to the plaintiff who will take appropriate steps or insist that personal service be made, depending upon the exact information of the official. When the plaintiff insists on personal service, the judge shall decide whether the service should be made as prayed after collecting the information and after giving the evidence which is found necessary.

§ 1: If it is impossible, on account of dementia, the cause is found justified on the basis of certificate issued by Director of the establishment where a person was interned. If he is not interned, certificate from two specialists in Psychiatry or proof of dementia by way of examination of 3 credible witnesses.

§ 2: In the event the impossibility is arising from other cause of permanent character, like deaf - dumbness, paralysis, blindness, the justification shall be made equally by way of evidence of the witnesses of recognised probity up to 3 in number or production of certificate issued by two doctors.

§ 3: If the impossibility consists in serious and acute sickness, involving risk of life of the person to be summoned, the proof may be by a certificate issued by the physician treating the person or by the evidence of the witnesses of recognised probity.

§ 4: Once the impossibility is established, a curator shall be appointed for the protection of the

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person to be summoned, with the preference of person appointed as curator as per clauses no. 1, 2 and 3 of article 320 of the Civil Code. Such appointment is restricted to the suit in question and without any other effects.

The service shall be made on the person of the curator. In the event it is found that in the case foreseen in paragraph 3, after service of summons, the proceedings shall he stayed till the person to be

summoned improves; such suspension shall not last for more than 60 days. If in the meantime the defendant expires, the suspension shall last until the heirs are brought on record. When the curator does not contest, what is provided in article 15 shall be observed.

Article 237 – **Absence of party to be summoned at uncertain place** - Where the official, upon the permission to enter in the residence of the person to be summoned, certifies that he is not at home and he is informed that he is out of the locality, but at a specific place, he will try to obtain the precise indication of his whereabouts and the probable time of his absence of all the details a report shall be prepared and shall be signed by the person who furnishes the information.§ 1: The registry, without need from any order from the court, shall immediately communicate the record and details to the plaintiffs, who shall apply for service of summons at the place indicated, if he does not like wait for the return of the defendants.

§ 2: If the person to be summoned is not found in the place indicated, what is provided in the article 235 shall be observed. There being the ground to hold that the information supplied is malicious, the person who gave the information shall be subject to the penalty of giving false information to the public authority.

Article 238 – **False address – House closed and uninhabited** - If the official tries to find the person to be summoned as per the information obtained about his residence and he is informed that he never stayed at that place or that he does not reside at such place, information shall be collected in respect of residence of the person to be summoned. Record shall be made of all the above and signed by the persons from whom the first information was obtained. If the official finds that the house is closed and with all the indication that it is not has been occupied, record shall be made to that effect and whatever information is obtained shall be inserted in that report. In either case immediate information will be given to the plaintiff in order that the plaintiff takes adequate steps.

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§ Sole Paragraph: If in the case foreseen in the first paragraph of this article it is found that the person to be summoned is residing at the place initially indicated, the person who gave the false information shall be subject to be prosecuted as per paragraph 2 of the article 237.

Article 239 – **Absence of person to be summoned at uncertain place** - If the official does not find the person to be summoned at his last known residence and he is informed there that he is absent from the locality at an unknown place, he shall record such information which will also be signed by the person giving such information.

When the plaintiff has not indicated that the defendant as resident at an uncertain place, information of the report shall be immediately given to him in order to take appropriate steps.§ 1: Service by publication shall not be done unless proper inquiry is made by the judge by all means at his disposal that the residence of the person to be summoned is not known, information being always obtained from the parish priest and of village administration official of the respective place.
§ 2: What is provided in second part of paragraph 2 of article 237 shall be followed in the present case.

Article 240 – **Service at fixed time** - If the official does not find the person to be summoned and there is no case as foreseen in articles 235 to 239, he shall give the indication of a specific time for the first working day to any person in his house with preference to the relatives. On the day and hour indicated above he shall effect the service if the defendant is found; and if not service shall be effected on the person to whom the time was given and if even he is not found on in any other person of the house, with preference to the relatives.

When none of the persons of the house offer to receive the summons, what is provided in the second and third clause of article 235 and paragraphs 1 and 2 of article 235 shall be followed. In the event on

the day and time already indicated it is found that the house is closed and not habitated, a notice will be pasted on the door with the note as provided in article 235, and by this method a service of summons shall be deemed as made in the person to be summoned.

Article 241 – **Mode of service if there is evasion** - If it is not possible to effect service of summons on the defendant in the manner indicated in the previous articles and there is a ground

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to believe after two unsuccessful attempts made, that he is avoiding service of summons, the court official shall go accompanied by the representative of a public authority or police force and serve the defendant at any place he is found.

The report signed by the said official and by the authority shall constitute full proof of the service.§ Sole Paragraph: In the case foreseen in this article, the court official and the agent of the administrative authority have the liberty to enter into the house to effect the service, on the same terms as the Code of Criminal Procedure permits execution of warrants and it will be so declared in the writ of service of summons.

Such warrant is executable in whole territory of the republic with the approval of the local judge when it is necessary to enforce the order outside jurisdiction of the judge who signs it.

Article 242 – **Formalities for service on person** - Where the service of summons has been made in the person of the defendant, the official shall deliver to the defendant the duplicate of the plaint and will inform him the time limit within which he has to give his defence explaining the effects of non contest. In the duplicate a note is made of the date of service, time given for filing defence, the consequences and the court in which the suit is pending, if allotment has already been done. Of all this report shall be made and signed by the defendant.

§ Sole Paragraph: If the defendant refuses to receive the duplicate, the official of the justice shall state so in presence of two witnesses and that the copy is available in the registry. In the report, specific mention shall be made of this event.

 There could be certain cases in which delivery of the duplicate to the summoned person does not arise like summons for pre-trial conciliation, summons for inventory (Art.1375) and summons to the spouse and creditors for execution (Art.864).

In such cases however the note mentioned in this article shall be handed over and the notings there in shall be according to the purpose to which they are meant.

Article 243 – **Formalities for service on a person other than the person summoned** - When the service of summons has been made on a person different from the defendant, the official shall hand over to such person the duplicate with the note mentioned in previous article and shall cast obligation on such person to convey it to the addressee and that for all purposes he is deemed as served for the purpose of the action as shown in the duplicate. The report shall be signed by the said person.

§ 1: The person who has received the summons is bound to perform his duty failing which he

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shall incur in the liability foreseen in paragraph 2 of article 235.

§ 2: In the case foreseen in this article, as well as in the cases where the service is deemed as made by simple affixation of the note at the residence of the person summoned, the official shall send to the defendant a registered letter, with acknowledgment due in which he gives notice of the date of summons, in the manner in which it is done and indicating the time limit within which he may defend and the respective consequence in the case of default and what he is to do with the duplicate. When the service is done on a person, identification of that person shall be done.

Article 244 – **Service on person residing abroad** - When the defendant resides in a foreign country, whatever has been stipulated in the treaties or international conventions shall be followed.

In the absence of the stipulation, the service of summons shall be made by postal service by registered letter with acknowledgment due, with the remittance of respective duplicate. In the letter it will be declared that the addressee is summoned for the purpose of the suit as referred to the duplicate with the precise indication of the court where the suit is pending and time up to which the defence can be filed and what are the consequences in the case of default; also mention shall be made of the section of the court, if allotment has already been done. Service is deemed as effected on the date when acknowledgment due is signed which will be annexed to the file.§ 1: The notice shall be signed by the person summoned or by the postal employee as provided in the postal regulations.
§ 2: Whatever is provided in this article shall be observed when the locality where the defendant resides is known even though the road and police number of his residence, is not known.

Article 245 – **Service of defendant taken as residing abroad when the letter is returned -** In the event the letter is returned without any indication or with the indication that addressee is not known or is unknown or is whereabouts are not known, the office immediately will bring this fact to the knowledge of the plaintiff irrespective of any order.

If a defendant is a Portuguese subject the plaintiff may apply for service through the nearest Portuguese consulate; if he is a foreigner and if there is no Portuguese consulate and a distance is not more than 50 kilometers, the service may be sought by way of rogatory letter.

Instead, the plaintiff may apply for service by publication and declaring whether the defendant

has had residence in the continent or adjacent islands and in the affirmative, in which place. In such case the judge shall make efforts to inquire through the Parish Priest or the Village Official whether the residence of the person to be served is known and shall order service through publication if the information is received that he is at uncertain part.
§ 1: If the last residence is in different judicial division or sub division, information will be solicited from the other judge so that information is transmitted by the other judge.
§ 2: What is provided in paragraph 1 shall apply equally in the event the acknowledgement due is not returned or the postal receipt is returned without signature.
§ 3: If the plaintiff has made a false declaration, he shall be incurring the penalty of paragraph 2 of article 237.

Article 246 – **Summons through Consulate** - The service of summons through the consulate shall be solicited by the court by request letter accompanied by the duplicate. In the letter request shall be made for delivery of duplicate to the person to be summoned and with the writing that the duplicate is to be delivered to the person to be summoned.

§ l: The costs incurred towards the service and which are indicated by the consulate shall be included in the costs.
§ 2: If the consulate gives information that the person to be summoned is unknown or is in uncertain part immediately service will be made by publication of the summons in the newspapers.

Article 247 – **Summons by publication** - The service by way of publication is to be done not only when the person to be summoned is at an uncertain place in accordance with previous provisions, but also even when the persons to be summoned are uncertain.

Article 248 – **Form of service by publication for uncertainty of place** - The service by publication on account of uncertainty of place shall be done by affixation of the notices and by publication in the newspapers.

The notices shall be affixed one at the door of the court, other at the last residence of the defendant in the country and third one at the door of the house of the local administrative authority of the respective parish.

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The notices shall be published in two consecutive issues in the most widely read newspaper of the place where last residence of the persons to be summoned was found; if there is no newspaper it shall be published in two issues of the most widely read newspaper of the judicial division; to which his residence belongs, if even there is no newspaper, in two issues of the newspaper most widely read in its respective administrative district, and if also there is no paper available in the district of the publication will be done, 2 issues in one of the most widely read newspapers of Lisbon.
§ Sole Paragraph: In the inventories of orphan's jurisdiction and in the concise proceedings there will only be affixation of the notices.

Article 249 – **Contents of the notices** - In the notices for publication, as far as possible, the details of the action are to be given such as for which purpose the absentee has been summoned, indicating who has instituted the case and in substance what is the relief sought by the petitioner; besides also the court where the file is pending will be mentioned and the respective section of the court if there has been distribution, extension of period, time period for the defence and the consequences of the default in case of absence of defence and adding thereafter the time expires not only fixed in the case but also necessary extension starting from publication of last announcement. The announcement shall reproduce the text of the notices.

§ Sole Paragraph: The extended period shall vary between 30 days to 6 months.

Article 250 – **How the time for defence is counted in case of service by publication** - The notice is deemed as served on the day when the last publication is done. From this date the period of extension is to be added. This addition shall be done to the statutory period and only from the end of the extended period, the defence is required to be submitted.

Article 251 – **Form of service by publication due to uncertainty of person -** The service by publication on account of uncertainty of the person shall be done in accordance with the articles 248 to 250, with the following modifications:
1. Only one notice will be affixed on the door of the court, except where the uncertain parties are called upon as heirs or representatives of the deceased person, because in such case, besides the notice affixed at the door of the court, in addition one more notice is to be affixed at the residence

of the deceased and other at the door of the house of the administrative authority of the respective parish, if they are known and in the country;

2. The announcement shall be made by publication in the newspaper widely read in the seat of the judicial division;

3. The extended period shall not be lesser than 30 days nor more than 60 days.

Article 252 – **Filing of the notice and publication in the record** - One copy of the publication shall be annexed to the file, in which the bailiff shall declare the dates and the places where the affixation has been done; the affixation shall be done in one sheet of paper, which is also required to be annexed to the file, and the announcement made respectively and extracted from the newspaper, indicating the title and dates of the publication.

Article 253 – **Retroactive effect of service delayed for no fault of Petitioner** – In respect of

interruption of the prescription, the effect of the service of notice, delayed for no reason not attributable to the petitioner operates retroactively to the dates when the suit was instituted.

- The provisions of this article are meant to avoid that the defendant takes advantage of any devices or efforts tending to delay the service or that the plaintiff suffers prejudice as a result of delay in service of summons, when this delay is not due to his fault.
- In view of Art.552(2) of the Civil Code and Art.485(a) of the Civil Procedure Code interruption of prescription takes place only from the time when the defendant is summoned; it is not sufficient for this purpose that the suit has been filed that is that the respective plaint has been received in the office (Art.267) Suppose a debt is incurred subject to prescription of one year under Art.539 of the Civil Code; when there are only two days to complete the period of prescription the creditor presented in the office the plaint for the suit meant to recover the debt and applied for immediate service on the debtor; but the latter came to be summoned only after 3, 4 or 5 days. Should the prescription be considered as interrupted or not?

  As prescription is interrupted only by the act of summoning and this has taken place after the expiry of the time fixed byArt.539 of the Civil Code it appears that the debt should be considered as prescribed. This would indeed infact happen if the provision of Art.253 were not there.
- By virtue of this article we have to distinguish;

  (a)Either the delay in service of summon that is the fact that the defendant is summoned after 3, 4, 5 days instead of being summoned immediately, is due to the reason attributable to the plaintiff;

  (b)Or it is due to the cause attributable to the defendant (he sought to delay service by absenting himself) or to the court office (it was negligent in complying with the order) or to the judge (he was not quick in ordering the summons); (c)Or it is not attributable to any person and results from circumstances in the nature of force major, of any fortuitous cir - cumstances or genuine impediment.
- In the 1st case the debt prescribes because the normal effect of Art.552(2) of the Civil Code, Art.485(a) of the Civil Procedure Code and the rule contained in the 3rd portion of Art.267 applies.
- The suit was filed before the period of prescription was completed; but since the act of the proposition does not produce effect in relation to the defendant except from the time of service of summons and this was done after expiry of the period of prescription in other words as the prescription was not interrupted by the factum of the filing of the suit and the act which would interrupt it, namely the service of summons, was done after expiry of one year the prescription is extinguished.

In the 2nd and 3rd case the prescription gets interrupted in view of the article of 253.

The circumstance that the summons has been delayed by virtue of the fact not attributable to the plaintiff results that the effect attributed to the summons by Art.552(2) of the Civil Code and by Art.485(a) of the Code of Civil Procedure has retroactive effect to the date of the filing of the suit that is to say in this case the prescription is considered to be interrupted not on the date of service but on the date in which the plaint was presented and received in the office.

DIVISION III
NOTICES

Article 254 – **Notice to parties when they have appointed attorneys** - Notices to parties in pending proceeding shall always be done on the person of their agent with office in the seat of the court.

The agents shall be notified by the registered letter with acknowledgement due addressed to the respective office.

When the notice is to call the party for the performance any act in person act or to give the notice of the accounts, besides the agent also notice shall be issued through post to the party. The case of article 258 stands excepted from this category.

§ Sole Paragraph: The notice issued does not cease to produce effects on account of papers being returned or on account of non signature in the acknowledgement due, once the remittance has been addressed to the office. Any of such cases, the acknowledgement due as well as the envelope shall be annexed and notice is considered effected on the day subsequent to the registration of the letter.

Article 255 – **Notice to parties when they have chosen domicile** - If the party has not appointed an agent with the office in the seat of the court, but has chosen domicile for the purposes of receiving notices, service will be made through the post in terms of preceding article.

When the party has not appointed agent nor chosen domicile at the seat of the court, no notification shall be issued and orders and judgments passed are deemed as published as soon as the proceedings has the entry in the registry and as soon as the application with the order passed thereon has been annexed to the file.

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§ Sole Paragraph: What is provided in the second part of this article is not applicable if the notice has the purpose to call the party to the court for doing the act in person or the law requires expressly his personal appearance. In such cases in the absence of agent or lack of choosing the domicile, the party has to be notified personally.

Article 256 – **Personal notification** - If a party has to be notified personally the provisions relating to service of summons shall apply.

Article 257 – **Sundry notices and notices to non parties** - The sundry notices and those which are intended to call to the court, witnesses, experts and other persons with occasional intervention in the case shall be served personally on those to whom the notices are to be served. Whenever there is no possibility of effecting the service and there is a case foreseen in article 241, the provision as contained in said article shall apply.

In summary proceedings, concise proceedings and in the inventories under orphans jurisdiction, the notices shall be served by registered letter with Acknowledgement due card when the persons to be served reside within area of the respective court. The Acknowledgement due card shall be handed over to the addressee and he should sign the receipt which accompanies the notice. The receipt shall be returned to the court when signed. If the addressee does not sign the employee of the court shall declare in the receipt that he has handed over the receipt to the parties.
When there is no possibility of delivery of the notice, the notice shall be done by ordinary manner.

- There is a procedure to be adopted as per the Decree law no. 30384 dated 13-4-1940 dealing with manner of service by post.

Article 258 – **Notice to public servants or employees of public enterprises** - The notice intended to call to the court any public servant or employee of public enterprise, whose appearance depends on the permission of the hierarchized superior shall be done with necessary anticipation by way of requisition sent to his superior.

The hierarchical superior shall take necessary steps to see that the requisition is complied with. When for urgent necessity of public service it is not possible to permit the notified person to appear, the superior shall inform the court with due anticipation why it is not possible to grant permission for the appearance. In such case if the appearance is indispensable, new requisition

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shall be made for another day and this time the office concerned shall not refuse the employee the permission to appear in the court.
§ Sole Paragraph: The superior who fails to comply with the provision of the article incurs in the penalty of disobedience in aggravated form.
The employee who fails to attend the court will be subject to penalty applicable to the defaulter; and to be exempted from such penalties he has to prove either that permission was refused to him or that no notice was given to him to appear.

Article 259 – **Notice of orders or judgments** - Whenever notices of orders and judgments are served on the agents, a copy of the order shall be sent to him, without the judgment portion.

Article 260 – **Notice for personal appearance** - When the notice is meant to call to the court the party or any other person, the court official shall indicate in the notice the day, hour, place where he is to appear and purpose for which notice is given and respective note is kept for his knowledge. A service report will be prepared which will be signed by the person notified.§ Sole Paragraph: Where the notice is sent by postal service, no certificate is necessary and there is no need for making any note.

Article 261 – **Formalities for sundry notices** - The service of sundry notices shall be done on the strength of respective application delivering to the recipient one duplicate on which the bailiff shall

declare the day on which the service was effected. If the application is accompanied by any document, the official shall permit the notified person to read the same.

The official shall make the report of the event, which will be signed by the notified person. The application along with the report shall be given to the applicant.

§ Sole Paragraph: The applications for sundry notices shall always be submitted in duplicate. And if the persons to be notified are more than one, number of duplicates are to be submitted as per the number of persons to be notified, living in separate economy.

Article 262 – **Bar on opposition to sundry notices** - The sundry notices do not admit of any opposition. The respective rights can be enforced only in the competent actions.

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Article 263 – **Notice for revocation or relinquishment of Power of Attorney** - If the notice has the purpose of revoking the power of attorney, service will be effected not only on the attorney but also on the person with whom he was supposed to contract, if the agency was created to deal with specific person.

In other cases, the revocation shall produce effect in relation to third party acting in good faith, provided the same is announced in the newspaper of the locality in which the attorney resides. If there is no paper published in that locality, the notice shall be published in any paper of the seat of the judicial division, and if there is no newspaper in such seat, then any newspaper in the judicial division nearest to the residence of the attorney.

§ 1: The revocation of agency may be done also in any other form; but in relation to third party in good faith it shall not produce effect unless they are communicated or without being published in the manner found in this article, depending upon the third parties are certain or uncertain.§ 2: The revocation or the renunciation of the power of attorney produced in any proceedings shall produce effect after the production of the application in the said proceeding and the certified copy of the service of the notice.

CHAPTER II
PROCEEDINGS
SECTION I
COMMENCEMENT AND PROSECUTION OF THE PROCEEDINGS

Article 264 – **Duty to promote prosecution – Duty of probity on parties – Power of Judge to ascertain the truth** - The initiative and the prosecution of the proceedings are upon the parties; it is their duty not to consciously formulate unjust prayers, not to plead facts contrary to the truth nor to take simply dilatory steps.

The Court has power to *suo moto* order steps and measures for discovery of the truth.

- **Articles 264-279** - Proceedings - Corresponding provisions in C.P.C. 1908: - o Pleadings – Order VI.

Article 265 – **Duty of parties to co-operate** - The parties and their representative are bound to appear whenever they are notified to appear and furnish all the clarifications sought from them.

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Article 266 – **Power of Judge to render prompt Justice** - Justice should be prompt. It is incumbent upon the judge to remove all the obstacles which come on the way of the regular progress of the cause, either refusing what is not relevant or purely dilatory, or directing what is necessary for the progress of the proceedings.

Article 267 - **When the case is deemed to be filed** - The proceedings stands initiated by instituting the same. The action is deemed as proposed, filed, or pending, as soon as the initial petition is

received in the office. However, the mere institution has no effect in relation to the respondent until he is served, save what is provided in article 253.

§ Sole Paragraph: In the judicial division where there is more than one court the suit is deemed to be filed as soon as the petition is received in the registry which is on the turn.

Article 268 – **Principle of stability of proceedings** - Once the respondent is summoned, in principle, the proceedings remain the same as to the persons, object or relief and cause of action.

Article 269 – **Necessary alteration due to joinder of new respondent** - Until the stage of the pleadings is over, the petitioner may join in the cause new respondents when he finds their joinder is necessary in order to secure the standing to sue. The petitioner can take the same step when in the curative order the court holds that there was non-joinder of parties and as such the respondent was not a lawful party.

Article 270 – **Other necessary modifications** - The proceedings may be modified in relation to persons in the circumstances mentioned in the previous article and also;
(a) On account of the death of any of the parties;
(b) On account of the transfer inter vivos of the thing or right under litigation.
(c) As a consequence of applications for intervention by third parties.

Article 271 – ***'Locus standi'*** **of transferor – Joinder of transferee** - In case of transfer inter vivos of the thing or right subject of the litigation, the transferor shall continue to have standing to sue, until the transferee is by way of application for substitution permitted to substitute the transferor.

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§ 1: Substitution shall be admitted when the opposite party agrees to the prayer. In the absence of agreement, the substitution is to be declined only if it is found that the transmission was made to render the position of the adversary more difficult in the case.
§ 2: The final Judgment shall produce effects in relation to the transferee even if he does not intervene in the proceeding, except where the suit was liable to be registered and the transferee had registered the transfers before the registration of the suit.

Article 272 – **Alternative prayers** - It is permitted to frame alternative reliefs in relation to rights and obligations which by their nature or origin are alternative, or which may be granted in the alternative.

§ Sole Paragraph: When the election is left to the discretion of the debtor the omission to seek relief in the alternative is not a ground to refuse relief in the alternative.

Article 273 – **Ancillary reliefs** - It is lawful to pray for ancillary reliefs. Ancillary relief means that relief asked may be taken into consideration only when main relief cannot be granted.§ Sole Paragraph: The inconsistency amongst the reliefs is not a ground to apply for subsidiary relief; but, the circumstances in sole paragraph of article 29 regarding joinder of parties will come in the way of the grant of the subsidiary reliefs.

Article 274 – **Aggregation of reliefs** - It is open to the plaintiff to seek more than one prayer cumulatively as against the same defendant which may be compatible with the form of proceeding, as to the competence to the court and absence of obstacles indicated in the sole paragraph of article 29.

Article 275 – **Generalized reliefs** - It is permissible to the plaintiff to seek general reliefs in the following cases.

1) When material object of the suit is general in nature as far as facts are concerned;
2) When it is not possible to find in a definitive manner the consequences of an illicit fact; 3) When the determination of the amount is dependent upon rendering of the accounts on any other act which ought to have been performed by the defendant.

§ Sole Paragraph: In the case of clause no. 1 and 2, the relief may be converted into specific by

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way of incidental proceeding of liquidation. The conversion will be left to the execution if it is not possible to grant the same in the suit for declaration.

Article 276 – **Claim for instalment due** – Where there is a case of periodical instalments either in cash or in kind, if the debtor does not pay, the prayer as well as the order may cover not only the arrears of the instalments due as also future instalments until the main obligation subsists. It is also permissible to ask for future instalments when eviction from a property is sought on expiry of lease and also in the similar cases where the absence of executable document at the date of the accrual of instalment, may cause grave prejudice to the creditor.

Article 277 – **Amendment of pleadings by consent** - When there is agreement between the parties, the relief as well as the cause of action may be altered at any stage, in the first or second instance except where it is found that the alteration fundamentally disturbs the trial, arguments or decision.

- **Articles 277-278** – Amendment of pleadings - Corresponding provisions in C.P.C. 1908: -
  - Pleadings – O.VI
  - Amendment of pleadings – r. 17 of CPC

Article 278 - **Amendment of pleadings when there is no consent** - In the absence of agreement, the cause of action may be changed in the replication, if the proceedings admit it, unless the change is the consequence of admission made by the respondent and accepted by the petitioner. The relief may be also altered in the replication; the petitioner may also at any stage reduce the relief and amplify it till the decision of the first instance, if it is the development or consequence of the original prayer.

§ Sole Paragraph: If the modification of the relief is done in the course of trial, the same shall be noted in the rozanama.

- This is a provision for amendment of proceedings and its latter part is similar to O.6, R.17 of Civil Procedure Code, 1908

Article 279 – **When counter claim is admissible** -The defendant, in the counterclaim, may seek reliefs against the plaintiff. The counterclaim is admissible:

1. When the prayer of the defendant emerges from the act or juridical fact which is the basis of the plaint or the defence;

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2. When the defendant desires to obtain compensation or claim the right to improvements or expenses relating to the thing, delivery of which is sought from him;
3. When the prayer of the defendant intends to achieve to his benefit, the same juridical effect which the plaintiffs proposes to obtain;
4. When the prayer of the defendant proposes to widen the object of the action, so that the sustainability or unsustainability of the act or of the basic fundamental juridical relation, may be adjudicated.

§ Sole Paragraph: The counterclaim is not admissible when to the prayer of the defendant entails a type of procedure different from that pertaining to the prayer of the plaintiffs, save where the prayer of the plaintiffs is subject to ordinary procedure and the prayer of the defendant is subject to a simpler form of ordinary procedure.

Article 280 – **Consolidation of suits** - Where there are separate suits filed which, in accordance with articles 29 and 30 could have been combined in one suit, the court shall order their consolidation upon the application of either party even though they may be pending in different courts, unless the stage of the proceedings or any other special reason is against such consolidation.

§ 1: The proceedings shall be appended to the proceeding which was filed in the first place, except where the reliefs are independent of each other, because in such case consolidation will be made in the

order of the dependence

§ 2: The joining shall be applied for before the court where other proceedings are to be appended.

SECTION II

STAY OF PROCEEDINGS

Article 281 – **Grounds for stay of proceedings** - The prosecution of suit stands stayed in following cases:

1. When any of the parties dies or ceases to exist;

2. In the proceedings where appointment of the advocate is mandatory and he dies or is completely incapacitated from exercising his mandate. In other cases when legal representative of the incapable dies or is incapacitated from acting as legal representative, save where there is an

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or legal advisor appointed;

3. When the judge orders stay;

4. In other cases where law specifically directs the stay.

§ Sole Paragraph: In the case of transformation or amalgamation of a collective person who is party to the suit, the prosecution does not get stayed and only the substitution of the representatives is be done where necessary.

- **Articles 281-289** – Stay of proceedings - Corresponding provisions in C.P.C. 1908: - o Stay of Suit - S.10

Article 282 – **Stay due to death of party** - Upon the production of a document which proves the death or extinction of any of the party, the proceeding shall immediately stand stayed, except where the oral arguments have already started. In such case, the suit shall stand stayed after the passing of the judgment.

§ Sole Paragraph: It is the duty of the party to bring on record the factum of the death or extinction of the co-plaintiff or his counterpart, as soon as he had notice of the death and it is possible for him to annex to the file document in support of the death. If not done so, all the acts done subsequent to the death which ought to have been certified will be of no effect.

Article 283 – **Stay upon death or impediment of attorney** - In case of clause no. 2 of article 281, as soon as the proof of the fact is produced, the suit shall immediately be stayed. However, if the file is placed before the judge for passing judgment is ready for being so placed before the judge, the stay shall take place only after the passing of the judgment.

Article 284 – **Stay by Judge** - The judge may order stay where the decision of the case is dependent on the judgment in another case already filed and when he is of the view that there is another ground to justify the stay.

§ 1: Despite pendency of the prejudicial cause, no suspension shall be ordered if there are well founded reasons to believe that the other case was instituted solely for the purpose of obtaining the stay or if the first case is at such an advanced stage that prejudice caused by the stay is much more than the advantages.

§ 2: When the stay is not on the ground of pendency of a prejudicial case, the time of duration of the stay shall be fixed in the order.

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Article 285 – **Stay to ensure compliance with Revenue laws** - Matters in which the ownership or possession of a property or based on acts connected with an industry or profession subject to payment of tax shall remain in suspension until entry in the file or booklet of the property from where it is seen that the property has been inscribed in the matriz, or challan of payment of industrial tax is produced, or professional tax or payment of any of the instalment is produced.§ Sole Paragraph: Until there is a

document supporting the payment or the booklet to prove the inscription produced in the fiscal office, the inscription may be proved by certified copy of matriz or the report that was made for making such inscription.

Article 286 – **Stay to ensure compliance with Revenue laws** – So also a suit where interest is prayed for either prior to the filing of the suit or subsequent thereto, shall not be entertained, unless it is established that the plaintiffs have been registered under usury laws for the purposes of the payment of tax towards interest.

Article 287 – **Duty of Judge for the purpose of stay** - In the cases foreseen in preceding two articles and any other in which there is no compliance with the fiscal provisions, by express provision of the law, the proceeding shall remain stayed and the judge shall order stay when the omission or the violation comes to his knowledge.

Article 288 – **Effect of stay** – When there is a stay of the proceeding only urgent acts can take place to avoid irreparable loss. The party who is prevented from attending the court, shall be represented by the Public Ministry or by an Advocate appointed by the judge.

Periods of limitation shall not run during stay. In the case of clause no. 1 and 2 of article 281, the stay nullifies the part of the limitation period which has run before.

Article 289 – **Vacation of stay** - The stay is vacated :-
(a) In the case of clause no. 1 of article 281 when order bringing on record the legal representatives of the deceased or of the extinct collective body is notified;
(b) In the case of clause no. 2 when the opposite party has knowledge that another advocate has been appointed or the party has another representative or that the impossibility which occasioned stay has ceased.

(c) In the case of no. 3 when the prejudicial case is finally decided or when time fixed for the purpose has already elapsed.
(d) In case of no. 4 when the incident is over or the circumstances to which the effect of stay was given have ceased.
§ 1: If the decision of the prejudicial case removes the ground or the reason for suit, the suit shall be dismissed.
§ 2: If the party delays the appointment of the new advocate the opposite side may apply that the same party be notified to appoint new advocate within the time fixed. The absence of the appointment within period fixed shall have same effect as lack of initial appointment.
Any party may equally apply that the Public Ministry be notified for the appointment of new representative for the legally disabled person when the earlier one has expired or it is impossible for the said representative to act for a period which may extend beyond 30 days. In the event there is no representative appointed when the period has expired the stay shall cease and the legally disabled person shall be represented by the Public Ministry.

SECTION III
TEMPORARY SUSPENSION OF PROCEEDINGS

Article 290 – **Grounds for temporary suspension and its effects** - The proceedings are temporarily suspended when the file is pending for more than one year due to lack of initiative from the parties.

Once the proceedings are temporarily suspended the effect of clause no. 2 of article 552 of the Civil Code attributed to service of summons ceases, the time till service being added to the time from the moment of interruption of the proceedings. The time for filing proceedings will run again on the same terms.

- **Articles 290-306** – Abatement - Corresponding provisions in C.P.C. 1908: -
  - Abandonment, Withdrawals, Compromise – O.XXIII
  - Admission of claim – O.XII
  - Written Statement, Set-Off and Counter Claim – O.VIII
  - Appearance of parties and consequence of non-appearance – O.IX
  - Examination of parties by the Court – O.X

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Article 291 – **How suspension ceases** - The temporary suspension and its effects cease immediately after the plaintiff declares in the proceedings that he desires its continuation and such declaration is notified to the defendants who have not defaulted in appearing. But the notification shall not produce any effect if the plaintiff does not take steps to prosecute the proceedings within 48 hours.

§ Sole Paragraph: The notification shall have effect, although the period of prescription or the period to exercise the right to file a suit has already expired, except if any of the defendants invoke prescription or the bar of limitation before the plaintiff makes the declaration that is referred to in this article. In the later case, the declaration shall not be accepted.

SECTION IV

TERMINATION OF PROCEEDINGS

Article 292 – **Grounds and manner of abatement** – A proceeding ends by final judgment, by settlement through arbitration, by abandonment, by withdrawal, by admission and by compromise.

Article 293 – **Grounds for dropping of proceedings** - The judge shall abstain from taking cognizance of the relief and discharge the defendant in the suit:

1. When the defence of lack of jurisdiction is decided in the affirmative;
2. When the entire proceeding is annulled;
3. When he is of the opinion that any of the parties lacks judicial personality or, being incapable, is not duly represented;
4. When he considers that any of the parties do not have a standing to sue;
5. When any other dilatory exception is decided in the affirmative.

§ Sole Paragraph: The provisions of this article shall not be of any effect when the proceeding has been transferred to another court and when the absence or irregularity is cured.

- Article 499, 514(1), 660 of this Code.

Article 294 – **Consequences and effects of dropping proceedings** – Dropping of proceedings in no case precludes to the institution of another action for the same purpose.

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The civil effects derived from the institution in the first action and of the service of summons on the respondent shall be maintained wherever possible, if the new case is intended or the respondent is served within 30 days from the time when the judgment dropping the proceedings becomes final for want of appeal.

§ 1: If the plaintiff files a new suit without paying the costs directed in the previous suit, not only payable to the court, but also to the defendant, the latter may apply, after the expiry of the period to raise objection against calculation of the costs, that the plaintiff be notified to prove that such costs have been paid, on pain of a fresh discharge of the defendant being ordered, and the plaintiff loosing the benefit referred to in the second part of the article.

§ 2: If the defendant is discharged from the suit on the grounds No.1 and 5 of article 293, in the new suit between the same parties the evidence produced in the first suit can be made use of and the decisions passed therein on controversial questions, shall be effective, save for what is provided in Article 105.

Article 295 – **Agreement to refer to Arbitration** - The parties may agree, at any stage of the proceedings that the decision of entire matter or a part thereof be remitted to one or more arbitrators of their choice.

As soon as the arbitration agreement is drawn up in the proceedings or document containing arbitral clause is produced, the court shall examine whether the agreement to submit to arbitration is valid in relation to its object and the status of the parties, and if so, the proceedings shall come to an end and the parties shall be referred to the arbitral tribunal, each of the parties being directed to pay half of the costs, unless otherwise expressly agreed.

§ Sole Paragraph: It is not lawful to place reliance on any record of the proceedings, unless the parties have made an express reservation to the contrary.

- See also Article 1561 of this Code.

Article 296 – **Abandonment of proceedings** - The proceedings shall be considered as abandoned when it remains pending for a period of 5 years, without prejudice to what is provided in the following article.

As soon as the fact foreseen in this article is ascertained, the office shall place the file before the judge for the proceedings to be declared closed in view of abandonment.

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Article 297 – **Abandonment of appeals** - Appeals shall be declared as abandoned for lack of prepayment of costs towards the prosecution of the appeal or of payment of costs, as provided in the appropriate law. The appeals shall also be declared as abandoned, when by reason of inaction of the parties, the appeals were pending for more than one year, although the initial prepayment of costs may have been done.

If any incidental proceedings has arisen with effect of stay of the operations, the appeal shall be adjudged as abandoned, if more than one year has elapsed without there being any progress in such incidental proceedings.

The desertion shall be adjudged by simple order of the Judge or of the Assignee Judge.

- Assignee Judge *("Relator"):* in a collective Court, one of the Judges was assigned the task of preparing the judgement.

Article 298 – **Liberty to withdraw, admit, claim and compromise** - The plaintiff may, at any stage, withdraw all the reliefs prayed or a part thereof, in the same manner as the defendant may admit all or part of the relief. It is also lawful for the parties, at any stage of the suit, to enter into a compromise over the object of the suit.

Article 299 – **Effect of admission and compromise** – An admission or a compromise has the effect of modifying the relief or put an end to the case in the precise terms in which it has been drawn.

Article 300 – **Effect of withdrawal** - The withdrawal of the claim extinguishes the right which was intended to be enforced.

The withdrawal of the proceedings only brings to an end the proceeding which is initiated, unless it takes place after a passage of eight days from the notice of the curative order, because in that case, it shall have the same effect as abandonment of the claim.

Article 301 – **Protection of the rights of respondent** - The withdrawal of the proceedings depends upon the acceptance of the respondent, when it is applied for after the written statement is filed.

The abandonment of the claim is free, but does not defeat as a rule, the counterclaim.

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Article 302 – **Restriction on the rights of representatives of collective persons, incapable persons and absentees** - The representatives of collective persons and of incapables or absentees can only

withdraw, admit or compromise within the precise limits of their powers or special authorization from the entity who has power to grant the same.

Article 303 – **Admission, abandonment and compromise in case of joinder of parties** - In case of joinder of proper parties, the admission, abandonment and compromise by an individual are free, limited to the interest of each one in the suit. In case of joinder of necessary parties, the admission, withdrawal and compromise of any of the parties has bearing only on the costs.

Article 304 – **Limitations on admission, abandonment and compromise** - It is not lawful to make admission, abandonment or compromise which imports the affirmation of the wish of the parties in any legal domain in which it is not lawful to make such affirmation.

Article 305 – **How admission, abandonment, compromise is to be made** - The admission, withdrawal or compromise may be made by recording it in the proceedings or by an authentic document. The record shall be drawn within the period fixed by the court or else the proceedings shall continue.

The record having been drawn or the document having being produced, it shall be examined whether such admission; abandonment or compromise is valid as to its object and capacity of the persons making it; and in the affirmative, it will be so ordered in the final judgment issuing proper declaration or either allowing the relief or dismissing the same, as the case may be.

§ Sole Paragraph: When the nullity of admission, withdrawal or compromise arises solely from lack of power or irregularity of mandate, it shall be sufficient if the judgment is personally notified to the party and such party did not challenge the same within the prescribed period. In this connection see also Article 38.

Article 306 – **Revocation of admission, abandonment or compromise** - It is not lawful to revoke the admission, abandonment or compromise due to a mistake of law, but it may be revoked due to a mistake of fact, deceit, coercion or misrepresentation in a suit brought for this purpose.

§ Sole Paragraph: The suit for revocation, till it is decreed, does not prevent that order passed on an admission, abandonment or compromise from producing all its effects.

CHAPTER III
PROCEDURAL STAGES

SECTION I
GENERAL PROVISIONS

Article 307 – **Mode of applying and means of proof** - The steps regulated in this chapter shall be drafted without paragraphs and it is incumbent on the party to submit the list of witnesses and apply for any other means of evidence.

Article 308 – **Time limit to file Defence statement and indication of means of proof** - The opposition to the prayer, when admissible, shall be filed also without paragraphs, within a period of 8 days, observing, as regards the leading evidence, what is provided in the previous article.

Article 309 – **Limit on number of witnesses** - Not more than 3 witnesses may be produced to prove each fact, and their total number, for each party, shall not be more than 8.

SECTION II
VALUATION OF THE CAUSE

Article 310 – **Valuation and its consequences** - To each and every cause a specific value should be attributed expressed in legal tender, which shall represent the immediate economic utility which is sought through the action. This value shall be taken into account for fixing the pecuniary jurisdiction of the Court, the type of proceedings and whether the cause exceeds the pecuniary jurisdiction of the Court.

§ Sole Paragraph: For the purpose of costs and other legal burdens, the value shall be fixed as per the rules laid down in the relevant legislation.

- **Articles 310-324** – Valuation of the cause:
  - Suits Valuation Act, 1887 and
  - Court Fees Act, 1870.

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Article 311 – **Valuation for money matters and eviction cases** - If the suit is instituted demanding certain amount in cash, this will be the value of the suit and any objection against the same or agreement to the contrary is not admissible. If the suit is meant to achieve different purpose the value of the suit shall be the amount in cash equivalent to such benefit.

§ Sole Paragraph: In the suit for eviction the value shall be of the annual rent, when the lease is for a period of one year or exceeding one year, and the rent of six months when the lease is for more than six months or more and less than one year; and of the monthly rent when the lease is for less than six months.

Article 312 – **Valuation in case of cumulation of prayers and other types of prayers** - Where there is joinder of prayers, the value of the suit shall be amount corresponding to the totality of the prayers.

If the reliefs are in the alternative only the reliefs of greater value shall be taken into account; if the reliefs are subsidiary, the prayer formulated in the first place shall be taken into account.§ Sole Paragraph: When interest, rent, income already accrued and to be accrued, during the pendency of the suit, is demanded, the value of the suit shall be only the interest already accrued.

Article 313 – **Time to determine value – Valuation of counter claim** - For the fixation of the value, the time to be considered is the date of institution of the suit, However, if the defendant files a counter claim, the value of the prayer formulated by the defendant shall be added to the prayer formulated by the plaintiff; but, such increased value shall have effect only to the extent, of the acts subsequent to the defence of the defendant.

Article 314 – **Valuation for future rents** - If in the suit there are instalments already accrued and instalments to be accrued the value shall be fixed adding both the values.

Article 315 – **Valuation shall depend on value of juridical act** - When the suit is for determining the existence, validity, implementation, modification or rescission of a juridical act, the value fixed by the parties shall be taken into account. If there is no price nor value stipulated, the value of the act shall be fixed in accordance with the general rules.

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Article 316 – **Valuation based on value of thing** - If the suit is to enforce a right of full ownership to property over a thing, the value of the same thing shall be the valuation of the cause. If there is a case of property in imperfect ownership or of capital of one instalment, the general rules of the valuation shall be observed.

Article 317 – **Valuation for status or Incorporeal rights** - In the suit in respect of status of a person or in respect of incorporeal interests, the valuation is always considered equivalent to the pecuniary jurisdiction of High Court plus 1 $ (one escudo).

Article 318 – **Rights of parties to indicate value – how exercised** - The plaintiffs shall indicate the valuation of the suit in the plaint, without which the plaint shall not be received. The defendant may, in the pleadings where he files his defence, challenge the valuation, provided that he offers his own valuation in substitution. In the subsequent pleadings, if available, the parties may agree to any valuation.

§ 1: If the suit permits only two pleadings, the plaintiff has liberty to declare, within three days subsequent to the defence of the defendants, that he accepts the value fixed by the defendants.§ 2:

When the plaint does not contain the indication of the value and despite the same, has been wrongly accepted, the plaintiff shall be notified to declare the valuation as soon as the omission is discovered. In this case, notice will be given to the defendants of the declaration made by the plaintiffs; and if the time for filing the pleadings is over, the Defendants may contest the value declared by the Plaintiffs. § 3: The absence of challenge on the part of the defendant signifies that the Defendant accepts the value offered by the Plaintiff.

Article 319 – **Will of parties and judicial intervention in fixing valuation** - The value of the case shall be that which is agreed between the parties as provided in the preceding article, except where the judge finds, after the pleadings are over, that the real value is different that offered by the parties.

If the parties are not in an agreement or if the judge is of the view that the agreement is in flagrant opposition to reality, the value shall be fixed by the judge if the proceedings contains necessary material; if not, the valuation shall be fixed in accordance with two following articles.

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Article 320 – **Valuation where neither will of parties nor power of judge are adequate** - In the suit referred to in article 316, the value shall be fixed.

a) By the head of the registry when the suit deals with properties registered in matriz (Revenue Record), of the dominium directum, of the census or any other instalment payable in cash or kind of which there is value fixed by the Municipality. Upon the certificate of matriz or rate fixed by the municipalities produced, the head of the registry shall observe the rules relating to the valuation considering the net revenue as the real value of the property;

b) By the last listed price when it is a case of securities, values, or objects having legal price, or listed price;

c) By the valuation done by the expert when it is a case of precious stones or metals.

Article 321 – **Valuation in extreme cases** - If it is not possible to fix the value in the manner provided in the preceding article or in cases different from those referred to in article 316, the judge shall summarily decide the matter, holding inquiry in the manner he thinks fit and fix the valuation. When it is necessary to fix the valuation by way of arbitration, the valuation shall be fixed by a single expert appointed by the judge and against whom no impediment or recusal by parties shall be entertained.

Article 322 – **Valuation of incidental proceedings** - The valuation of the incidental proceedings is that of the main cause to which they relate, save where the incidental proceedings are appended to the main cause and have in reality a value different from that of the cause, because in such cases, the valuation shall be determined in accordance with preceding articles.

§ Sole Paragraph: When the party who files the incidental proceedings does not indicate any different valuation, it is understood that he accepts that the value is that of the main cause. The opposite party may challenge the valuation of the ground provided in the exceptions foreseen in the article and in that case Article 319 to Article 321 shall be followed with necessary adaptations. The challenge is also admitted when different valuation is given to the incidental proceedings and the opposite party does not agree with such valuation.

Article 323 – **Valuation of Preventive and Mandatory Injunction proceedings** - The valuation of the preventive and conservatory proceedings shall be fixed in following manner:

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(a) In the case of seizure, according to the amount of credit, which is sought to be guaranteed; and if the seizure is not meant to secure payment of any amount, by the value of the objects seized; (b) In the case of injunction to prevent new construction and preventive measures, by the damage which is sought to be avoided;

(c) In the case of sealing and enlisting of the articles, by the value of the properties listed or seized;
(d) In the case of deposit, by the amount or the value of the thing deposited;
(e) In the case of provisional alimony, by the monthly amount asked multiplied by 12;
(f) In the case of provisional restoration of the possession, by the value of the property dispossessed;
(g) In the case of suspension of resolution of the company, by the amount of damage likely to be caused;
(h) In the case of offering the security, by the amount to be secured.

Article 324 – **Effect of valuation on jurisdiction and type of proceedings** - After being satisfied by the final decision on the incidental proceeding that the court has no jurisdiction or the category of the proceedings to the action is different, the case shall be remitted to the court having jurisdiction or the appropriate form of the procedure is directed to be followed; without, however, annulling whatever has been processed.

However, if the judge is of the view that the use of less solemn

form caused prejudice to the defendant in his defence may upon the application of the defendant permit him to submit new defence in accordance with the applicable form of the proceedings

SECTION III

INTERVENTION BY THIRD PARTY

SUB SECTION I

IMPLEADMENT OF A THIRD PARTY

Article 325 - **Impleadment of true owner** - Whoever is sued as a possessor of the property enjoying it in his name where in reality he possesses the same in the name of another shall be

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bound to indicate the person in whose name it is possessed. If he does not do so, he shall be deemed to be a possessor in his own name, but the judgment passed on the merits of the case shall not constitute res judicata against the person in whose name he was enjoying, unless the later voluntarily joins in the suit.

The person against whom the suit was filed, shall be answerable to the owner for all the damages caused on account of default in not bringing him on record.

- **Articles 325-364** – Joinder of parties, Third Party, Party procedure — Corresponding provisions in C.P.C. 1908: -
  - Third party procedure – Bombay High Court, Amendment to CPC – O. VIII, rr. 23 to 36.
  - Parties to suit – Suit in name of wrong plaintiff – O.I, r.10

Article 326 – **Limitation and notice** - The period for the indication of the name of the real owner shall be counted from the date of service of summons. The defendant shall apply that the plaintiff be given a notice of the indication made by him.

Article 327 – **Acceptance or refusal by Plaintiffs – consequences** - The plaintiff shall declare if he accepts the indication made by the defendant.

If he does not accept it, the indication shall be without effect, and the time of the defence shall start from the date the defendant was served with the refusal by the plaintiff.

If the plaintiff accepts the indication or does not make any declaration, service will be made on the person indicated and to whom the copy of the plaint and of the application for indication of the name shall be given.

§ Sole Paragraph: When the plaintiff does not accept the indication, the judge shall declare that the defendant has no locus standi if he is convinced that the Defendant is enjoying in the name of the other person.

Article 328 – **Consequence of the stand taken by the person named** - The person named may decline the capacity attributed to him. If he does so, the indication shall equally have no effect and the period for the defence on the part of the defendant originally served will start from the date he is served notice of refusal on the part of the appointee. In such a case the status of being the possessor in the name of the other shall not come in the way of the defendant being considered the necessary party and the judgment delivered in the suit shall constitute res judicata

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in relation to the appointed person.

If the appointee does not decline the status in which he was called upon he shall be holding the position of the true owner, and the initial notice served upon the person initially sued shall be of no effect. But the latter may seek his joining in the suit as assistant and the judgment passed shall constitute res judicata against him.

§ Sole Paragraph: In the suit of concise nature the period shall be three days for the appointment and for declaration referred to in this article and two preceding articles.

Article 329 – **Indication of Defendant where act is done for another** - Whatever is provided in the preceding articles is equally applicable to the case of an owner or a possessor suing someone as a consequence of the fact found to be violative of his right and of the person sued upon pleads that he did the act by order or in the name of third party.

Article 330 – **Nomination as Plaintiff** - The defendant who has acquired a property from a third party, answerable for eviction in the respect of a thing, delivery of which is sought from him, or he had cause of action against the third party to be indemnified by him for the damages which are likely to be caused in the event of a suit being decreed, may nominate the third party as a plaintiff.

If he fails to make such nomination, he shall prove in the suit for damages that in the previous litigation he has made all the efforts to avoid a decree against him.

Article 331 – **Time limit, notice and summons** - The period for initiation of incidental proceedings starts from service of summons. Once the proceedings are stayed, the plaintiff shall be notified and the person who has been indicated shall be summoned, to whom at the time of service of summons the duplicate of the application and copy of the Plaint shall be given.

Article 332 – **Where the nominee refuses to join as Plaintiff** - The person who is summoned may declare that he does not accept the impleader. If he says so, the suit shall proceed solely against the original defendant, but the judgment delivered on the merits of the case shall be res judicata in relation to the person who was summoned, and the latter is not entitled to plead in the suit for damages, that the defendant was negligent in submitting the defence, even when the latter

has admitted the claim in the plaint or not reacted against the judgment passed in the court of first instance.

§ 1: The defendant shall be served with the notice of the declaration by the impleader who has been called upon and time shall run against him from the date of the service of notice.

§ 2: The person who has been called as an impleader may intervene in the suit as assistant; if he intervenes and the defendant admits the claim, the judgment of the admission shall be notified to him and he may declare that he assumes the position of the principal party as defendant for further progress of the case. The person who has been called upon is bound to accept the case in the state as it is found at the time of the impleadment.

Article 333 – **Where the impleader accepts** - In the event the impleader accepts the defense or does not make any declaration, the case shall proceed against him and against the original defendant. However, the judge, at the instance of the plaintiff, may declare that the impleadment is of no effect, when it is manifest that the incident has no serious ground and it is meant solely to make the position of the plaintiff in the suit more difficult.

However, the defendant who has been served in the first place may apply for his exclusion from the suit. The application may be granted, but the judgment delivered on the merits of the case shall constitute res judicata in relation to the defendant also.

§ Sole Paragraph: If the impleadment is declared without effect, the time for defence shall start from the date the defendant was notified of such decision.

Article 334 – **Nomination by the Impleader** - The new defendant who has been called as impleader at the instance of original defendant may also indicate another person for similar purpose and thus successively, whatever has been provided in Article 331 upto Article 333 shall be followed.

Article 335 – **Nomination as Defendant** - The defendant who has been sued upon may designate another person as a debtor in the following cases:

(1) When the surety is sued upon, he may call upon the debtor to be party to the suit, in accordance

with Article 832 of the Civil Code;
(2) When there being many sureties, whoever has been sued upon first may call upon the other

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sureties in accordance with Article 835 of the same Code;
(3) When a debtor liable jointly with others is sued, for the full debt, he may call upon other co-debtors to be joined;
(4) When one of the spouses is sued for the recovery of debt contracted by him, desires the impleadment of the other spouse to seek a declaration that he or she is also liable for the payment of the debt.

Article 336 – **Time limit for nomination – summons** - The time limit to call upon the new party starts from the date of the service of summons. Summons shall be issued to the other persons to be impleaded, without however staying the proceedings. Each of the defendant so summoned shall be handed over one copy of the plaint.

Article 337 – **Time for defence in cases coming under Article 335, clauses 1, 2 and 3** - In the cases provided in clause 1, 2, 3 of article 335, any of the defendants may defend till last day upto when it is lawful for the last defendant to file his defence. If the suit is decreed the court will pass the decree not only against the original defendant but also against others who remained ex-parte.

Article 338 – **Procedure in cases under Article 335 (4)** - In the case of clause 4 of Article 335, the defendants shall file their defence in separate, each of them within the legal time counted from the date of service of summons to the respective defendant, but the spouse who has been called upon always has a right to produce his or her defence within eight days after the defence presented by the other spouses. Two duplicates shall be annexed, along with the defence, one meant for the plaintiff and the second for the other spouse.

§ 1: Where the defendants did not dispute the plaintiff's right as creditor, the court shall immediately pass the order decreeing the suit against the original spouse and the suit shall proceed solely between the spouses; the original spouse shall occupy the position of plaintiff. The written statement of the defendant spouse shall be treated as plaint.
Where the suit admits more than two pleadings the time period for submission of pleading shall be counted from the date of the order of the court referred to in this paragraph.
§ 2: If the right to the credit is contested, the file will proceed with the intervention of three interested parties, but shall be understood that there are two connected suits, being one between

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the plaintiff and two defendants, the other between the said two defendants. The time limit for filing the replication or the corresponding pleading, if available, shall start from the time fixed for producing defence; and if the defendants still have a right to reply the time limit for the reply on the part of the spouse who has been called upon to the suit shall be counted from the time assigned to the other spouse.

Article 339 – **Consequence of these incidental proceedings on impediment, suspicion and lack of jurisdiction** - The incidental proceedings referred in the present section have precedence over the incidental proceedings for impediment, suspicion and lack of jurisdiction and the following procedure shall apply:
(a) Where the incidental proceedings of the joinder of the parties and have been rejected, the time to raise an incident of suspicion and of lack of jurisdiction shall start from the date when the defence of the original defendant is to be given;
(b) Where the original defendant is substituted or another person called upon to join, the time limit for raising such incidental proceedings shall start from the date of service on the new defendant and the

suspicion will not be founded on the facts arising as against the original defendant;
(c) Where the suit is proceeding against the original defendant and those who are called upon to join, the time limit for filing the above incidental proceeding shall start from last service of summons.

§ Sole Paragraph: The person nominated and those who are been called upon to join are not entitled to raise exception of lack of jurisdiction on the ground of their place of domicile.

SUB SECTION II

ASSISTANCE THROUGH INTERVENTION

Article 340 – **Meaning and locus standi** - Whoever has juridical interest that the decision of the dispute be favourable to a party where there is a pending suit between two or more persons, may intervene in order to assist the said party.

Article 341 – **Intervention and exclusion** - The Assistant may intervene at any time, but he has to accept the proceedings in the stage they are at the time of volunteering the assistance. In the event the party opposite to the party that the Assistant is assisting, opposes the intervention, decision will be passed immediately or as soon as possible on whether the assistance is legal.

Article 342 – **Position of the Assistant – General powers and duties** - The assistants have in the suit the position of the helpers to one of the principal parties. They enjoy the same rights and are subject to same duties available to the party who is assisted, but their activity is subordinate to that of the principal party and they are not entitled to perform any act which the original party lost the right to do, nor assume any stand which may be opposite to that of the person who is sought to be assisted.

§ Sole Paragraph: If the person who has been assisted is ex-parte, the assistant shall act as manager of his affairs.

Article 343 – **Deposition by the Assistant** - It is lawful to seek statement of the assistant as a party. The court shall evaluate such statement with the full liberty giving it the merit, as it deems fit.

Article 344 – **Use of oral evidence** - The Assistant may avail of evidence of the witnesses but only to complete the number of the witnesses permitted to the principal party.

Article 345 – **Assistant and admission, abandonment or compromise** - Assistance does not in any way change the right of the principal party who may freely admit, withdraw or compromise the suit and in such cases the intervention will come to an end.

Article 346 – **Effect of Judgment on Assistant** - The judgment pronounced in the suit shall be res judicata in the relation to the assistant to the effect that the latter may be bound to accept in any subsequent suit, the facts and rights which have been proved except;
(1) If the Assistant alleges and proves in the subsequent suit that the stage of the proceeding at the time of his intervention or the stand of the principal party did not permit him to use the pleading or means of the evidence which might have influence in the final decision;

(2) Where the assistant shows that he was not aware the existence of pleadings or means of evidence which could influence the final decision and which the assisted party did not avail intentionally or due to grave negligence.

SUB SECTION III

OPPOSITION

Article 347 – **Meaning of opposition. Till when admissible** - Whenever there is a pending proceeding between two or more persons, a third party may intervene in the same as opponent in order to enforce his own interest, inconsistent with the claim of the plaintiff.

Such intervention is admitted only till the time there is a date fixed for hearing of the matter in the first instance.

Article 348 – **Opposition by application** - The opponent may file a claim by way of petition, simple or para wise, depending upon the form of proceeding and he shall immediately give the list of evidence if in the main cause there is a curative order passed. If there is no room to reject the petition in limine the petition, as provided in Article 481, notice will be issued to the parties of the main suit inviting reply within eight days.

Article 349 – **Rejection of opposition** - After the time fixed for the replies is over, the judge, either in the curative order or within five days if such curative order has been passed, shall decide whether the intervention should be admitted. The court shall not admit the opposition:

1. If the same is not within time;
2. If the opponent does not have locus standi to institute the suit;
3. If the claim of the opponent was manifestly untenable;
4. If is necessary to stay for more than three months the course of the main suit, in order that the claim of the opponent is decided along with the main suit.

Article 350 – **Position of the Opponent** - Once the opposition is admitted the opponent shall occupy in the litigation the position of the principal party with inherent rights and responsibilities.

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Article 351 – **Stand of parties as to opposition** - If any of the parties in the main suit admits right of the opponent and locus standi of the opponent is satisfied, the suit shall proceed only between the other party and the opponent and the later shall take the position of the Plaintiff or of the defendant depending upon his adversary being defendant or the plaintiff in the main suit. If both the parties contest right of the opponent, the suit shall proceed amongst three parties, and in such case there will be two interconnected suits, one between original parties and other between the opponent and the others. The same happens, when the defendant acknowledges the right of the opponent and the question of locus standi of the latter shall be depending on the merits of the final judgment.

Article 352 – **Opposition provoked by Defendant** - The opposition may also be caused by the defendant in the main suit. When the defendant is ready to satisfy the obligation, but has knowledge that a third party is claiming same right as the plaintiff, he may apply that such third party be called upon to file his claim in the suit.

Article 353 – **Notice to the Opponent** - The notice shall be sought within the time fixed for filing the defence. After the proceedings are stayed, notice shall be issued to the third party fixing the time to give his say within the same time as given to defendant in the suit. Such time may be extended.

§ Sole Paragraph: At the time of service of notice copy of the plaint shall be served to the person notified.

Article 354 – **Failure by notified party to respond** - If the third party was served with the notice personally and he does not file his claim, immediately a judgment will be passed directing the defendant to satisfy the claim of the plaintiff. Such judgment shall be binding on the person notified.

Article 355 – **Effect of claim filed by the Opponent on the course of the proceedings** - If the third party proposes to file his claim, he shall present it within the time assigned for defence, in which, after opposing the claim of the plaintiff he shall make his claim and justify the same. The original defendant shall be excluded from the suit as soon as the standing to sue of the opponent

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is acknowledged and he may stand in the position of the defendant. The Plaintiff shall have the right

to file his defence to the claim of the opponent, even though the proceedings do not allow replication nor rejoinder.

§ Sole Paragraph: The original defendant shall be considered as depository of the thing or right in dispute, it being permissible to any party to apply that the amount may be deposited in the establishment where the judicial deposits are made or that the thing shall be handed over to another depositary.

SUB-SECTION IV

INTERVENTION AS MAIN PARTY

Article 356 – **Who can intervene as main party** - When there is a matter pending between two or more persons, it is open to seek intervention therein as the main party:

1) To the person who in the relation to the object of the dispute has interest equal to that of the plaintiff or that of the defendant, as per article 28;

2) He who, as per Article 29 and 30 could join to the plaintiff or who could be sued along with the defendant.

Article 357 – **Position of the intervenor** - The principal intervenor enforces his own right, parallel to that of the plaintiff or of the defendant.

Article 358 – **Till what stage intervention is admissible** - Intervention is admissible at any stage, until the suit is finally decided. The intervenor accepts the case in the stage as it is found and he will be considered as ex parte in relation to the previous acts and records; but he enjoys all the rights of the principal party from the time of his intervention.

Article 359 – **How the intervenor has to make out his case** - If the intervention has been applied for at the stage of pleadings, the intervenor may file his claim by proper pleadings, to which the opposing party has right to give his reply and in the rest the procedure provided in respect of the claims of the plaintiff or the defendants shall be followed.

If the intervention is subsequent to the stage of the pleadings in the main suit, the intervenor has to adopt as his pleadings either the pleadings of the plaintiff or the pleadings of the defendants.

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Article 360 – **Challenge to the locus standi of the Intervenor** - If the intervention is presented during the period of the pleadings, the opposite party may challenge the locus standi of the intervenor and satisfy in that none of the circumstances of Article 356 are satisfied.

The judge shall take cognizance of the challenge in the curative order.

Where the intervention is sought subsequent to the pleadings, the opposite party may object to the intervention on the ground of the locus standi of the intervenor or that the stage of the proceeding does not permit objection against the claim of the intervenor. The judge shall decide whether the intervention is to be allowed.

Article 361 – **Intervention at initiative of parties** - Any party may call upon the interested parties to whom article 356 acknowledges the right to intervene as principal party. The plaintiff has right to call upon the parties who can join with him in the suit; the defendant also has the right to call upon the parties who may be associated with him along with those called upon to associate with the plaintiff.

Article 362 – **Upto when intervention can be called by party** - The intervention may be applied for during the stage of the pleadings. After hearing the opposite party, it shall be decided whether the intervention is to be allowed.

Article 363 – **Notification of Intervener** - The interested parties shall be called upon by way of notice. At the time the service, notices shall be given copies of the pleadings already tendered, which shall be produced by the intervenor.

Within next 10 days subsequent to the notice, the notified party may file his pleadings or declare that he adopts the pleadings of the Plaintiff or of the Defendant.
If the intervenor appears after the expiry of the period of the pleadings, he has to accept pleadings of the parties with whom he associates and all the acts and the steps already processed.

Article 364 – **Binding effect of judgment on notified person** - If the notified person intervenes in the suit, the judgment shall appreciate his right and will constitute res judicata in relation to him.

If he does not intervene, the judgment shall constitute, in relation to him res judicata when he has been notified in person and the eventuality of the instance no.1 of article 356 is satisfied.

SECTION IV
FORGERY

SUB - SECTION I
FORGERY OF DOCUMENTS

Article 365 – **Time limit to plead forgery of document** - The forgery of the documents produced along with the pleadings must be raised in the subsequent pleading or within the period of eight days if the documents are annexed with the last pleading.

If the document is produced subsequently, the period for giving answer shall be 8 days, counted from the date of notice of production of documents.
The forgery of documents produced along with memo of appeal shall be raised within 8 days counted from end of the period to submit the answer of the opposite party.
If the party alleges and proves that he got the knowledge of the forgery after the time fixed for raising the plea of forgery, the same is to be raised within the period of 8 days counted from the date he got knowledge of the forgery.
§ 1: If the party has acknowledged, in equivocal manner that the document was genuine, he may raise the supervenient forgery.
§ 2: When the plea is raised subsequent to the pleadings, then it will be submitted in duplicate and processed as appendage.

- See also Article 534 of this Code.
- **Articles 365-375** – Forgery of documents in judicial proceedings
- Is not part of Civil Procedure in our system.

Article 366 – **Reply to the allegation** - The opposite party shall reply in the subsequent pleadings or within 8 days, when time to file the pleadings has ended. In such cases the reply also is to be given in duplicate.

If in the execution of the document a public officer has intervened, he will be summoned to contest the allegation within the period of 8 days when the forgery consists in a fact which is attributed to him or could not have been committed without his connivance.

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Article 367 – **Effect of reply or its absence** - In case the opposite party does not reply or declares that he does not want to make use of the document, the plea raised is considered as closed and the document shall not be considered in the suit for any purpose. If the plea is objected, the issue is to be decided. The decision is to be made in the curative order, if any, when the issue is raised in the pleadings.

- See also Article 514 of this Code

Article 368 – **Cases in which matter is not proceeded with** - In the following cases no cognizance is taken of the allegation of forgery:
1) When the court is of the view that the document has no bearing in the decision of the case; 2) When by mere inspection of file it is found that the opposite party has acknowledged that document is

genuine except where forgery is supervenient;
3) When it is manifest that the issue is raised merely as a dilatory tactic.

Article 369 – **Procedural steps and Judgment** - If the plea is cognizable, following steps are to be taken while entertaining and deciding the said plea:

a) Where the plea of forgery is raised in the pleadings, the cognizance of the same shall be taken along with the trial of the main case and as per the norms applicable to the trial and each party is permitted to examine not more than 5 witnesses on the issue of the forgery;
b) Where the plea has been raised subsequent to the pleadings, the parties shall within the period of 5 days from the date of the notice from the order taking cognizance shall produce all the documents and give the list of the witnesses. Within same period, examination of the documents shall be carried out and the same shall be applied within 3 days, subsequent to the time fixed for leading evidence;
c) The plea of the forgery is to be tried along with the trial of the main case and the main trial will be stayed only for the minimum time required, in order that the trial should be joint.

Article 370 – Fine - The party who has raised the plea of forgery shall be ordered to pay fine to be credited to the fund of the court if he withdraws the application or the issue is decided against him or he delays the prosecution of the inquiry for more than twenty days, except when the plea is manifestly in good faith.

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Double fine shall be imposed on the party who consciously made use of the forged document.§ Sole Paragraph: The plea of forgery will be without effect if the party has not prosecuted the same for more than twenty days.

- Article 146 of the Code of Judicial Costs.

Article 371 – Intervention of Public Ministry - When the plea of forgery is under inquiry before the court, the proceedings are compulsorily sent to Public Ministry who may take adequate steps for the purpose of prosecuting and deciding into the offence of forgery.

§ Sole Paragraph: Whenever in civil proceedings the plea of forgery is found proved, upon carrying out examination of documents, the record of the civil court shall be the basis of the criminal action and for the purpose the certified copy of the report of the examination and of the judgment of the civil court, unless any other evidence is necessary.

Article 372 – Communication to Public Ministry - In the event the civil court declines to entertain the proceedings relating to forgery or the same is finally dropped, the record is to be passed to the Public Ministry so as to prosecute in the criminal court whatever is deemed fit.

Article 373 – Incidental proceedings of forgery to take in the superior court - Whatever is provided in the preceding articles is applicable to the incidental proceedings of forgery filed before superior courts and functions of courts are performed by the judge assigned the case. The witnesses, who are resident outside the division of the court or seat of the court, are examined by sending letters of request when the parties do not produce the witness before the court. If the witnesses are produced by party, the inquiry will be conducted by the assignee judge before clearing it for hearing and the evidence is to be recorded in writing. But if the inquiry is to be done orally, the Assignee judge shall hold the inquiry during the session meant for hearing of the appeal.

SUB - SECTION II

FORGERY OF JUDICIAL ACTS

Article 374 – **Time limit to plead forgery in acts** - The commission of forgery in the service of the summons is to be inquired within 8 days from the intervention of the defendant in the

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proceedings. The forgery of any other judicial act also is to be raised within the same period from the date when it is understood that the party got knowledge of the act.

To the forgery of the judicial acts whatever is said in the previous section (articles 365-373) is applicable; but the inquiry may be contested not only by adverse party, but also by the employees who had taken part in the act or to whom the forgery is attributed, who are to be summoned for the purpose.

Article 375 – **Stay of the case** - When the issue of forgery is in respect of service of summons on the defendant further proceeding are stayed when the inquiry into the offence has started.

SECTION V

BRINGING HEIRS ON RECORD
(SUBSTITUTION OF PARTIES)

Article 376 – **Enablement (qualification) of heirs** - When, during the pendency of the cause, any of the parties die, the enablement of his successors shall follow the procedure prescribed in subsequent articles.

The enablement may be initiated not only by the parties who are surviving as also the successors of the deceased.

§ Sole Paragraph: If the official entrusted with the service of summons on the defendant, certifies his death, the plaintiff may take steps to bring on record the successors of the deceased in the manner provided in this article, even though the death is prior to the institution of the suit. If the plaintiff dies after having given power of attorney to file the action and before it is filed, it is permissible to initiate the qualification of his successors when exceptional conditions are satisfied in which the agency may be continued after the death of the principal.

- See also Article 281 (l) and 282 of this Code.
- **Articles 376-382** – Bringing heirs on record is part of a wider title (substitution of parties) and includes successors of legal persons also – Corresponding provisions in C.P.C. 1908: -
  - Death, Marriage and Insolvency of parties – O.XXII

Article 377 – Procedure for enablement (qualification) where locus standi is already acknowledged in a document or in another suit - In the event the status of the heir or status

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which depends on the locus standi of the suit is already declared in other proceedings by a judgment already become res judicata, or acknowledged in a notarial deed of qualification, the substitution shall be based on the certified copy of the judgment or of the public deed. Upon bringing on record the said documents, the other interested parties shall be heard in the case of qualification through notary and the qualification by the judgment to those whom the judgment is not res judicata.

The persons heard may contest the qualification of heirs and produce proof by documents and by witnesses. After hearing those witnesses during 5 subsequent days it shall be decided whether qualification stands proved and in the affirmative the representatives of the deceased are brought on record and they shall be served to continue with the proceedings except where the substitution has been applied for by the representatives themselves.

§ Sole Paragraph: There having been an inventory, those who have been indicated by the head of the family shall be considered as heirs brought on record if all have been summoned in the inventory and none of them have contested their locus standi or of others, within legal time. In such case, upon production of certified copy from the inventory proceeding by which the indicated facts stands proved, what has been provided in this article shall be observed.

- See also Articles 1371 and 1374 of this Code.

Article 378 – Procedure for qualification in case locus standi is not confirmed - If the requirement provided in the preceding article is not satisfied, upon the presentation or the application for the purposes, all the parties shall be notified to contest the proceedings and they may offer proof by documents or witnesses.

The notice to the persons to be brought on record shall be personal.
In 5 days subsequent to period established for objections witnesses shall be examined and immediately thereafter the application will be decided.
§ 1: When the capacity of heir is dependent upon the decision to be passed in any suit, the court shall declare the persons qualifying for the purpose those who are in possession of inheritance or who are heirs; and the other interested parties to whom notice is given of the decision shall be permitted to intervene in the case as co-parties of those who have been declared as heirs, following what is provided in Articles 358 and onwards.

§ 2: In case the substitution applied for has been declared not proved, the applicant may make

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fresh application or adduce further evidence in the same proceedings.
§ 3: In the case prescribed in this article the incidental proceedings shall be appended to the main suit.

Article 379 – Qualification where heirs are not known - The heirs or successors of the deceased being uncertain they shall be notified by way of publication in the newspaper. If nobody appears during the period of publication, the proceeding shall be continued with Public Ministry. If anybody appears claiming to be successor of the deceased, the surviving party shall be heard and may challenge the application.

There being contest on whatever is provided in the previous article shall be observed; if nobody contests the proceedings shall continue with the person has put in appearance.

Article 380 – Identification of successors in case of winding up or liquidation of collective persons - If the party in the cause is a collective person which is wound up, the substitution of the successors shall be made in accordance with provision of Article 378.

Article 381 – Identification of Purchaser or transferee - The substitution of the purchaser or transferee of the thing or right under dispute shall be made in the following terms:
After the record of assignment is drawn in the proceedings or after production of document of transfer, the opposite party shall be heard, who may challenge the validity of the act or plead that transmission was made to make more difficult his position in the proceedings.

In the case of opposition, the applicant shall be notified to reply and thereafter the decision will be passed.
In the absence of opposition the validity of the transfer is acknowledged considering the object and capacity of parties who intervene therein, the purchaser or the assignee are acknowledged as successors and the suit may proceed with them. The substitution may be applied for by the transferee.

Article 382 – Identification of heirs in higher court - What is provided in this section is applicable to the proceedings for substitution before superior courts and the functions of the judge shall be performed by the Assignee Judge, except for the pronouncement of judgment.

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The witnesses resident outside the division of the court or seat of the court shall be examined by letter of request, except where the party agrees to produce them before the court. Those who are produced and are residing in the division of the court or seat of the tribunal shall be examined by the Assignee Judge and their statement shall be recorded.

SECTION VI
LIQUIDATION

Article 383 – Quantification of Relief - In the case of no 1 and 2 of article 275, the plaintiff, before the trial shall, if possible, apply for proceedings to assess and quantify his generic prayer.

- See also Article 275, clause 1 and 2 of this Code.
- **Articles 383 – 385** - Liquidation i.e. quantification of relief is not exactly statutory law in our midst.

Article 384 – How to quantify - In the case of no.1 or Article 275, the plaintiff shall produce a list of the objects comprised in the universality, with the indication of particulars of identification in the case of no.2 of the same article and shall specify in the application the losses arising from the illicit act and apply for certain amount.

Article 385 – Subsequent stages - If the incidental proceedings are filed 8 days before the last pleading, the defendant may challenge the assessment. The proof shall be offered and produced if possible along with remaining matter of the suit and defence but total number of witnesses for each party shall not be above 10.

The subject of the incidental proceedings shall be considered along with the main suit.

CHAPTER IV
PREVENTIVE AND CONSERVATORY PROCEEDINGS

SECTION 1
GENERAL PROVISIONS

Article 386 – Application of rules relating to incidental proceedings - The provisions of articles 307, 308 and 309 are applicable to the proceedings regulated in this chapter.

- **Articles 386-435** – Preventive and Conservatory proceedings - Corresponding provisions in C.P.C. 1908: -
  - Specific Relief Act, 1963 – Ss. 38 – 42
  - Temporary injunctions and interlocutory Orders - O.XXXIX of C.P.C
  - Supplemental proceedings – S. 94(e)

Article 387 – Lapse of acts or measures - With the exception of deposits and protests, the acts or preventive measures shall be of no effect:

1. If the applicant does not file within 10 days the suit of which the proceedings are a preliminary step or having filed the suit same is kept pending for more than 30 days, on account of negligence of the plaintiff in prosecuting their terms or of any incident on which the prosecution depends; 2. If the suit has been dismissed by judgment which became “res judicata”;
3. If the defendant was exonerated at the preliminary stage and the plaintiff did not file suit within 10 days;
4. If the defendant paid the debt or has offered security whenever case relates to recovery of amount.

§ Sole Paragraph: The period of 10 days referred to in clause no.1 is counted in the case of provision of restitution of possession from the date of restoration; in other cases from the date when objections could have been filed and if there is objection, the period starts only after the judgment granting relief becomes final.

Article 388 – Lifting of measures - In the case of clause no. 2, 4 and second part of the no. 1 of the previous article, the interim relief shall be vacated without hearing the plaintiff upon proof of the fact by the defendant of the circumstances of clause no.4 of the previous article.

In other cases upon application filed by the defendant for vacating of the interim relief, the

plaintiff shall be heard; and if it is found the allegation made by the defendant is not untrue, the interim relief granted shall be vacated.

Article 389 – **Attachment of proceedings** - The preventive or conservatory proceedings on own motion or upon the application of the parties shall be appended to the main suit when the same is filed. If the suit is instituted in another court, the preventive proceedings shall be sent to that court.

From the time of appending or sending the file only the judge handling the suit is competent to take further steps.

- See also Article 83 Sole Paragraph of this Code.

Article 390 – Anticipation of effects on Defendant - If the defendant has been heard in the preventive or the conservatory proceedings, the filing of the suit shall be effective on him from the date of presentation of plaint.

- See also Articles 267 and 485 of this Code.

Article 391 – Preventive measures during pendency of proceedings - The acts and interim measures may be applied for in the course of the proceedings and in this case the provisions of this chapter shall be applicable to them to the extent applicable and shall be processed as an attached file.

Article 392 – **No second application for interim relief** - In the event the interim relief granted has been vacated in terms of article 387 it is not lawful to make application afresh either preparatory as a incident of the same.

SECTION II

PROVISIONAL MAINTENANCE

Article 393 – Cases in which provisional maintenance can be sought - As an act preparatory for the suit in which primarily or subsidiary installment .of maintenance have been asked, it is lawful to pray for fixation of monthly installment which the Plaintiff should receive towards provisional maintenance until the executable decree is passed in the suit.

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The maintenance installment shall be fixed keeping in view what is strictly necessary for the maintenance, residence and clothing of the Plaintiff and also towards expenditure for litigation, when it is not possible to get legal aid.

§ 1: The part meant for expenses of litigation shall be separated from maintenance proper.§ 2: The wife may ask for provisional maintenance as an act preparatory of the suit for separation of persons and properties or of divorce, when she had asked for judicial custody. But independently of such judicial custody, she is entitled to ask for provisional maintenance, as an act preparatory of suit for permanent alimony, based on lack of assistance or abandonment on the part of the husband.

Article 394 – Provisions for provisional maintenance - The applicant shall mention the grounds of his claim and conclude by praying for a fixed monthly amount.

Upon failure to contest, an order shall soon be passed considering the maintenance as prayed for by the applicant.

There being a contest, the party shall be called for a conference which shall take place within a period of 8 days. In this conference, the judge shall make all efforts to secure the fixing of the maintenance by agreement between the parties.

Where the same is not possible, witnesses who are acquainted with the matter shall be examined and the issue shall be immediately decided based on the declaration of the parties and the evidence produced.

Minutes of the conference shall be drawn in which what had occurred shall be mentioned, and the agreement between the parties or the decision shall be accurately recorded. The minutes shall contain, in brief, the deposition of the witnesses.

Article 395 – Consequences of absence from conference - If the applicant fails to attend the conference without reasonable cause, his application shall immediately be rejected and the applicant is not entitled to renew the prayer.

The absence of the defendant without any justification shall have the same consequence as that in case of lack of contest.

In the absence of any of the parties for just cause, a conference shall be called afresh which shall take place within the period of 5 days. If the absence from the second conference is not justified,

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it shall have the same effect as the first. In the absence of justification, the decision which the judge shall pass as he deems fit upon the material which he could obtain, shall not be postponed.

Article 396 – Procedure where any steps are sought - If any of the parties apply, in the conference, for service which cannot be effected immediately, the application shall only be allowed if it is found that the service is absolutely indispensable in order to arrive at a decision of the matter in question and the same cannot be effected by postal mail.

Once the application is allowed, the same must be proceeded with within a period of 5 days and in the subsequent 3 days conference for the decision there shall take place.

Article 397 – Service by Public notices - If the defendant has been summoned by publication, the lack of contest shall not have the consequence contained in article 394. In such case, there shall be fixed a day for hearing of the matter which day must be within a period of 8 days including the period designated for contestation; and in this hearing the alimony shall be fixed in accordance with the evidence produced by the applicant.

§ Sole Paragraph: If the defendant appears at the hearing, what is provided in articles 394 and 396, in relation to conference, shall be observed by him.

Article 398 – Procedure for change of alimony - If there is ground to increase, decrease or end the determined installment, the prayer shall be dealt using the same procedure and observing the terms prescribed in the previous articles.

Article 399 – Alimony by proceedings incidental to main cause in superior court - The same form of procedure shall be followed when the provisional maintenance is sought in the course of the proceedings pending before superior courts, the Assignee judge exercising the same functions as a single judge with the exception of conference and of adjudication.

§ Sole Paragraph: The applicant shall have to show in this case that the maintenance is necessary for the prosecution of the pending case in the first instance.

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SECTION III

PROVISIONAL RESTORATION OF POSSESSION

Article 400 – When and how provisional restoration of possession is possible - In case of forcible dispossession, the possessor may pray that he may be provisionally restored to possession pleading the facts which constitute possession, forcible dispossession and use of force. If the Court is satisfied from evidence that the Applicant had possession and was dispossessed therefrom by use of force, shall grant restitution of possession, without notice to and without hearing the encroacher.

- Civil Code article 487.
- **Article 400** – Provisional restoration of possession
  - This embodies the principle of temporary mandatory injunction (AIR 1990 SC 867, Dorab Cawasji Warden vs. Coomi Sorab Warden).

Article 401 – Appeal from Order restoring possession - When the suit for possession is filed, the defendant may, within a period of eight days from the service of summons upon him, appeal from the

order which directed the restitution of possession and such appeal will be processed as an appendage to the proceeding for provisional restoration of possession.

Article 402 – Rejection of relief not bar for possessory action - If the prayer for restitution of possession is rejected, the plaintiff is not precluded from filing a suit for possession in that regard, in which the decision passed in preparatory proceedings, is not to be relied upon.

SECTION IV

SUSPENSION OF THE RESOLUTIONS OF A SOCIETY

Article 403 – Requirements for suspension of society resolutions - If any society, of whichever kind, passes resolutions, contrary to the express provisions of law or statutes, any of its members may, as an act preparatory to the suit for annulment, apply within a period of 5 days, independent of the protest, for the suspension of the resolution, justifying his capacity as a member and showing that the execution of the resolution can result in appreciable damage.

- Commercial Code: Article 186, Law of 11/04/1901, Article 46.

Article 404 – Objection and decision - The board of the society may oppose the application; and, at the end of the period prescribed for contestation, the application shall be decided. Although the deliberation may be contrary to the law or the bye law, the judge may, in his judicial discretion, abstain from suspending the resolution if he is of the opinion that the prejudice resulting from the suspension will be greater than the prejudice resulting from its execution.

SECTION V

PREVENTIVE MEASURES

Article 405 – Grounds for preventive reliefs - Where any person has just apprehension that anybody may use force or commit acts which are likely to cause serious injury and irreparable loss to his right, he may apply for preventive measures which are adequate to prevent the damage such as possession, seizure, deposit of litigious thing, injunction or authorisation for certain acts.

Article 406 – Procedure for preventive measures - The Court may grant the preventive reliefs without hearing the opposite party when such hearing is likely to defeat the purpose of preventive measure. If not, the opponent may be served with summons to contest.

Before granting preventive measures the Court may collect information which it deems necessary and issue directions which it deems fit.

The court shall try to maintain the fair balance between two interests, the one which the grant of injunction may cause and the other which by grant of injunction may be avoided.

Article 407 – Preventive relief in suit for immovables - During the pendency of the suit pertaining to an immovable property, if the defendant causes damage to it or fails to cultivate or to do necessary repairs to it, the plaintiff may apply at any stage of the suit for the defendant to be directed to abstain from doing or to do the same act. Upon prima facie case being made out, order may be passed to notify the defendant immediately.

Article 408 – Receivership - If the defendant, after being directed, persists in his irregular conduct, the plaintiff may apply, that the property or properties be entrusted to a receiver. In respect of the application, the opponent shall be heard, who may put forth his case and produce

any evidence in that respect within a period of 3 days. In the subsequent 5 days, the court shall ascertain, investigating by personal inspection, by arbitrament or any other means of proof, whether the case of the applicant is true, and in the affirmative, the application shall be granted.

SECTION VI

SEIZURE

SUB - SECTION I
GENERAL PROVISIONS

Article 409 – When seizure can be sought - A seizure may take place:

1. In cases of fraudulent reproduction of any work or counterfeit, in terms of Article 611 and 637 of the Civil Code and in cases of illegal use of trademarks or the seal of the state or of the local bodies;
2. In special cases in which the attachment of the ship or its cargo is admissible;
3. When the creditor has reasonable apprehension that the debtor will become insolvent or that he is concealing his properties.

§ 1: In the case under clause no, 1, the seizure would depend on the evidence of the existence of literary, artistic, industrial or commercial property and the offence is in relation to such property. In the cases under clause no. 2, the seizure would depend on evidence of certainty of the debt and the admissibility of the attachment. In cases under clause no. 3, besides the evidence of certainty of debt, the attachment would depend upon the evidence of reasonable apprehension, and if the debt is commercial, and the debtor is a businessman, his name had not been registered in proper books.

§ 2: The debt shall be considered as certain when the existence of a lawful act from which the credit has arisen or the fact which gives rise to the obligation is confirmed by judicial decision, If the fact to be proved is of criminal character, the order of framing the charge, or its equivalent, is sufficient when the said order has attained finality for want of appeal. If the credit is unascertained, the probable quantity of debt has to be indicated in the application; where the debt is conditional, no order for attachment shall be passed without the applicant furnishing a security.

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§ 3: In the case foreseen in the final part of Paragraph 1, the seizure shall be ordered if the creditor proves that the debtor, although registered as a businessman, never performed any commercial activity or stopped doing the same for more than 3 months.

§ 4: The certificate that the debtor is not registered as a businessman, meant to serve as evidence, will not have value when more than 8 days have passed before the application for attachment is made.

- See Articles 611 and 637 of the Civil Code and articles 491 of the Commercial Code.
- **Articles 409-419** - Seizure - Corresponding provisions in C.P.C. 1908: -
  - Execution of Decrees and Orders - O. XXI
  - Attachment - r. 41-57

Article 410 – Procedure to order seizure - He who applies for seizure shall state the grounds for the same, and shall list, if possible, the assets or objects which are required to be seized; with an indication of their value and with the particulars and numbers, that the properties have in the Land Registration Office or with necessary indication that will serve as its description. After production and examination of the evidence, the seizure shall be ordered without hearing the opposite party, if the legal requirements are satisfied.

§ 1: If the witnesses offered are not creditworthy in the opinion of the judge, he can, even before hearing them, order that other witnesses of recognized probity be produced.

§ 2: When the judge finds that the assets intended to be seized are more than sufficient to serve as security for the obligation, he shall reduce the security to reasonable limits. The debtor shall never be deprived of his income strictly indispensable for the maintenance of the family and the expenses of the suit that shall be fixed in terms of Article 393 and the following.

Article 411 – Guarantees to be furnished by applicant - The seizure shall not be effected, without the applicant executing the necessary bond of responsibility for loss and damages, if the application is finally rejected, for having intentionally concealed the truth or for having made assertion contrary to it.

The judge may also, when he thinks fit, make the attachment dependent upon furnishing of security by the applicant.

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Article 412 – How seizure is effected - Seizure consists in apprehending the assets, observin the provisions relating to attachment.

Only those assets may be seized which can be attached.
§ 1: Whatever be the nature of the assets, they shall always be deposited with a receiver, without prejudice to what is contained in Article 848.
§ 2: In case of seizure of a ship or its cargo, the seizure shall not take place if the debtor soon offers a security which the creditor accepts or the judge, within 24 hours, adjudges sufficient, by delaying the departure of the ship until furnishing of the security.

- See also Article 821, 838 and following of this Code.

Article 413 – Effects of seizure - The effects of seizure are the same as attachment.

- See also Article 847 of this Code.

Article 414 – Objections from opposite party - The person whose property is attached upon being notified of the order which directs the attachment, may appeal from the order or file objections against the seizure and may, simultaneously, use both the remedies.

Article 415 – Purpose and procedure for objections and Compensation - The objections shall be filed paragraph wise within a period of 10 days, and are intended specially, either to allege facts which nullify the grounds for seizure, or to ask that it be reduced to reasonable limits when the property seized is more than necessary to secure the debt. If the person whose property is seized does not appeal from the order, he may also, in the objections allege that the seizure should not have been ordered as it did not satisfy the legal requisites.

The party who has applied for seizure may answer the objections within a period of 5 days starting from the day when he is furnished with the objections in duplicate and shall follow, without any further pleadings, the terms of summary proceedings.
§ Sole Paragraph: When in the objections, the grounds for the attachment are challenged, the person raising the objections may allege that the person who has applied for attachment and his witness have consciously abstained from the truth and pray that a fixed amount be ordered to be paid to serve as compensation against loss and injury. In such a case, the witnesses shall be summoned to contest the objections; if the objections are allowed, the applicant and his witnesses who had proceeded in bad faith shall be jointly and severally ordered to pay compensation for loss which appears reasonable.

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SUB - SECTION II

SPECIAL PROVISIONS RELATING TO ATTACHMENT AGAINST TREASURERS, CASHIERS OR DEBTORS OF THE GOVERNMENT OR OF LOCAL AUTHORITIES

Article 416 – Seizure on account of defalcation by public officials - Against treasurers, cashiers or any other employees who hold the charge of money or valuables of the state or of the local authorities, the Public Ministry shall apply for attachment when they are found to have engaged in defalcation. Similar proceedings may be instituted by the Public Ministry against the debtors of the Public Treasury, by enforcement of their contract, and against their sureties.§ 1: The existence of the debt shall be proved by certificate of the record of the inspectors, the account, or the condition of the contract.

§ 2: For this seizure to be made, it is not necessary to sign the bond, nor to prove the reasonable apprehension of insolvency, nor even the concealment of the assets.

Article 417 – **Seizure due to defalcation by representatives and sub lessees** - The right that the previous article confers in the Public Ministry may, in the same manner, be exercised by the treasurers, cashiers and any employee who hold the charge of money or valuables of the government or the local authorities, against their representatives and by the bidders of fixed receipts of the government against their sub lessees.

Article 418 – **Imprisonment of guilty person** - In case of defalcation, the Public Ministry shall apply, apart from seizure, for imprisonment of the guilty, and the same may be done in relation to their representatives of treasurers, cashiers and other receivers of money and valuables of the State or local bodies.

The seizure shall be lifted and the imprisonment shall cease as soon as security is furnished for payment of the defalcation, the imprisonment, being, in no case, extended beyond two years.

Article 419 – **Special procedure of seizure when the settlement is with the Accounts Tribunal** - What is stated in clause (1) and (2) of Article 387 is not applicable to seizure dealt under Article 416, when the discharge of responsibility is within the competence of the Accounts Tribunal.

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SECTION VII

DENUNCIATION OF NEW WORK (EMBARGO)

Article 420 – **Objection to new construction** - Whoever feels threatened in his right to the property, singular or joint, perfect or imperfect, or to its possession or enjoyment, as a consequence of new construction, work or new activity which may cause prejudice to him or the manner of execution may cause him prejudice, may apply within 30 days from the knowledge of the fact that the construction, labour or activity be ordered to be suspended immediately

The interested party may also make denunciation out of court, by issuing verbal notice, in the presence of 2 witnesses, to the owner of the work, or in his absence, to the person entrusted with the construction or who is in charge, not to continue with the work. The denunciation shall be of no effect, if within three days no ratification through court is demanded.

Article 421 – **Objection by Municipalities** - The municipalities may use the remedy of article 420 against works, construction or buildings done by the private parties in contravention of municipal regulations and bye-laws.

Article 422 – **Works not subject to objection** - The works of the government in public land nor the works of the local authorities in the lands of the common use, or the works undertaken on the land acquired by the government cannot be stopped, whoever may be the executor of the work.§ Sole Paragraph: The right of compensation for damages to the aggrieved parties is safeguarded.

Article 423 – **How to file the objections** - The applicant shall support the claim in accordance with articles 420 and 421. The Judge, if found necessary, may demand summary proof of the allegations made in the petition and may also hear the owner of the work.

Article 424 – **Undertakings from applicant** - The court shall not order nor ratify the objection without the applicant undertaking to pay damages. The judge may, if it is found convenient, direct the applicant to furnish security.

Article 425 – **Objection from the Opposite party** - From the order which directs the suspension of new construction or ratifies the denunciation or which rejects the application for denunciation,

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appeal lies in terms of general law. The owner of the work may file his objections :-

1) When the case falls under article 422;

2) When the denunciation of new work, objection or the ratification have been applied beyond limitation period.

§ 1: The form as to how the Objection is to be filed and processed is governed by article 415.§ 2: The controversy in the denunciation of new work is solely, in the case of No. 1 whether the provision of article 422 has been breached, and in case of clause no. 2, whether the objection was raised within time.

§ 3: In the case of clause no. 1 as well as clause no. 2 the owner of the work may apply in her objection that he may be awarded a certain amount as compensation for damages sustained by him on account of suspension of work.

- **Articles 425 Sole para** - Compensation, for wrongful attachment - Corresponding provisions in C.P.C. 1908: -
  - Compensation for obtaining arrest, attachment or injunction on insufficient grounds – S.95

Article 426 – How objection is raised or ratified – The objection shall be made or ratified by way of a written report which faithfully and precisely reflects the state of the work and its measurements are clearly specified, wherever possible.

Notice shall be issued to the owner of the work or, in his absence to the agent or any other person in his place, not to proceed with the work.

§ 1: The judge, shall be present at the time of denunciation of new work, if the party so applies.§ 2: The report shall be signed by the judge; whenever he is present or by the officer who draws it and by the owner of the work or any other person who carries out the work, if the owner is not present. When the owner of the work and his agent are not in a position to sign or do not want to sign two witnesses shall intervene.

§ 3: The party who applied for denunciation of new work and the opponent may, at the time of denunciation at the site click photographs indicating the state of the work, to be annexed to the court file. In this case specific mention will be made of this fact and also name of the photographer and identification of the film.

Article 427 – When can the work be allowed to continue - Once the work is stopped, the construction may be authorized, on the application of the opponent, when it is found that the

demolition will give to the applicant / Objector the status prior to the continuation or when it is found that the damages caused by the stoppage of the work is a greater than by its continuation and in both the cases security may be furnished and with further security of the amount required for total demolition.

Article 428 – Action in case of violative further construction - If the person objected against continues the work, without permission, after the notice and during the period the order subsists, the applicant may pray that whatever has been constructed after the Objection be demolished. Once there is satisfactory evidence by way of appointment of experts or witnesses, when it is found that the former method was not sufficient, the judge may direct that the work shall be placed in the previous status, without prejudice to the criminal liability of the owner of the work.

SECTION VIII

AFFIXATION OF THE SEALS, ENLISTING AND APPOINTMENT OF RECEIVER

Article 429 – Grounds for sealing and enrolment - Where there is just apprehension of concealment or dissipation of any assets, mobiliary or immobile, or even of documents, the imposition of seals and of the enlisting of the same may be applied for.

- **Articles 429-435** – Seals, Enlisting and Receiver - Corresponding provisions in C.P.C. 1908: -
  - Appointment of Receiver – O.XL
  - Supplemental proceedings – S.94(d)

Article 430 – **Who may apply – Security to be furnished** - Such measures may be applied for by any person who may have interest in the preservation of the assets, but they shall not be granted unless the applicant executes indemnity bond for losses and damages.

However, the bond shall not be necessary:
1) when steps are taken for the benefit of a legal person, or collective entity; 2)
when the measure is sought as a preparatory act before filing of an inventory.
§ Sole Paragraph: The creditors are permitted to apply for listing in case of recovery of an inheritance.

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Article 431 – **Procedure for ordering preventive measures** - The applicant shall satisfy the court as to his interest and indicate the grounds for the relief. After production and examination of the evidence, the judge shall order preventive measures, if he is satisfied that without them, the interest of the applicant runs serious risk.
In the order, which directs the sealing and the enlisting, the judge shall appoint one valuer and a receiver.
§ 1: When the measures are sought in anticipation of filing of inventory, it is not necessary that the applicant produces evidence, but the judge may ask summary proof of the facts pleaded.§ 2: When the sealing and enlisting are applied in anticipation of petition for interdiction on account of insanity, of deaf dumbness, for the proof of legitimate paternity or maternity, after the death of supposed father or mother, suit for declaration of nullity of will or gift, the measures shall not be ordered unless the applicant satisfies about maintainability of the main action.§ 3: Before ordering the sealing and enlisting, the judge may call for the say of the person who is in occupation or possession of the assets if he is of the view that such hearing of the say will not defeat the ends of justice.

Article 432 – **How enlisting is done** - The enlistment consists of description, valuation and deposit of the assets. A record shall be prepared in which description will be done item-wise as in inventory proceedings, showing the value indicated by the valuer and handing over of the assets to the receiver.

The possessor or occupier shall remain present, if he is present at the site, or it is possible to call him, and if he desires to remain present. The interested party may be represented by an advocate; and for this purpose oral statement of the party will be sufficient and shall be mentioned in the record prepared.
§ 1: The Judge may preside over the listing if any of the parties so apply. When the judge's presence is solicited the possessor of the property at the time of enlisting, and the judge is unable to attend, sealing shall be done, on the door of the premises where the goods are found or on the moveables wherein the object which are subject to loss, the receiver shall be entrusted with the custody and the enlisting will be carried out on the day fixed for the purpose.
§ 2: All the events during the operation of enlisting shall be noted in the record, and the record shall be signed by the judge, when he presides on, by the clerk, who draws the record, by the

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receiver, and by the possessor of the assets, if he is present, in presence of two witnesses when not signed by the judge or by the possessor of the properties.

Article 433 - **Imposition of seals** - Besides the case foreseen in the § 1 of the previous article, the imposition of the seals shall take place:

1. When there is urgency in the listing and it is not possible to carry it out immediately; 2. When the listing cannot be concluded;
3. When it is a case of objects, papers, or values which are not necessary for use or do not sustain the loss if there premises are closed. In such case the objects kept in boxes sealed with wax will be deposited in the establishment where the judicial deposits are made.

Article 434 – Receiver - When there is a case of making of an inventory a person shall be appointed to be receiver and who may be fulfilling the position of head of the family in relation to listed assets. In other cases, the receiver will be the possessor himself or the holder of the assets unless there is manifest inconvenient in the assets being entrusted to him.

§ Sole Paragraph: The list may shall constitute the description of assets in the inventory.

- Civil Code Articles 2068 to 2070.

Article 435 – Objection from the possessor or holder of assets - If the possessor or the holder of the assets was not present at the time of carrying the steps, he shall be notified of the order which granted the listing, as seen as soon as work is concluded. The possessor or holder may appeal from the order or raise an opposition by way of objection in accordance with article 414 and 415, and the time limit start from first intervention or issuance of the notice.

SECTION IX
SECURITY BONDS

SUB SECTION I
FURNISHING OF SECURITY BOND

Article 436 – Modes of furnishing bonds - When the law does not designate type of the

security, the same may be given, by way of deposit of money, credit, instrument, precious stones or metals or also mortgage, pledge or bank guarantee.
When the guarantee is given by way of mortgage the certificate of provisional registration shall be produced.
§ 1: In the assessment of suitability of the security furnished by way of mortgage or deposit of the credit instruments, precious stones or metals, the depreciation which the assets may undergo as a result of compulsory sale, as well as expenditure towards the sale which may take place shall be taken into consideration.
§ 2: Once the value to be offered as a guarantee and the type of guarantee is fixed the same shall be considered as furnished after the deposit or delivery or the endorsement of final registration or mortgage.

- **Articles 436-452** – Security - Furnishing, reinforcing security is much more detailed - Corresponding provisions in C.P.C. 1908: -
  - Supplemental proceedings – S.94(a) & (b)
  - Arrest and attachment before judgement – O.XXXVIII
  - Security for costs – O.XXV

Article 437 – Demand to furnish security - Whoever proposes to demand the furnishing of security shall declare the ground for which it is asked, as well as the amount of security, and shall apply that person liable to furnish the security be summoned within 10 days to file his objections, failing which the request is deemed as admitted.

Article 438 – Procedure where there is no objection - If the defendant does not contest, he will be immediately directed to furnish the security for the amount indicated in the petition and to declare in what manner he wants to furnish the guarantee.

The plaintiff may give his say on the suitability of security and after strictly necessary steps, the order shall be passed.
If the defendant does not make any declaration, the plaintiff may seek seizure or registration of mortgage over the assets of the defendants.
§ Sole Paragraph: To the seizure directed in terms of this article, articles 409 to 411, 414 and 415 shall not be applicable.

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Article 439 – Procedure in case of opposition - In the event the defendant contests the demand, the plaintiff may reply and the issue shall be immediately decided, after necessary steps.
Once it is found that the defendant is liable to give guarantee, he shall be notified to challenge or accept the value and to furnish the security.

The plaintiff may rejoin and the judge shall fix the security after taking necessary steps.
When the defendant does not offer any security the provision of last part of the previous article shall be applicable.

Article 440 – Procedure when only amount is disputed - When the defendant challenges only the value, he shall indicate the manner in which security will be furnished, failing which the objection shall not be admissible and provision of last part of article 438 shall be applicable. The plaintiff may rejoin and then whatever is provided in the second part of the previous article shall be followed.

Article 441 – Procedure for voluntary furnishing of security - In the event the person who is liable to offer the security is ready to furnish the same the plaintiff shall indicate in the plaint, besides the ground for furnishing the security, the amount to be secured and the manner in which it is to be furnished.

The person in whose favour security is given, within 10 days may challenge the amount offered or fitness of the guarantee.
If the person summoned does not file any objection, the security furnished will be held suitable. If the value and the suitability of security or either of them is disputed, the plaintiff may reply as to the objection and then matter will be decided after such inquiry as deemed necessary.

Article 442 – Security in favour of legally disabled persons - Whatever has been provided in the preceding article is applicable to the security to be furnished by parents, curators, administrators, or curators of the minors, interdicted or absentees, in respect of assets listed or indicated in the inventory, with following modifications:
a) The security shall be offered as attachment to the proceedings of enrolment or inventory; b) If the representative of incapable or of the absentee does not indicate the security to be offered, what is provided in the civil law as to the person not willing or not able to furnish the security

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shall be observed;
c) The powers of the judge in relation to fixation of the quantum and appreciation of suitability of the security and necessary steps to be taken shall be exercised by the council of family when it falls within domain of such council.

Article 443 – Security as part of a cause - When in any pending cause there is ground for any party to furnish security in favour of other, the interested party shall apply for such furnishing of the security indicating immediately, the amount to be secured and the type of security which is to be furnished. The opposite party shall be heard and he will give his say about the suitability of the security.

§ 1: The incidental proceeding shall be attached to the main proceedings.
§ 2: In this case the security may be furnished by a suitable surety, though not by way of bank guarantee.

Article 444 – Fixing of security - If the opposite party does not raise objection, the security furnished shall be deemed as suitable and that the security is deemed as furnished as soon as the instrument of security is placed on record. If there is an opposition the applicant may reply within 3 days and after

taking necessary steps within further 3 days carryout absolute indispensable steps, the security to be furnished shall be fixed.

Article 445 – Furnishing security to object to dissolution of legal entity - What is provided in the preceding 2 articles, with the exception of Paragraph 2 of article 443, is applicable to the case of anonymous society wishing to exercise right conferred by the second part of Paragraph 4 of article 120 of Commercial Code, to avoid the winding up applied by creditors.

The suit for dissolution will come to the end as soon as the society furnishes the guarantee which is held as fit.

SUB SECTION II

REINFORCING SECURITY

Article 446 – When reinforcement can be sought - Whenever the mortgage becomes

insufficient on the grounds not attributable to the creditor and the latter desires to demand the reinforcement to the security, he shall justify his claim and shall indicate in the application, the quantum of depreciation of the mortgage assets and consequently the amount of reinforcement to the security which he desires to obtain.

The debtor shall be summoned to contest the request or challenge the quantum of reinforcement to the guarantee and indicate the assets which he is offering.

Article 447 – Procedure when application is opposed - If the defendant opposes the application, upon effecting the valuation of the assets or any other procedural step which is found necessary it will be decided whether the mortgage requires reinforcement of security.

After deciding quantum of reinforcement is necessary, the debtor shall be notified to challenge the value indicated by the plaintiff and offer the assets which he gives as reinforcement to the mortgage. The plaintiff may rejoin and the judge shall decide after taking necessary procedural steps.

§ Sole Paragraph: The challenge to the valuation shall not be admitted when the defendant does not immediately offer in what manner he proposes to give reinforcement to the security. Immediately thereafter provisional registration of mortgage shall be done over the assets offered by the defendant.

Article 448 – Procedure where objection is only as to value - If the defendant challenges only the valuation, he shall indicate immediately the assets which he proposes to offer to reinforce the mortgage failing which the objection shall not be entertained. The plaintiff may rejoin and thereupon what is provided in the last part of the previous article shall be followed.

The procedural steps shall be the same when the defendant does not contest the prayer not challenge the valuation, but he offers assets for the purpose of reinforcing the mortgage.

Article 449 – Procedure where there is no opposition - If the defendant neither raises any objection nor offers any asset or if the asset offered by him are found to be insufficient, the following shall be observed:

a.) The registration of mortgage over other assets of the debtor shall be permitted or seizure shall be carried out, if the debtor has no sufficient immovable assets when mortgage was created for securing future and eventual liabilities.

b.) If the mortgage has been created as security of any obligation already contracted, the same will be declared recoverable as if the liability is already crystallized.

§ 1: The execution whenever there is place for the same, shall be followed as based on mortgage in the same proceedings.

§ 2: To the seizure ordered in accordance with this article the provisions of articles 409 to 411, 414 and 415 shall not be applicable.

Article 450 – **Reinforcement of pledge and guarantee** - What is provided in the previous articles is applicable to the reinforcement of the pledge and of the guarantee admitted by articles 860 clause no. 4 and 825 of the Civil Code,
In the case of reinforcement of the pledge, the defendant may offer mortgage instead of another pledge; in the case of reinforcement of guarantee he may furnish any other type of security.

Article 451 – **Reinforcement of security furnished in Court** - If the security has been created by Court, the reinforcement shall be applied for in the same proceedings, and the provisions of preceding articles and also the part applicable, of what is provided in clauses (b) and (c) of article 442 shall be applicable.

Article 452 - **Reinforcement of security furnished as part of proceedings** -When the security has been furnished by one of the parties in favour of the other as an incidental proceedings of the cause, the reinforcement shall be applied in the same proceedings by observing with necessary adaptations the steps prescribed for furnishing security.

- See also Article 443 of this Code.

SECTION X
DEPOSITS AND PROTESTS

Article 453 – **Deposit preparatory to suit** -The deposit for the purposes of article 1423 of the Civil Code and 474 of the Commercial Code and similar provisions shall be made on the application of the interested party. As soon as the deposit is made, notice shall be issued to the

person with whom the depositor is in dispute.

Article 454 – **Effect of deposit** - The deposit does not admit any opposition. The person notified, however, shall file the suit against the depositor within 30 days from the deposit failing which the question is considered as decided in favour of depositor and under the terms proposed by him.

Article 455 – **Lodging of protests** - The protests in order to stop running of prescription and for any other purposes may be effected by means of sundry notice, in accordance with article 261. The protest does not admit opposition.

CHAPTER V
COSTS, FINES AND DAMAGES

SECTION I
COSTS

Article 456 – **Liability for costs** -The judgment which decides the suit or any of its incidents, shall award costs in favour of successful party, in proportion fixed by the court.

If many plaintiffs and defendants have lost the case, they are liable to pay the costs in equal parts, unless there is a apparent difference in the degree of their participation in the cause, because in such case the costs shall be distributed according to the measure of participation. In case parties are held joint and severally liable, the joint and several liability shall extend to the costs.

- **Articles 456-468** – Cost, fines and damages are in much greater detail - Corresponding provisions in C.P.C. 1908: -
  - Costs – S. 35,
  - Compensatory costs in respect of false or vexatious claims or defences – S.35A
  - Costs for causing delay – S.35B
  - Payment into court – O.XXIV
  - Costs – O.XX-A
  - Security for costs – O.XXV

Article 457 – **Acts and steps which do not count for costs** - The liability of the defeated party does not extend to costs for superfluous acts and incidents, nor to the steps and acts which have been repeated on account of fault of any judicial officer, nor even to the costs towards

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adjournment of the judicial act on account of absence of the person who ought to have appeared.§ 1: Acts and incidents, unnecessary for declaration or defence of the rights should be taken as superfluous. The costs of such acts will be on the account of the one who applied for the same. The costs of other acts which are excluded shall be paid by the employee or respective person.§ 2: The officer who has given cause for annulment of the act shall be answerable for annulment, besides disciplinary liability.

Article 458 – Costs on Plaintiff - When the defendant has not given cause to the suit and he does not contest the suit, the costs are paid by the plaintiff. It is understood that the defendant did not give cause to the suit:

1: When the plaintiff does not assert the existence of any previous obligation of defendant and proposes to simply exercise a legal right;

2: When the obligation of the defendant accrues only after service of summons or after institution of the suit as declared in clause (a) and (b) of article 662;

3: When the suit is not founded on any illicit fact committed by the defendant.

4: When the plaintiff, being armed with a title with executive force, unnecessarily uses a suit for declaration.

- See also Article 46 of this Code.

Article 459 – Distribution of costs - If the opposition of the defendant was founded when the cause has arisen but on account of supervening circumstances ceased to be operative, each party shall pay the costs in relation to the acts done during the period in which there was unjustified activity.

Article 460 – Costs in case of admission, abandonment or compromise - When the suit ends by abandonment or admission, the costs shall be paid by the party who abandoned or admitted the claim. And if the abandonment or admission was partial, the liability towards costs shall be proportionate to the part of abandonment or admission.

In the case of compromise, the costs shall be borne equally except if otherwise agreed upon.

Article 461 – Liability of assistant for costs - Whoever has intervened in the suit as assistant

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shall be awarded, if the assisted party looses the case to the extent of proportionate share of the costs shall be payable by the latter, in proportion to the activity which he has exercised in the proceedings, but never exceeding (1/10) one tenth.

Article 462 – Costs of preventive and conservatory proceedings, conciliation and notifications - The costs of preventive and conservatory proceedings shall be paid by the applicant when there is no opposition, but shall be taken into consideration in the suit instituted. If there is opposition, what is provided in article 456 shall be followed.

§ 1: The costs of settlement shall be paid by the defendant when he acknowledges the right of the plaintiff and to the extent to which there is acknowledgment.

§ 2: The costs of sundry notices shall be paid by the applicant.

Article 463 – Payment of legal fees through costs - The attorney on record and technical experts of the winning party may apply that amount due to them towards fees, expenses and advances made, total or partially, be satisfied from the costs recoverable from the losing party. If they apply for the same, winning party will be heard and decision will be passed.

§ Sole Paragraph: If the winning party disputes the amount of credit in favour of attorney, only the portion not disputed shall be paid.

Article 464 – **Security of costs** - The costs always shall be deducted from the amount realized from the assets and when the costs arise from contract, only after the payment, the execution can be enforced, a certified copy or any other document, which demonstrates satisfaction of the decision with or which the same document may be executed and registered.

SECTION II

FINES AND DAMAGES

Article 465 – **Liability in case of bad faith in litigation** – **Definition of Bad faith** – If the party has filed vexatious proceedings, fine shall be imposed on him and compensatory costs to the adversary, if the latter demands it.

A litigant is considered to be in "bad faith", not only if he who puts up a claim or raises an

objection, of which the lack of foundation, he could not be reasonably ignore, but also who has consciously altered the true facts or omitted essential facts and who has made use of the wrong proceedings or remedies the purpose of obtaining illegal objective or has impeded the course of justice or the discovery of the truth.

§ Sole Paragraph: The winning party may also be considered a litigant in bad faith, even in the main suit, when he has acted with instrumental malice.

Article 466 – **Contents of damages** - The compensation by way of damages may consist: a) In the reimbursement of the expenses occasioned to the opposite party, by the malafides involved, including the fees of the Advocate and Technical experts;

b) In the satisfaction of the remaining losses sustained by the opposite party;

The judge shall direct payment of the damages which may be found adequate to the conduct of the losing party, fixing it always in specific amount.

§ 1: If there is no data for fixing the amount of the damages in the judgment after hearing the parties they shall be fixed by the judge at his prudent discretion, as deemed reasonable and reducing to just limits the items of expenditure and fees quoted by the party.

§ 2: The fees shall be paid directly to the advocate except it is found that they are already paid by the client.

Article 467 – **Liability of representative of legally disabled or of collective persons** – When the party is legally disabled or a collective person, the liability for costs, fine and damages shall be on their representatives, if they have acted in bad faith.

Article 468 – **Liability of advocate** - When it is found that the mandatary of the party had personal and direct responsibility which revealed bad faith in his part, the matter will be reported to the Bar council of the advocates or body of solicitors (legal advisors), in order that they apply respective penalties and punish the mandatary to the extent of their share in the costs, fine and damages which they deem fit.

CHAPTER VI

FORMS OF PROCEEDINGS

SECTION I

COMMON PROVISIONS

Article 469 – **Common and special proceedings** – Proceedings, as far as form is concerned, may be common proceedings or special proceedings.

Special proceedings applies to cases expressly specified in the law; common proceedings applies to all other cases to which special proceedings are not applicable.

Article 470 – **Types of common proceedings** – Common proceedings are ordinary, summary and concise.

SECTION II

PROCEEDING FOR DECLARATION

Article 471 – **Applicability of ordinary, summary and concise** - If the value of the suit exceeds the pecuniary jurisdiction of the High Court, the procedure to be used is of the ordinary proceeding; if it does not exceed, the procedure to be used is of, summary proceeding, except if it does not exceed 3.000$ and the suit is meant for recovery of debt, compensation for damages and delivery of mobiliary things, in which case the proceedings to be used are concise proceeding.§ Sole Paragraph: In the concise proceeding the damages shall be computed always in specific sum.

Article 472 – **Provisions regulating special and summary proceedings** - Summary proceeding and special proceeding are governed by the provisions which are exclusive to them and also provisions which are general and common; and in all the remaining which is not provided in either of them, the form prescribed for ordinary proceeding shall be followed.

As far as appeals, the regime of summary proceedings is applicable, with following exceptions: a) If the value of the suit exceeds the pecuniary jurisdiction of the High Court, appeal shall lie to

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the Supreme Court, as in the case of ordinary proceeding;
b) If, as per the law, from a particular stage ordinary proceeding is to be followed, the regime of appeal is to be adopted integrally, right from the beginning.

Article 473 – **Provisions for concise proceedings** - To the concise proceeding, besides the provision peculiar to the same, the general and normal provisions shall apply; when they are silent or insufficient, in the first place whatever is provided for the summary proceeding shall be followed and in the second place, whatever is provided for ordinary proceeding shall apply.

SECTION III

EXECUTION PROCEEDINGS

Article 474 – **Ordinary, Summary and Concise execution** – Executions, value of which exceed the pecuniary jurisdiction of the High Court, are subject to ordinary form.

Executions based on judgment passed in proceedings of summary nature are subject to summary form, and so are those based on other instruments when they do not exceed the pecuniary jurisdiction of the High Court.

Judgment passed in concise proceeding are subject to execution in concise form.

Article 475 – **Regulation of various types and forms of execution** – To the execution for the delivery of something and performance of an act, the provisions relating to ordinary form of execution for payment of a certain sum are applicable, to the extent permissible.

In respect of regime of execution, summary and concise, for payment of certain amount, the provisions of article 472 and 473 are applicable; to the execution, summary and concise, for the delivery of certain thing, the regime of execution of ordinary form for delivery of certain thing shall be applicable, but the periods are the same which have been provided, respectively for the execution, summary and concise, meant for payment of specified amount.

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TITLE II

DECLARATORY SUITS

SUB TITLE I

CONCILIATION

Article 476 – **Prior attempt at conciliation** - Before filing the suit, the plaintiff may make an attempt for conciliation, provided settlement is legally permitted and all the defendants reside within the jurisdiction of the same local court of peace.

§ Sole Paragraph: The representatives of collective bodies, of legally disabled and absentees may compromise only within the precise limits of their powers or with previous permission of the competent authority empowered to grant it.

Article 477 – **Application and summons for settlement** - The plaintiff, briefly explaining the prayer and its grounds, shall apply to the court of peace of the domicile of the defendant for summons to be issued for the purpose of settlement.

The justice of peace shall fix the date, time and place for the settlement which shall take place within the next eight days and shall send summons to the defendant to appear, keeping at least a gap of three days between the date of issuance of summons and the date fixed for appearance. The notice of the order so passed shall be given to the plaintiff.

Article 478 – **Subsequent steps** - If the parties appear personally or through attorney, with the powers to compromise over the subject of litigation, the justice of peace shall attempt to arrange settlement between them, and if he succeeds, in totality or in part, he shall direct to make a report in writing in which the terms and condition of the settlement is to be specified with precision and clarity. If some of the parties do not appear, or there being no settlement, report shall be drawn in the same manner, recording all the happenings.

Article 479 – **Record of conciliation or failure thereof** - The report shall be written by the office after the note of service which is to be annexed to the application. When there is a settlement, the report shall be signed by the judge, by the clerk who has drawn the report and by

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the parties or by two witnesses when the parties are unable to write; in other cases, the signature of judge and the clerk are sufficient.
§ 1: If there is a settlement, total or partial, the application as well as the report shall be transcribed in the book meant for the purpose. The book shall be initialled by the judge on all pages and it shall contain the note of opening and the note of closing, signed by him. When complete, it shall be remitted to the court of Judicial division for the purpose of being archived.§ 2: The documents of power of attorneys shall remain archived.
§ 3: From the book, certified copies may be issued as applied for, there being no need to transcribe therein the text of the powers of attorney.

SUB TITLE II

ORDINARY PROCEEDING

CHAPTER I

PLEADINGS

SECTION I

INITIAL PETITION (PLAINT)

Article 480 – **Function and purpose of initial petition** - The prosecution of a suit is initiated by a petition in which the plaintiff shall set up his foundation and the relief in the suit.

In the initial plaint the plaintiff shall:
(1) Indicate the court before which the suit is filed;
(2) Identify the parties;
(3) Indicate the form of procedure;
(4) Plead in clear terms and precision the facts and the legal reasons on which his contentions are

based;
(5) Formulate the relief with all precision;
(6) Declare the value of the suit;
(7) Satisfy the requirements of the Revenue laws;
§ 1: The grounds of the suit shall be pleaded by the numbered paragraphs.

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§ 2: The prayer shall be formulated in such a manner that no doubt arises about juridical effects of declaration or creation of rights which is proposed to be obtained; and if the suit is for some direction, it is necessary to specify the obligation to be complied with by the defendant.
§ 3: If the suit is based upon a document signed by the defendant, the plaintiff shall apply that the defendant is summoned to admit or denial the name of the firm or signature.

- **Articles 480-486** – Plaint - Corresponding provisions in C.P.C. 1908: -
  - Plaint – O.VII

Article 481 – Dismissal in *limine'* - The petition shall be rejected in '*limine*':
1) When it is found the plaint is defective;
2) When there is absolute lack of jurisdiction of the court, the lack of personality, or lack of capacity of the plaintiff or defendant or of his "locus standi";
3) When the suit is filed beyond the limitation period or when by any other ground, it is evident that the suit of the plaintiff was bound to fail.
§ 1: If the form of procedure chosen by the plaintiff does not correspond to the nature or to the value of the suit, then direction to be issued to adopt the adequate form. But where the plaint cannot be made use of for such form, it shall be rejected.
§ 2: From the order of rejection, appeal lies. The decision of the superior court shall be final in the cases of no.1 and 2 and paragraph 1; in case of no. 3 appeal may go upto the Supreme Court, whichever may be the value, the appeal filed against the rejection and the final decision, when favourable to the plaintiff, only secures the prosecution of the suit.
Once the appeal from order is filed, immediately the defendant will be summoned for the purpose of the appeal as well as for the purpose of the suit, if the same is to be prosecuted. If the order is revoked, the notice will go to the defendant as soon as the file reaches the office and time for filing the written statement shall start from the date of service of notice.
§ 3: If the plaintiff, instead of filing appeal from order from the rejection order, presents another petition within 3 days, the suit is deemed to be filed on the date of the first plaint was presented in the office.

Article 482 – Irregular or deficient plaint - When there are no deficiencies foreseen in the previous article, but the plaint cannot be accepted on account of lack of legal requisites or because it is not accompanied by required documents or there are irregularities or deficiencies

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which are likely to affect the success of the suit, the plaintiff may be asked to supply the deficiency or make the corrections, fixing the time for the presentation of the new plaint.§ Sole Paragraph: If the new plaint is presented within the fixed time, what is provided in Paragraph 3 of the preceding article shall apply.

Article 483 - Issuing of summons - If there is no room for immediate rejection and the plaint is in condition of being received, summons for service on the defendant shall be ordered. Before the issuance of summons, the stage of distribution take place provided the plaintiff has so applied. In such

case, the head of the office, immediately shall present petition and direct the issuance of the summons. After such compliance, the file will be sent for distribution.

§ 1: The order referred to in this article and two previous articles shall be passed in five days next to the presentation of the plaint to the judge.
§ 2: Appeal from order lies from the order which directed service of summons to the defendant. Even though no appeal is filed, the questions which could be raised for rejection of the plaint cannot be considered as finally decided.

Article 484 – Summons to defendant - The defendant shall be summoned to contest the proceedings. At the time of service the defendant shall be cautioned that non presentation of written statement, amounts to admission of the facts pleaded by the plaintiff.

Article 485 – Effect of summons - The service of summons shall have the following effects: (a) Prescription is interrupted;
(b) Good faith of the possessor comes to an end;
(c) The debtor is considered as a defaulter when the fulfillment of the obligation does not depend upon the specific time;
(d) The essential requirements of the suit become crystallized in accordance with article 268; (e) Bars the defendant from filing against the plaintiff, any suit in relation to same juridical relation.

Article 486 – Steps when summons are annulled - The effects mentioned in the previous article are maintained, even though the summons served has been annulled, if the defendant was served

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with the summons afresh within 30 days from the earlier judgment declaring the service null and void has been passed and became res judicata.

SECTION II
ABSENCE OF THE DEFENDANT

Article 487 – Duty of Court where Defendant remains absent - If the defendant does not appoint an advocate, nor file written statement within the limitation period, the court shall verify whether service was made with all legal formalities, and in the event it is found that there are some flaws, direct repetition of the same.

- **Articles 487-489** – Absence - Corresponding provisions in C.P.C. 1908: - o Appearance of parties and consequence of non-appearance – O. IX

Article 488 – Effect of non-appearance - If the defendant, having been summoned or considered to have been summoned in person with legal formalities, does not contest, the facts pleaded by the plaintiff, are deemed as admitted. The proceeding shall be made available for examination of the plaintiff for a period of eight days, firstly, to the advocate of the plaintiff, and then to the advocate of the defendant, to submit their arguments in writing and thereafter the judgment will be passed in accordance with the law.

Article 489 – Cases in which effect of default does not take place - What is provided in the previous article shall not apply:
(1) When there being many defendants, one of them contests;
(2) When the defendant or some of them are incapable, or is a public body mentioned in article 32 of the Civil Code;
(3) When the wish of the party is not sufficient to produce the legal effect which is intended by suit;
(4) When there are facts which have to be proved only by the way of authentic or authenticated document and until same document is produced.

SECTION III
WRITTEN STATEMENT

SUB SECTION I
GENERAL PROVISIONS

Article 490 – Time limit to contest - The defendant may contest by disputing facts or raising defence within a period of twenty days.

§ 1: The time for defence starts after the end of extended period of limitation when service is effected by registered letter or by way of publication.

§ 2: When the party is represented by the Public Ministry, extension shall be granted when such extension has been applied on the ground that information which is required could not be obtained and the reply to consultation made to higher authorities is awaited.

- **Articles 490-505** – Written Statement - Corresponding provisions in C.P.C. 1908: -
  - Written Statement, Set-Off and Counter Claim – O.VIII

Article 491 – Defence by dispute or by exceptions - The defendant defends when he denies the facts pleaded in the plaint or when asserts that such facts do not produce the juridical effect as sought by the plaintiff. He raises defence by way of exceptions when he pleads new facts which prevent appreciation of the merits of the case or granting of the relief sought by the plaintiff.§ Sole paragraph: The pleading is called written statement, in the both the cases i.e. when the defence is by way of contest or by way of exception.

- **Articles 491-494** – Admissions - Corresponding provisions in C.P.C. 1908: -
  - Written Statement, Set-Off and Counter Claim – Denial to be specific – O.VIII, rr.3-5

Article 492 – Requisites of written statement - In the written statement the defendant shall refer to the suit and explain with great clarity and concision of the facts, the grounds of law and conclusion of the defence.

§ Sole Paragraph: The grounds should be pleaded by way of numbered paragraphs.

Article 493 – When defences should be set up - All the defence shall be set up in the written statement other than the exceptions and incidents required by law to be raised earlier.

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After the written statement it is permissible to raise exceptions, incidents and means of defence which are supervenient, or which the law expressly admits after such time or cognizance of which can be taken by Court of its own notion.

§ Sole Paragraph: Supervenient facts are those which have taken place subsequent to filing of the written statement as well as the facts which the defendant came to know only after the time limit of filing of written statement and in such case it is incumbent on the defendant to satisfy about the supervenience.

The supervenient defence shall be pleaded, same provided to the contrary, within 10 days subsequent to the facts occurred or the defendant took cognizance of the same.

Article 494 – Position of Defendant as to facts pleaded by Plaintiff - The defendant is bound to take definite position in respect of facts pleaded in the plaint. Those facts which have not been denied specifically are deemed as admitted by concurrence, unless they are in manifest opposition to the defence considered as a whole, or when admission on some of them is not legally admissible and may be proved only by document.

§ 1: If the defendant declares that he is not aware whether some specific act is exact, such declaration amounts to admission when the fact is personal or which the defendant should have known, and it will be deemed to be contested in the contrary case.

§ 2: A written statement by way of denial is not admissible.

§ 3: What is provided in the second part of the body of the article and in the paragraph 1 is not applicable to an advocate appointed by the court nor to the Public Ministry.

Article 495 – Admission or denial of Business name - Where a suit is heard on a document containing obligation signed by the defendant in a Business name in the written statement he shall admit or deny the business name, when he has been summoned for that purpose, it being understood that he admits the business name if he has not made any declaration. If he admits the business name, express or tacitly, but he denies the obligation, the suit shall be decreed provisionally; but the execution shall be stayed until final decree in the event he offers the security by way of deposit or mortgage.

§ 1: What is provided in the first part of this article shall not apply when the defendant has been summoned in the capacity of heir or representative of any signatory of the business name and he

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was incapable or service was done by way of publication.

§ 2: If it is found that the business name denied by the defendant is true he shall be held acting in bad faith.

Article 496 – Order in considering defence – When the defence is against the institution of the suit and against the prayer, the former defence should precede the one which is only related to dismissal of the prayer.

Article 497 – Time for defence when there are many defendants - If the time for filing written statement ends on different days for different defendants, the written statement of all of them or each of them may be presented till the end of the period for the defendant served last.

SUB SECTION II

EXCEPTIONS

Article 498 – **Dilatory and peremptory exceptions** - The defences may be dilatory or peremptory. The dilatory/(technical) defences are those which prevent the court from taking cognizance of merits of the case and gives rise to dismissal of the suit other than on merits or to the transfer of the suit to the other courts; the peremptory defences are those which give rise to dismissal of the suit on merits because of the existence of facts which prevent the court from granting relief or nullify juridical effect of the facts pleaded by the plaintiff.

Article 499 – **Dilatory defences** - Amongst others, the following defences are dilatory:-a) The nullity of the entire proceedings;

b) Lack of locus standi of any of the parties;

c) The lack of judicial personality or judicial capacity of any of the parties;

d) The lack of permission or deliberation which the plaintiff should have obtained;

e) Non-appointment of an advocate by the plaintiff, in the proceedings referred to in article 33 and the lack, insufficiency, or irregularity of the appointment of pleader who has filed the suit; f) Lack of jurisdiction of the court, either absolute or relative;

g) Lis Pendens;

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h) Avoidance of the arbitral court;

i) Joinder of plaintiffs and defendants when there is no connection as required in articles 29 and 30;

j) Non-payment of costs of the previous suit.

§ 1: The circumstances referred in the clauses (a), (b), (c), (d) and (e) take the nature of defences only when the respective omission or irregularity has not been cured in the manner prescribed at the appropriate places.

§ 2: The court shall take cognizance *suo moto* of all the dilatory/ (technical) defences, except territorial jurisdiction, avoidance of arbitral tribunal and non-payment of the cost to the party.

Article 500 – **Peremptory defences** - Among others, the following defences are peremptory in nature;
a) Res Judicata;
b) Prescription.

Article 501 – **'*Lis Pendens*' and '*Res Judicata*'** - *Lis Pendens and Res Judicata* pre-suppose the repetition of the same cause. When there is a repetition of the same suit, there being pending a suit there is a case of *lis pendens*, if there is a repetition after the decision of the suit by final judgment and the case does not admit normal appeal, there is a case of *res judicata.*

§ Sole Paragraph: *Lis Pendens* and *Res Judicata* has the purpose of avoiding that the court is called upon to decide or contradict or repeat any previous decision. Such objective shall serve as criteria for the resolution of doubt which may arise over the identity of the two cases.

Article 502 – ***Requisites of lis pendens* and *res*** - There is a repetition of the suit when there is one suit instituted which is identical to the previous suit, as to the subjects, object and cause of action.
§ 1: There is a identity of subject when the parties are same in the point of their juridical capacity.§ 2: There is identity of object when in one and other suit same juridical effect is sought to be obtained.
§ 3: There is a identity of the cause of action when the purpose in both the suits proceeds from same juridical act or fact. The cause of action in relation to suits for property is an act or fact

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juridical from which the right to property derives in perfect or imperfect ownership. In the suits which are constitutive and of annulment is the fact or specific nullity which is invoked to obtain the purpose in mine.

- See Article 2053 of Civil Code

Article 503 – **When *lis pendens* is to be raised** - The *lis pendens* should be raised in the suit filed subsequently. For that purpose the suit in which the defendant was summoned subsequently, is considered to be filed subsequently. If in both the suits the defendant was summoned on same day, the priority of the suit shall be determined by the entry of the respective suits in the court office.

Article 504 – **Foreign suit is not relevant** - The pendency of a suit in a foreign jurisdiction is of no relevance.

Article 505 – **Cognizance suo moto** - The court shall take cognizance of the res judicata of` its own motion.

SUB SECTION - III
COUNTER CLAIM

Article 506 –**Counter claim** - The counter claim is to be filed separately in the written statement, setting out the grounds and concluding by the prayer, in terms of clause no.4 and 5 of Article 480.

- **Article 506** – Counter claim - Corresponding provisions in C.P.C. 1908: -
  - Written Statement, Set-Off and Counter Claim – Particulars of set-off to be given in written statement – O.VIII, rr. 6, 6A to 6G.

SECTION IV
REPLICATION AND TRIPLICATION
(Rejoinder and Sur rejoinder)

Article 507 – **Purpose of replication** - To the written statement the plaintiff may answer by way of replication.

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The replication also serves to the plaintiff to plead all defence in the matter of counter claim.§ Sole Paragraph: It is not permissible to file fresh counter claim in answer to the counter claim.

- **Articles 507-511** – Rejoinder and Sur Rejoinder - Corresponding provisions in C.P.C. 1908: -
  - Written Statement, Set-Off and Counter Claim – Subsequent pleadings – O. VIII, r. 9.

Article 508 – **Filing of replication** - The replication shall be submitted by para-wise articles and filed within 8 days from the date provided to file the last written statement.

Article 509 – **Purpose and filing of triplication** - To the replication the defendant may give answer by way of triplication. The triplication shall be submitted by articles para-wise and submitted within 8 days from the date of the submission of the replication

Article 510 – **Reply to Triplication where there is counter claim** - If the defendant has filed any prayer against the plaintiff, he may answer by articles within 8 days in answer to triplication of the defendant in relation to subject of counter claim.

Article 511 – **Position of party as to facts pleaded by Opposite party** - To the pleadings referred to in his section, with necessary adaptation, applies what is provided in article 494 and Paragraph.

CHAPTER II

PRELIMINARY HEARING AND CURATIVE ORDER

Article 512 – **Instances of Preliminary hearing** - After the stage of pleadings is over, the proceedings shall be placed in the chamber of the judge. If there is any defence, except that of nullity of the proceedings, or if the judge feels that the stage of the suit enables him to take cognizance of the prayer, he shall appoint a day for hearing of the matter, which shall be in any of the following ten days.

The parties shall be intimated for personally appearing for the hearing. The party which does not appear or make representation through an advocate with special powers to compromise shall be liable to pay fine.

- **Articles 512-516** – First hearing - Corresponding provisions in C.P.C. 1908: - o Admissions – Judgement on admissions – O. XII, r. 6
  - Disposal of the suit at the first hearing – O.XV

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Article 513 – **Sequence of acts in the audience** - At the beginning of hearing, the judge shall seek to reconcile the parties, with a view to obtain an equitable solution.
If the conciliation is not found possible, the judge shall give an opportunity for say to the advocate for the plaintiff and thereafter to the advocate for the defendant for hearing arguments on the questions raised in the pleadings, which shall be decided in the curative order. The judge shall conduct the discussion in the manner of the order in which the questions to dealt with shall be decided.

Each of the advocates can use twice the opportunity for say that is given to them.
§ Sole Paragraph: When any of the parties or both of them do not appear and are not represented by advocate with special powers for compromise, the judge shall appoint another day for hearing, if he deems fit, to attempt the conciliation. The attempt for conciliation can take place at any other stage of the proceeding and whenever the court deems fit.

Article 514 – Curative Order - Upon the end of the discussion, within 10 days, an order shall be passed for the following:
(1) To take cognizance in the order laid down in article 293 of the exceptions that can lead to dismissal of the suit, as also the nullities even though they do not have the effect of nullifying the entire proceeding;
(2) To decide if there is any peremptory exception;

(3) To take cognizance of the prayer, if the issue is solely of law and can safely be decided at that moment, or if, being a question of law and of fact, or solely of fact, the proceeding contains all the necessary elements for a conscientious decision.

§ 1: What is referred in clause (1) can only be abstained from being decided in the order if the stage of the proceeding makes it absolutely impossible for the judge to pronounce an order on them, and the judge shall provide reasons for such abstention and enable the superior courts to appreciate the grounds for such abstention.

§ 2: What is referred in clause (2) shall be decided when the proceeding provide for the indispensable elements, in terms of what is declared in clause (3).

§ 3: When the cognizance of the prayer is taken, the order, for all purposes, is equated to a final judgment and shall be designated as such.

- See also Article 691 (1) of this Code.

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Article 515 – Specification and questionnaire - If the proceedings are to go on, the judge, within a period of 8 days, shall specify the facts which he considers to be confessed, admitted by agreement between the parties, or proved by documents, and shall fix, with numbers, the points of fact which are required to be proved which are material for the decision of the suit.

A copy of such questionnaire, as well as the specification, shall be furnished to the parties, who may file, in duplicate, their objections. The duplicate shall, immediately be handed over to the opposite party; in the following 2 days, the opposite party may file observations. At the end of this period, the objections shall be decided.

§ 1: The questionnaire shall only cover the facts in the pleading which are controverted and which are relevant and indispensable for the decision in the suit.

§ 2: The objections can be as regards the Specifications or the questionnaire (issues). This may be challenged on account of deficiency, excess, complexity or obscurity.

§ 3: From the order on such objections appeal may be filed to the High Court; from the decision of the High Court, no appeal would lie to the Supreme Court.

- **Article 515** – Questionnaire = Specification - Corresponding provisions in C.P.C. 1908: - o Issues – O. XIV

Article 516 – Notice to parties for Trial - Upon the questionnaire being finalized, the parties shall be immediately notified for filing of the list of witnesses and apply for production of any other evidence.

§ Sole Paragraph: If appeal is preferred in the proceedings, the modification shall be made immediately after the records are received by the court of first instance or immediately after the compliance of the decision of the superior court.

CHAPTER III
TRIAL
SECTION I
GENERAL PROVISIONS[5]

Article 517 – **Facts needing proof** - The steps intended for the productions of evidence can only lie as regards the facts which form a part of the questionnaire referred to in article 515, except for the application for examination of the documents

forming a part of the record in the proceedings.

Article 518 – **Facts which need not be proved or pleaded** - Notorious facts, which shall be considered as facts of common knowledge, do not require any evidence or pleading. Also, the facts of which the court has knowledge by virtue of exercise of its functions, shall not require any pleading to be made; when the court taken cognizance of such facts, the document which is the proof of such fact shall be made a part of the record.

Article 519 – **Onus of proof** - It is incumbent upon the plaintiff to prove the facts, positive or negative, that form the basis of the suit; it is incumbent upon the defendant to prove the facts, positive or negative, which form the basis of exception.

§ Sole paragraph: The court shall take into consideration all the evidence that is produced, whether or not by the party which ought to have produced it in terms of this article, without prejudice to the provisions which declare irrelevant the allegation of a fact when it is not made by a specific interested party.

- Article 2405 of the Civil Code.

Article 520 – Doubtful cases - The doubt as to the truth of a fact and as to the burden of proof shall be resolved against the party who avails of the fact.

5 *Evidence – Art. 517 to 580, and oral evidence (Art. 620 – 646) covers the area of Indian Evidence Act, 1872.*

Article 521 – Proof of Custom, local or foreign law - The party which invokes customary, local

or foreign which is unknown to the court shall produce the evidence of its existence and the contents of such law; but the judge shall officiously employ all means in his capacity to obtain the knowledge of such law, and he can, in this respect, he guided by the Ministry of Justice.

- Article 2406 of Civil Code.

Article 522 – Right to contest and cross examine - The evidence shall be led giving right to the opposite party to cross examine the witnesses, save in special cases where the contrary is provided under the law.

§ Sole paragraph : The principle of hearing of the contest is to be understood in the sense that the party shall be notified, when he has not failed to appear, for all the acts of preparation and production of evidence and shall be allowed to intervene in these acts, by himself or through his attorney, in conformity with the law.

Article 523 – Movables or immovables as evidence - When the party intends a moveable object which can conveniently be put at the disposal of the court, to serve as a mode of proof, he shall hand over the same in the office within the period designated for bringing the documents on record. The opposite party may examine the object there and take the photograph thereof. If a party intends an immoveable object or a moveable object which cannot be deposited in the office, to serve as a mode of proof, the opposite party shall be notified to exercise the rights which are referred in this article. The notification shall be applied for within a period in which the list of witnesses can be filed.

§ Sole Paragraph: What is provided in this article shall in no case prejudice the right to grant arbitrament and judicial inspection in respect of the thing in issue.

Article 524 – Duty to co-operate to find truth - All the persons, whether or not the parties in the suit, have a duty to co-operate for discovery of the truth and the administration of justice, responding to what is asked, submitting themselves to inspections that is adjudged necessary, allowing what is demanded, and performing the acts that are decided. If they refuse, they shall be liable to pay fine, not being party to the suit, without prejudice to employment of coercive measures which are possible; if

the person refusing is a party to the suit, the facts that are intended to be inquired shall be considered to be proved.

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But the refusal shall be legitimate if the obedience would mean violation of professional secrecy or cause grave injury to the honour and respect of the said person, of any of his ascendant, descendent, brother or spouse, or cause grave prejudice to the patrimonial nature of any of the persons referred above.

§ Sole Paragraph: What is contained in this article is subject to the entire provisions relating to the judicial display of the books of commercial records and of the documents related to it.

Article 525 – Anticipated production of evidence - Their being reasonable apprehension that the deposition of certain persons or the verification of certain facts by visual inspection will become impossible or very difficult, the deposition or the inspection may take place in advance and even before the suit is filed.

§ 1: The Applicant shall justify, in a summary manner, the necessity for taking the step in advance, mentioning with precision the facts in respect of which he has to call and identify the persons who have to be heard when dealing with the deposition of the party or the witnesses.§ 2: When the step is to be effected before the filing of the suit, the objects and the grounds for the same shall be indicated in a concise manner and the person or persons against whom the evidence is sought to be used is to be identified. These persons shall be personally notified in furtherance of the effects of article 522; if they cannot be personally notified or if they reside outside the continent or the island where the step is to be effected, the Public Ministry shall be notified in case of unknown persons or absentees at unknown place, and an advocate appointed by the judge, in the case of absentees in a certain place.

Article 526 – **Extra processual value of evidence** - The deposition and expert reports produced after hearing of the opposite party can be invoked in other proceedings against such party. But if the regime of production of evidence of the first proceedings offers to the parties inferior guarantees than that of the second, the deposition and expert reports produced in the first proceeding has value in the second to the extent of the purpose of the evidence.

§ 1: The admissions made in the pleadings can be contested in other proceedings.
§ 2: The provision in this article does not have application when the first proceeding has been annulled, at least in respect of the part related to the production of evidence which is sought to be invoked.

SECTION II
DOCUMENTARY EVIDENCE

SUB-SECTION I
TYPES OF DOCUMENTS AND THEIR PROBATIVE VALUE

Article 527 – **Kinds of documents** - The documents for the purpose of proof may be authentic, authenticated or private.

- **Articles 527-646** – Evidence Act - Corresponding provisions in C.P.C. 1908: -
  - Production, impounding and return of documents - O.XIII
  - Summoning and attendance of witnesses – O.XVI,
  - Attendance of witnesses confined or detained in prisons – O.XVI-A
  - Hearing of the suit and examination of witnesses – O.XVIII

Article 528 - **Authentic document** - Authentic document is that which was drawn by a public official or with his intervention as required by law.

- Civil Code Article 2422.

Article 529 – **Types of authentic documents** - Authentic documents are either official or extra official. Authentic official documents are those which are drawn or issued by the public offices of the Government or of the local authorities as well as judicial acts and the documents entered in the registers of all the public offices either existing or extinct.

Authentic extra official documents are those instruments or acts drawn by the notaries or with their intervention and meant to declare the wish of the parties.

§ 1: For the purposes of qualification of authenticity of the documents, the registers of the extinct ecclesiastic corporations, maintained in any public office, when have been compiled officially are deemed as public registers.

§ 2: Miscellaneous documents preserved in the tower of tombo or any other public offices may be qualified as authentic if they are satisfying the requirement of the second part of this article.

Civil Code article 2424, 2433.

Article 530 – Probative value of authentic documents - Authentic official and extra official documents constitute full proof in respect of acts done by authority or respective public official

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and in respect of truth of the facts which occurred in his presence and which he certified or could certify, unless the falsity of the document is established.

In respect of facts which did not occur in the presence of authority or public official and in respect of declarations made to him it is possible to demonstrate that they do not correspond to the truth independent of the plea of falsity of the document.

See Article 2425 and 2426 of this Code.

Article 531 – Third party rights are saved - The rights of the persons which may be considered as third parties shall not be prejudiced by the probative evidence of the authentic documents.

Civil Code article 2426.

Article 532 – **Indispensable nature of authentic documents** - Save any express provision to the contrary when the law requires any authentic document this method of proof cannot be substituted by any other.

Civil Code Article 2428.

Article 533 – Defects in authentic documents - The probative value of the authentic document may be disproved in view of the absence of ingredients which the law requires for its execution or on account of falsity.

Civil Code article 2493.

Article 534 – Falsity of authentic documents - The falsity of the document may arise :-I. When the document is fake.

2. When some of the parties mentioned therein either as parties or as witnesses are fake.
3. If some act is mentioned therein as done when really it has not been performed. 4. There is vitiation in the context, date or signature of the document.

Civil Code article 2496.

Article 535 – **Verification of authenticity** - The documents of the period before the sixteenth century, whose authenticity is contested, shall not constitute evidence without previous diplomatic examination done in the '*Torre de Tombo'*[6] from which results its authenticity.

[6]*Torre de Tombo' = 'tower of records', is the Portuguese National Archives.*

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Sole Paragraph: This examination shall be ordered by the director of archives, by virtue of the order of the respective court.

- Article 2497 of the Civil Code.

Article 536 – Definition and probative value of authenticated documents - An authenticated document is a private document with authentic recognition. The authenticated documents have the same probatory force as authentic documents.

- Article 160, paragraph 2; article 204, paragraph 1 and article 205 of the Notarial Code.

Article 537 – **Private documents** - Private documents are the ones that are written or signed by any person, without intervention of a public officer, and which are not authentically recognized.

- Article 2431 of the Civil Code.

Article 538 – **Disputing the documents** - The text and the signature on a private document shall be considered as recognized when it is not expressly challenged by the party against whom the document is produced.

The challenge may assume two forms. The person challenging can put up a case of falsity or can limit himself to declaring that he does not accept the text and the signature as true. In the first case, it is incumbent upon the person challenging to prove the falsity by following proper procedure; in the second case, it is incumbent upon the party which produced the document to convince of its veracity, by examination or by any other mode of proof. In both the cases, the challenge shall be made within the period in which the falsity of documents may be argued.

- Article 365 of this code.

Article 539 –Effect of admitting signature - If the party recognizes, expressly or impliedly, the signature on a private document as true, or if the signature is judicially regarded as recognized, the text of the document has to be considered as true, except in case where signature has been affixed by a third person at the request of the executants, or if the party alleges and proves that the document was blank, in full in part, when signed, and that the blank portion of document has been filled without any authority.

§ 1: When the document contains marginal notes, interlineations, erasures, or amendments, such alterations shall have validity if those words have been repeated before the signature or if is \

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shown as made by the signatory himself.

§ 2: The abuse in filling up a document consists in inserting recitals or stipulations contrary to what is agreed upon with the signatory.

- Article 2432 and 2433 of the Civil Code.

Article 540 – Value of signature on request - The signature on request shall be considered to be true when it is recognized by the notary with the declaration that the request was made in his presence, or when the party which ought to oppose the document, recognizes that the request was made, or when it is accompanied by the fingerprint of the person making the request.

The veracity of the document is to be inferred from the veracity of the signature at request when it is proved that the person for whom, or in whose name, the document is signed knows and can read its contents.

- Article 2434 of Civil Code, Notarial Law in force in Goa, Daman and Diu. Approved by Law No.8373 dated 18/09/1922, Article 75 clause 7.

Article 541 – Value of documents not usually signed - The entries, domestic registers and other writings which are not usually signed shall be considered to be arising from the person to whom it is attributed if the party which ought to oppose does not challenge them in terms of what is contained in article 538. In case of challenge, the provisions contained in the same article shall be observed.

- Article 2439 and 2440 of Civil Code.

Article 542 – **Probative value of private documents reputed as true** - The private documents, the veracity of which is established in terms of articles 538 to 541, prove that the executants of the

documents made the declarations referred in it. The facts consistent with those documents shall be considered to be correct, in so far as they are contrary to the interests of their executants; but the person who seeks to take the benefit of such facts also has to accept the facts contained in such documents which are not favourable or otherwise prove that they are not true.

§ Sole Paragraph: The private writing is not a proof against person who has written or signed it, if it was intended to leave his possession, but never did, except if it is shown that the retention was improper.

- Article 2432 and 2433 of Civil Code.

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Article 543 – **Free judicial appreciation of other documents** - The veracity of the private documents which are not contained in the conditions foreseen in articles 538 to 541 shall be freely appreciated by the judge.

Article 544 – **Value of creditor's notice on the credit instrument** - Notings written by the creditor, at the follow-up, in the margin or at the reverse of any document of obligation, although neither dated not signed, constitutes evidence in favour of the debtor.

- Article 2438 of the Civil Code.

Article 545 – Date of private documents in relation to third parties - In respect of third persons, the private documents shall be considered as bearing the date of the day on which any of the following facts have taken place:

1. The authentic recognition of the writing;
2. The death of any of the signatories;
3. The filing of any document in the court or in any public department.

- Article 2436 of Civil Code.

Article 546 – Burden on the person to whom document is attributed - The person who opposes any writing, ostensibly made or signed by him, shall be required, to declare if the writing or the signature is effectively his, if the person producing the document so demands.

- Article 2435 of the Civil Code.

Article 547 – **Value of photographs of document** - The photocopy of a document is valid only as starting point of evidence.

Article 548 – Reconstruction of documents - The documents which have in any manner disappeared may be reconstructed under the supervision of the Court.

Article 549 – **Legalization of documents issued in foreign country** - The authentic documents executed in foreign countries, in conformity of the law of that country, shall constitute proof in the same manner as documents of same nature drawn or issued in Portugal, provided that the signature of the public officer is recognizance by diplomatic agent or the Portuguese consulate in the respective state and the signature of such agent is recognized in Portugal in the ministry of foreign affairs.

§ Sole Paragraph: If the private documents drawn outside Portugal have been validated by a foreign public officer, the validation shall not be of any effect till it has obtained the recognition as is required under this article.

- Article 2430 Civil Code.

SUB-SECTION II

PRODUCTION OF DOCUMENTARY EVIDENCE

Article 550 – **At what stage documents are to be tendered** - The documents intended to be produced in support of the action or of the defence shall be filed along with the pleading in which the facts intended to be proved are pleaded.

If not, they may be produced later until the end of the trial in the first instance, but the party shall be liable to pay fine, except where it is proved that he could not file them till that time.
After the conclusion of the trial, the documents which could not be filed until that stage shall be admitted only in case of appeal.
The documents intended to be used as evidence of the facts occurred subsequent to the pleadings, or the filing of which has become necessary by virtue of such subsequent occurrence, may be produced at any stage of the proceeding.
§ Sole Paragraph: The opinion of advocates, professors, or technical persons, which may be filed at any stage of the proceedings, shall not be treated as documents.

Article 551 – **Notice to opposite party** - When the documents are filed with the last pleading, or subsequently, the filing shall be notified to the opposite party; except in case where he is present or if the documents are filed with pleas which allow reply.

Article 552 – **Possibility of using documents in the possession of the Opposite Party** - When the party intents to make use of the document which is in possession of the opposite party, he shall apply that the opposite party shall be notified to produce on record the document within the

prescribed period. The application shall indicate of what the document forms a part and what are

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the facts that are intended to be proved by means of the document.

If these facts are covered by the issues, or if they satisfy the necessary requirement to be included for production of such documents, notice shall be issued.

Article 553 – **Penalty for the party who does not furnish the documents** - If the party that is notified, neither files the document, nor makes any declaration, the facts which are proposed to prove, are deemed to be true and correct. The same facts shall also be considered to have been proved when the person notified admits that the document is in his possession and refuses to produce the same or when he declares that the document is in a specific place or in the possession of a third person and it is found that such declaration is not true.

If the person notified declares that he does not possess the document, the applicant shall be allowed to prove, by any means, that the declaration is not true. The court shall freely appreciate such evidence and confirm the conviction at which it arrives, and shall thereby apply or not the sanction as provided in the first part of this article.
§ Sole Paragraph: The declaration which is referred in the second part of this article shall be irrelevant when the party has already affirmed that he is in possession of the document or has made references or acted upon the facts from which his possession can be necessarily inferred, save in case where he produces evidence which affirms the involuntarily destruction or loss of the document.

Article 554 – **Use of documents in the power of third persons** - If the document is in possession of a third person, the party shall apply that the possessor be notified to deliver the said document in the office within such period as is prescribed. The provision of article 552 is applicable to the application and order under this article.

§ 1: If the document is delivered, it shall be made a part of the record.
§ 2: If the person notified neither delivers the document nor makes any declaration, the judge can order necessary steps for seizure and shall impose fine on the person notified. The same shall happen

when he declares that he does not possess the document and the applicant produces evidence to show that the statement is not true.

§ 3: If the third person pleads reasonable cause for not having effected the delivery, he shall be bound, under the sanctions prescribed in the previous paragraph, to make available the document

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for the purpose of being photographed, judicially examined or to draw necessary copies of it.§ 4: The provisions of this article and its paragraph do not apply to commercial book keeping or documents relating to it.

Article 555 – **Requisition of documents by Judge** - The court may, suo moto or upon the application of any of the parties, requisition particulars, technical opinions, documents, maps, photographs, drawings or objects which it considers necessary for the clarification of the truth. The requisition may be made from any public offices, from the parties to the suit or the third parties.

§ 1: The Government offices are bound to comply with the requisition, except if it relates to the confidential matter or reserved category or to proceeding in camera.

§ 2: The parties and third persons who do not comply with the order shall be liable to pay fine, except if they justify their stand, without prejudice to employment of coercive measures which are required for the purpose of enforcement.

§ 3: The expenses incurred on account of the requisition shall be charged as costs payable to the Government offices and for the third party which has initiated the procedural step or to whom it benefits.

§ 4: The production shall be notified to the parties, strangers to the requisition or to such production.

Article 556 – **Power to refuse irrelevant or unnecessary documents** - The court has the power to refuse the production of impertinent and unnecessary documents and to order that such documents be withdrawn from the proceedings.

Article 557 – **Destiny of documents** - The documents shall form part of the proceedings and cannot be withdrawn until the judgment or the order which ends the suit operates as res judicata. If the retaining of the documents as a part of the proceedings is not convenient, it shall be determined, suo moto or on the application of the parties, that the documents be kept in the custody of the court office, without prejudice to the right of the interested parties to examine them.

§ 1: At the end of the suit, the documents belonging to the third persons shall be immediately

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delivered to them and those of the parties shall only be delivered to them by way of an application made in that regard. In respect of the certificate of documents which permanently exist in government departments, the indication of the department and of the book and its respective place shall remain in the records; in respect of other types of documents, the indication of the type of the document and that of the person who had delivered it shall remain in the records.

§ 2: The documents referred in the first part of the second phase of article 167, shall be delivered to the respective parties independent of the application made by them.

§ 3: The documents can be delivered even before the end of the suit when the person to whom it pertains justifies the necessity for its immediate restitution. In such a case, the entire copy shall remain in the record and the person to whom it pertains shall always be bound to produce the original when the same is demanded.

Article 558 – **Sanctions for violation of fiscal laws** - The documents which are not properly stamped or which relate to transactions which are subject to tax, and do not show if such tax is paid promised in terms of the law applicable, shall not be admissible, without prejudice to the appreciation of the respective records of violation.

Article 559 – Copies of illegible documents - If the writing on the document is difficult to read, the party shall be bound to furnish a legible copy.

If the party does not comply with the same, it shall be liable to pay fine and the copy shall be produced on record at the cost of such party.

SECTION III

PROOF BY ADMISSION OF THE PARTIES

SUB-SECTION I

KINDS OF ADMISSION AND ITS PROBATORY FORCE

Article 560 - Admission - Admission is the recognition by a party of the right of the opposite party or of the truth of the fact pleaded by the latter.

- Article 2408 of Civil Code.

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Article 561 – Kinds of admission - Admission may be judicial or extra-judicial.

- Article 2409 of Civil Code

Article 562 – **Judicial admission** - Judicial admissions may be made in the pleadings, by record, in the deposition or in any other manner admissible in the proceeding.

The admission in deposition can only be made by the party himself. The admission by record can be made by the party or by the holder of mandate with special powers.

- Article 2410 of Civil Code.

Article 563 – From whom deposition of party can be sought - The deposition of the party may be demanded from the persons who have judicial capacity.

The deposition of minors of more than fourteen years of age and of the interdicted by prodigality, as well as that of the representatives of incapable persons and of the collective persons can be applied for; the deposition shall have the value of admission to the precise extent to which the persons making them can be bound, and such admissions may also bind their representatives. Each of the parties can not only apply for the deposition of the opposite party, but also for his fellow parties.

The deposition of the person assisting the case can also be applied for.

- Article 2411 of the Civil Code.

Article 564 – Facts of which deposition can be sought - The deposition may relate to the facts of which the deponent has personal knowledge or of which the deponent ought to have knowledge not being in respect of facts of criminal nature or involving moral turpitude in respect of which the party has been prosecuted.

- Article 2411, no.2 of the Civil Code.

Article 565 – Probative value of judicial admission - Judicial admission constitutes conclusive proof against the party making such admission, except:

1. If it is declared insufficient by law or if it depends on a fact, the recognition or investigation of which is prohibited by law.

2. If it results in loss of rights that the person making the admission cannot renounce or, in respect

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of which, he cannot transact.

§ Sole paragraph: An admission made by an advocate appointed by Court or by Public Ministry, as representative of the State, of uncertain persons or of the absentees has no probative value.

- Article 2412 of Civil Code

Article 566 – Value of deposition of assistant at the request of co-party - The deposition of the assistant called for on the application of a fellow party shall be freely appreciated by the judge, taking into consideration the circumstances and the position of the person who deposes and who applied for it.

Article 567 – Revocation of Judicial confession - Judicial admission can be revoked only in case of an error of fact, in a suit filed for this purpose. The act of revocation does not obstruct the progress of the suit in which the admission is made.

- Article 2413 of Civil Code

Article 568 – Extra Judicial admission – Extra judicial admission can be authentic or private. The first is the one that is done by public deed or public act; the second is the one that is done verbally or by a private document.

- Civil Code Article 2414 and 2415.

Article 569 – Evidentiary value of extra judicial admission – Evidentiary value of extra-judicial admission shall depend upon the form in which it has been made. If it is verbal, the rules relating to oral evidence shall be applicable; if written, the rules relating to documentary evidence shall be applicable.

- Article 2416 of the Civil Code.

Article 570 – Non retractability of admission - The admission is, in principle, irrevocable. But the admission of facts, expressed in the pleadings can be revoked until the opposite party has specifically accepted the same.

Article 571 – Indivisibility of admission - Admission is not severable. He, who desires to take benefit of the part of the admission that is favourable, has to also accept that part of it which is

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not favourable.

Where in the admission made by a party in answer to the cross examination posed to him, he has added new facts which serve as a ground for an exception or a counterclaim in his favour, it shall be severable.

- Article 2417 of the Civil Code.

SUB SECTION II

RECORDING OF DEPOSITION OF PARTY

Article 572 – Application for recording - Where the examination of a party is sought, the facts over which such examination is sought shall be specifically mentioned failing which examination shall not be permitted.

The party shall be notified with a warning that if he fails to appear, the facts in respect of which examination is sought shall be deemed as admitted.

Article 573 – Where it is recorded - The questions shall be given at the time of the trial, except where the deponent resides in the different jurisdiction, if he is unable to put in appearance before in the court or it is urgent. The court may, however, direct that the questions be answered at the hearing of the trial, by a party residing outside the judicial district in which the suit is in progress if it adjudges it necessary and the obligation for appearance would not result in a grave sacrifice for such party.

§ Sole Paragraph: Where it is shown that the party is unable to appear in the court, the questions shall be answered at the residence of such party.

- See also Article 653 (b) of this Code.

Article 574 – Sanctions for non appearance - The party, personally notified to answer the questions on the prescribed day and time does not appear, the facts in respect of which the answer were to be sought and he had an obligation to answer shall be deemed to have been admitted, if in the following 5 days from day for which he was notified, he does not prove a just impediment.

The penalty shall be the same of having appeared and refused to the answer the questions.

§ Sole paragraph: If the party proves just impediment, a new day shall be designated for answering the question, either in the court or at the residence, depending on the circumstances. If

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illness is the cause of the impediment, the judge get may get the party examined by a doctor of his own choice.

Article 575 – Order of deposition - If both the parties have to answer the cross examinations before the court, the defendant shall answer first and thereafter the plaintiff. If more than one plaintiff or defendant have to answer the question, their fellow parties who have not yet deposed shall not be allowed to remain present for the recording of evidence of any of them and when they have to be examined on the same day, they shall be gathered in a hall, from where they shall emerge in the order in which they have to depose.

Article 576 – Oath - Before the deposition, the court shall impress upon the deponent the moral significance of the oath that he will perform and the duty that is on him to be scrupulously faithful to the truth, cautioning him about the sanctions that result from false declarations; and thereafter shall call upon the party to take the following oath "I swear before God, that I will state the full truth and only the truth".

If the deponent declares that he prefers to swear upon his honour, the oath shall be as follows: "I swear by my honour and by my conscience that I will speak the full truth and only the truth".

§ Sole paragraph: The refusal to take the oath amounts to refusal to answer the questions.

Article 577 – Interrogation and replies - The judge shall interrogate the party on each of the facts which should be the object of the deposition. The deponent shall reply to the questions put to him with precision and clarity, and the opposite party may seek the clarifications required to clarify and complete the reply.

§ 1: The party cannot bring his answers in writing; but he can take the help of any document or note of dates or facts, to answer the questions that are put to him.

§ 2: When the party states that he does not remember or that he does not know, the fact is to be considered to be admitted.

- See also Article 494, paragraph 1 of this Code.

Article 578 –Intervention of advocates - The advocates of the parties may remain present while the party is answering the questions in the cross examination, and apply for what they think fit;

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but they are not to question the party.

§ Sole paragraph: If it appears to the advocate for the deponent that the question is inadmissible, in form or in essence, he shall raise objection to the opposition, it shall be decided immediately.

Article 579 – Recording of deposition - The answers to the questions shall be written when the answers are not given before the collective court. The writing is to be done by the judge, and the parties of their advocates may raise objections as they think fit. The judge shall reproduce with great integrity and brevity, the declarations of the party answering the questions. On the completion of the

questioning, the same shall be read to the party who shall, confirm or seek to make rectification, which may be adjudged necessary. The answers to the questions shall be made a part of the record.

SECTION IV

OATH

Article 580 – **Abolition of oath as a form of evidence** - Oath is abolished as a mode of evidence, as much in respect of merits as in case of supplementary proceedings.

SECTION V

EVIDENCE BY ARBITRAMENT

SUB-SECTION I

TYPES OF ARBITRAMENT AND THEIR EVIDENTIARY VALUE

Article 581 – **Types of arbitrament** - Evidence through arbitrament may consist in examination (in case of movables), inspection (in case of immovables) or valuation.

The examinations and inspections have the purpose of investigating the facts which have left marks or signs or can be subject to inspection or visual examination.
If the investigation is of movables it is called examination; if it is in respect of immovables it is called inspection.

The valuation has the purpose of finding the value of assets or rights.

- See Article 2418 of Civil Code.
- **Articles 581-606** - There is also evidence by Arbitrament.
- This is much more detailed than our provisions of appointment of commissioner, inspection, experts etc.

Comment – Arbitrament means investigation into facts which have left marks or signs or can be subject to inspection or visual examination; as also determination of value of assets and rights. Examination is for movables. Inspection ("vistoria"), normally site inspection is for immovables. The word "vistoria" literally means an eye's look or a look with the eye.

1. Arbitrament is different from arbitration.
2. Article 2418 of the Civil Code - The evidence by way of experts, of moveables or immoveables, is meant to investigate facts which have left vestiges or may be subject of examinations or subject of inspection.
3. Vistoria means inspection, surveying or visit. It is an inspection accompanied by experts from both the sides and also expert appointed by the judges who express their opinion on the subject.
4. Arbitrament is an opinion expressed freely by the person appointed for the purpose. There are suits which are decided through arbitrament viz. under article 1051 to 1067. It is different from arbitral tribunal.
5. Portuguese Civil Procedure Code in article 1561 provides for arbitration as in Arbitration Act.

Article 582 – **Evidentiary value of examination and inspection** - The probative value of an examination and of an inspection shall be freely appreciated.

- See Article 2419 of Civil Code.

Article 583 – **Evidentiary value of assessment** - When the valuation depends solely of arithmetic operations or quotations in the official list, the valuations shall be based on these.

In other cases of the final fixation of the value is the function of the judge who shall to attend to all the data available in the file and shall collect all the necessary information and may also hold judicial inspections if found necessary.

- See also Article 616 of this Code.

SUB-SECTION II

EXAMINATION AND INSPECTION

Article 584 – **Stage upto which examinations and inspection may be sought** - The arbitrament by way of examination or inspection and the production of the full books of account may be

applied for within five days from the day notice of article 516 is given, but if subsequently more

documents are annexed and the opposite party doesn't agree to accept the handwriting and the signature, it is lawful to ask for examination of such documents: within five days next after the declaration or knowledge of the same by the party who produced them.

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§ Sole paragraph: The party who applied for such procedural step is not entitled to withdraw the same without the consent of the opposite party.

Article 585 – Framing of queries - The party who applies for examination or inspection shall present the queries to be replied by the experts. If the court is of the view that the procedural step applied for is neither irrelevant nor dilatory, it shall issue notice to the opposite party to present its queries; the court further shall upon examination of the queries shall declare which of the queries do not form part of the questionnaire and then will fix the day and time for the appointment of the experts.

§ 1: Each party may formulate queries on all the items of the questionnaire even though they have been formulated by the opposite party.
§ 2: The parties may apply that the queries formulated be kept secret till the date of the inspection, when there is apprehension of alteration of the facts which the experts are to inquire. If the court finds that the apprehension is well founded it shall keep the queries duly sealed and issue the order for carrying out the inspection in the general manner.
§ 3: Till the date of the inspection the court may formulate queries which are found convenient.§ 4: If till the date fixed for appointment of the experts the parties produce application in writing signed by both the parties with the mention of one or three experts appointed by them by agreement, such application shall be annexed to the file, as acceptance of the appointment made by the parties.

Article 586 – **Appointment of experts** - If the parties are in agreement they shall choose one or three experts. In the absence of the agreement each party shall choose one and the judge shall appoint the third.

If the arbitrament has been ordered suo moto and the question of fact is of great simplicity, the procedural step shall be carried by a sole expert appointed by the judge.

In the first arbitrament, there shall be not more than three experts.
§ 1: If there is more than one plaintiff or more than one defendant the appointment shall be done by those who are present and in case of disagreement, the opinion of the majority will prevail. If the plaintiffs and defendants are not present or there is no agreement between them for majority,

power vests in the judge.

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If both the parties are absent, it is understood that they have withdrawn their prayer for examination by experts.

§ 2: Where the parties are not in agreement as to the appointment of the expert the appointment shall be done in the first place by the judge, and if possible a specialized functionary will be chosen. The parties are not entitled to choose functionary of a rank superior to the one appointed by the Court.

Article 587 – **Appointment of experts for steps to be taken through letter** - If the examination or inspection has to be made by letter of request, the appointment of the experts shall take place before the court where letter of request is addressed, except where till the dispatch of the letter of request, parties, by application, indicate the experts as per paragraph 4 of article 585. In such case such application shall be forwarded along with letter of request.

Article 588 – Impediments – The following persons cannot act as experts:
1. President of the Republic;

2. Members of the government;
3. Members of National Assembly; and of the Corporate Chamber when they are in active exercise of their functions, except if assembly or chamber gives them permission.
4. Archbishops and Bishops;
5. The military staff in effective service and government servants who are to render service in the secretariat or offices; except if permission from their superior is obtained;
6. The government servants in cases in which one of the parties is the government.
7. The government servants of the general administration of water and electricity department who are rendering service in particular division, if the dispute is in connection with supply of water or works connected thereto.
8. Those who do not have the qualification and to hold arbitrament when the same involves special knowledge
9. Those who are incapable to depose as witnesses

§ 1: In the case of nos. 3 and 5, the appointment will be of no effect, if till that day the sanction from higher authorities or permission has not been produced. However the licence as required as clause no. 5 is not necessary when the government servant intervenes by virtue of provision of

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law and the government servant has been appointed considering his special and technical competence.

§ 2: The impediments referred to in clauses no 6 and 7 cease in case the respective employees have been appointed by the government or by the court.

§ 3: The impediments may be opposed by the opposite party or by the experts and may be raised suo moto till the date of the inspection. But breach of clauses no. 6 and 7 read with Paragraph 2 will give rise to nullity of the procedural step which can be raised by the opposite party and shall be declared ex officio till the date of the judgment in the first instance; besides the government officer appointed should recuse from intervening until he is expressly ordered by the court, failing which he incurs disciplinary liability.

- See Articles 623 and 624 of this Code.

Article 589 – Exemptions - The following persons may refuse to act as experts:

1. The councilors of the State, judges and magistrate of the Public Ministry in effective service; 2. Ecclesiastics in charge of souls;
3. Those who are of more than 70 years of age.

§ 1: The recusal shall be sought by the appointee within the period of 24 hours from the date of the communication made to him and the same is to be granted provided the ground invoked is satisfied.

§ 2: In the case of clause 3 the applicant shall produce certified copy of the birth registration or produce the identity card. If it is not possible to produce immediately the said document, the same shall be done within next three days. In the case of no. 1 and 2 the applicant is not bound to produce the proof of the ground alleged. If the judge has doubts he will hear the parties and may ask for the information which he deems fit.

Article 590 – Recusals - The experts may be permitted to recuse on the same grounds available to the judges, in accordance with article 127 and also those mentioned in clauses no 2 and 4 of article 122 in the part in which these grounds do not constitute impediment in terms of clause no 9 of Article 588.

The recusal may be opposed by any party, when appointed by the court and by opposite party if the expert is appointed by the parties. The objection may take place till three days after the appointment.

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§ 1: If the recusal is raised at the stage of appointment the same shall be decided immediately and

work of the examination shall be continued except where the expert who recuses has to produce evidence which is unable to produce immediately. The decision on recusal may be adjourned and will be passed on the designated day within the period of eight days and the appointment will become final without any further notice.

§ 2: In the Judicial divisions where there is more than one court, the arbitrament shall be suspended as soon as there is a recusal and the same shall be decided by the judge after following what is prescribed by the preceding paragraphs.

§ 3: Save in the case of extreme emergency between the day of appointment of the expert and the date fixed for the purpose of the judicial work at least three days gap shall be maintained.

Article 591 – **Finality of decisions** - From the decision passed on impediments, excuses and recusal no appeal lies.

Article 592 – **Record of appointment of experts** - If at the time of appointment of experts no objection of any kind is raised, note will be made on the file about the appointment of each of expert and by whom he was appointed. In case any question arises the same shall be recorded in the file.

Article 593 – **New appointment** - If the recusal of any appointment is held maintainable, or experts appointed have expired or could not be summoned and it was not possible to hold the inspection on account of supervening motive or unforeseen circumstance, the parties by agreement or respective party may make fresh appointment provided that the step fixed is not adjourned.

In all other cases including granting of recusal and impediment raised after the act of the appointment, the power to substitute is within the jurisdiction of the court, there being no ground for making application for recusal if the party has chosen another expert. The same procedure shall be followed when any expert does not appear on any ground.

§ Sole paragraph: If the party is entitled to make fresh appointment the same may be made by application before the date fixed for inspection and opposite party shall be given notice or may ask for recusal within the next 24 hours and even at the time of the inspection.

In the last case if there is a recusal which has been accepted by the court and party is unable to make substitution, the fresh appointment is to be made by the court and party is prohibited from raising objection against the appointment by the expert who has tendered the refusal.

Article 594 – Experts from outside jurisdiction - The parties may chose experts from outside the judicial division, who shall not be notified, but the party who nominated them being bound to ensure their attendance.

The court may appoint experts from outside when there are no fit persons within the judicial division as the matter requires specialized knowledge. In this case the emoluments to be paid to the experts shall be fixed by the court taking into consideration time and importance of the work and category of the person who has rendered the service and inconvenience sustained by him. Allowances shall be paid to the experts in advance for their dislocation.

Article 595 – Experts which Court should appoint - In all the questions over the waters and related works which are not private in nature, the judge shall always appoint as expert, an engineer from the concerned office of the water resources department.

In the case of examination of accounts and commercial book keeping judge shall appoint judicial administrators in the case of insolvency; when this is not possible the appointment shall be of persons qualified through institutions of middle or higher education in commerce if available. In other examination and inspection which require technical knowledge the experts appointed by the court shall, as far as possible, be appointed from amongst the officials from the respective services.

Article 596 – **Commencement of steps** - Once the experts have been appointed date time and place will be fixed for the starting to the inspection. The experts who were to be produced by the parties shall not be notified, even if they reside in the judicial division of the proceedings.

Article 597 – **Inspection by experts** - The experts shall solemnly undertake to perform the functions which have been entrusted to them and after receiving the queries shall hold the inspection in making necessary inquiry to be able to respond to the queries. The judge shall be

present to the inspection if his presence is solicited by the parties and that event costs shall be

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borne by the applicant. The parties may for themselves or through their advocates make necessary observations which they deemed fit and shall furnish the clarifications sought by the experts. If the judge is present, they may also make any application which is found necessary in relation to the object of the inspection.

The experts have the right to avail of all the necessary means for proper exercise of their functions. They may also solicit the information from the file. However they cannot make any change at the site like destruction, elimination of the thing submitted to their inspection without any order from the court.

Article 598 – **Fixing time for steps** - Whenever presence of the judge is not solicited, the latter shall fix the time within which the inspection will be carried and the same procedure shall be followed when presence of the judge was solicited and the inspection does not end on the same day.

At the end of each section, the expert shall give the knowledge to the parties of the day when the inspection is to be continued.

§ 1: The time may be extended once, if there is a justified reason.
§ 2: If any of the expert appointed by the parties does not give his report within the time, the report will be collected only from the other experts.
If the defaulter is the expert appointed by the court, in his substitution new is appointed and fine will be imposed on the former.
§ 3: Between the conclusion of the inspection and hearing of the case time gap should be the minimum.

Article 599 – **Reply to queries** - When the experts are ready to answer the queries they will report the matter to the office. Thereupon the judge will fix the date for their replies which shall be given in the presence of the judge at the site but in the case of examination they may be given in the court. Thereafter a report shall be made where after each query respective answer is written, indicating whether it is given by all the experts or by some of them and in the affirmative by whom.

The experts should submit their opinion in resume but with justification; however, they may submit also a detailed report where they have noted what verification they made in lower court,

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which information they collected and from whom and what is their opinion on the facts they collected. In this case, the report shall contain queries and answers to each of them with great clarity and simplicity.

§ Sole paragraph: Where the judge attends the inspection and the experts are able to give their opinion on the same day; report with answers shall be immediately prepared.

Article 600 – **Objections** - Parties are not to be remain present at the time of the replies; but they are to be read to them after they are written. If they are of the view that there are some deficiencies, obscurity and contradiction, they may formulate immediately their objections; if they are accepted by

the judge, he will direct the experts complete, harmonize or clarify their replies of all the details mentioned in the report.

Article 601 – **Verification of correctness of plans and other documents finalized by parties** -If the parties have produced plans, drawings, photography's or any other type of graphic expression, the experts are bound to either to acknowledge their correctness or point out the differences which are found therein.

Article 602 – Filing of exhibits by experts - It is lawful to the experts to present drawings, plans, maps or any other documents so as to clarify or justify their opinion; but for the purposes of accounting, only on those will be considered which the court finds useful.

Article 603 – **Examination of handwriting** - Examination for the purpose of identifying hand writing shall have for its basis the comparison of the handwriting which is intended to be identified with another which is known as being of the person to whom it is attributed. In order to make the comparison, the judge may requisition any documents which exist in the archives or public offices.

The examination takes place in the office or archives if the documents cannot be taken there from. If there is no writing with which any comparison can be made of the hand writing to be examined, the person to whom the hand writing is attributed shall be notified personally to write, in the presence of the experts, the words which they may indicate. If the person resides in another

judicial division letter of request shall be issued accompanied with a paper sealed containing the

indication of the words that the notice shall write in the presence of the judge where the letter of request has been addressed.

The letter shall be remitted and returned officially.

Article 604 – **Examination by official scientific agencies** - In the judicial division of Lisbon, Porto and Coimbra, all medico-forensic examinations shall be done by the Institute of Legal medicine, those of acknowledgment or hand writing and any other which the same institute are specially equipped to conduct. In the same judicial division is the examination which require particular knowledge of some clinical speciality or which demand investigation proper of laboratories or adequate scientific institutes shall be made in the respective official establishment by the professors or technicians of the same establishment.

Whatever is provided above has application to any other Judicial division as to the things or persons which may be the subject of examination may, without inconvenient be transported to the seat of the institute or establishment.

The examination shall be made in Lisbon, Porto or Coimbra, according to the High Court Jurisdiction to which the Court belongs.

Article 605 – **Examination by scientific establishment** - The examination referred to in the previous article shall be requisitioned to the director of concerned institute or official establishment by way of official letter signed by the judge which shall indicate the facts to be inquired and the time to conclude the examination to maintain the normal course of the proceedings.

The result of the examination shall be submitted as a report addressed to the judge. Along with the report the parties shall be given notice and they may object within three days against any deficiency or obscurity or apply, within legal time for a second examination by the Medico Legal Council, if the first examination was made by the Institute of Legal Medicine, in the rest to the extent applicable, provisions relating to medico-forensic examinations in penal proceeding shall apply.

Article 606 – **Appearance of experts at hearing** - The experts shall be notified to appear at the time of trial and they shall furnish all the clarifications which may be asked from them.

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If they reside in another Judicial division, the parties may produce them voluntarily and the judge may order that the third expert be notified by letter of request to appear.

SUB SECTION III

VALUATION

Article 607 - **Legal principles for valuation** -In the determination of the value of assets, the following shall be observed:

1. The properties will be valued, taking as basis the net income recorded in the matriz failing which the average income or produce of the last five years; when the income is in kind, the average market price during the same period shall be considered. After deducting the expenses towards cultivation and conservation, where there is no collectible income and upon multiplying the net income by 20 installment the normal value shall be obtained, which may be increased or decreased depending upon the length of the period for which income can be increased or decreased so long as the land yields the same produce or rent or the use to which it can be put up or any other circumstances which may have bearing on the market value;

2. The movables shall be valued taking into consideration their substance, utility, and state of conservation. If they generate any income, the same shall be taken as basis for fixation of rent, in accordance with the preceding number;

3. The value of any other perpetual or temporary installment, which should be realized during 20 years or more shall be equal to 20 annual installments. The value of annual installment, whenever it is in kind shall be fixed by the average price of the commodities during last five years; the prices fixed by municipality if there is any and is accepted by the parties shall indicate average price.

If the installment is emphyteutic and if there is any '*laudemium'* (premium payable for transfer of emphyteusis; acknowledgement money), the valuation of "dominion directum" shall be obtained adding one more installment to the capital of 20 installments. The value of the '*laudemium'* shall be obtained by deducting from the value of the property the amount corresponding to 20 installment and dividing the rest by the rate of the instalment plus one;

4. The value of any other temporary installment shall be fixed by the sum of installments yet to be paid, after making necessary deductions so that the capital and the respective annual interest of

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5% make up at the end of the period the total amount of the installment yet to be paid;

5. The value of the usufruct, of the use and habitation of permanent nature shall be obtained multiplying by 10 the annual income; but the produce may be increased or decreased depending upon the probable duration of the respective right;

6. The rights of easement and similar rights shall be calculated by approximate estimate of benefits which are derived from easement and the burdens towards inconvenience caused; 7. Value of any right and suit shall be determined taking into consideration the difficulties to make the right effective;

8. Value of the foreign currency, shares, documents and certificates of public debt and other securities and commodities which have an official quotation or listed price, shall be the said quotation or listed price;

9. The value of a commercial or industrial establishment, considered as an unit and of the shares of the companies, by other than share holding shall be determined by the latest balance sheet.§ Sole paragraph: If the shares or securities have no listed official price the value shall be fixed by the Chamber of Brokers and by annexing to the file the respective declaration.

- **Articles 607-612 -** Valuation rules would be applicable for Inventory Proceedings but they would need to be amended and updated to meet present circumstances.

Article 608 – **Who does the valuation** - The valuation shall be done by the office when it is dependent solely on arithmetical calculations and by experts when inquiry or inspection is needed. In the case of *"dominium directum"* with *'laudemium'*, the experts shall only determine the annual value of the installment in kind if necessary and value of the property and the rest is done by the office; in the case of no. 4 of the previous article fixation will be done if necessary of the annual installment in kind.

The value of the precious stones and precious metal shall be done by one expert appointed by the judge preferably amongst the goldsmiths.

Article 609 – **Valuation by experts** - The valuation shall be done by the experts without assistance of the judge on the basis of list of the assets with all particulars being duly numbered and described. Below such list the value with reference to each number will be given and giving reasons in accordance with the legal basis and the outcome of the operation.

If there is any deficiency or wrong description, necessary additions and rectifications will be done.

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§ Sole paragraph: If the valuation is not done within time the experts shall be fined.

Article 610 – **Rectification of valuation** – If, after the valuation is done, it is found that the circumstances are different from those which were considered, the value shall be rectified by office, wherever possible, otherwise by the experts who intervened.

Article 611 – **Error in calculation** - If there is an error in the valuation or final assessment made in any account which does not relate to the cost, any party may require rectification of such error within five days from the notice.

On the application the other side will be heard. If the later party agrees that there is error then the final account will be reviewed depending upon the agreement. If there is no agreement the judge will direct the office to give its say and thereafter to pass a decision.

Article 612 – **Use of the regime of examination and inspection** - In all the other aspects wherever applicable what is provided in the previous sub section will follow.

SUB- SECTION IV

SECOND ARBITRAMENT

Article 613 – **Time and purpose of second arbitrament** - Any party may apply for a second examination, inspection or valuation within a period of eight days after the conclusion of the first and the court suo moto may also, at any time, direct it, if found necessary.

The second arbitrament is meant for investigation of same facts or fixation of the value of the same assets which were the subject matter of the first.

Article 614 – **Regime for second arbitrament** - The second arbitrament is governed by the same provisions established for the first except following modifications;

1. In the second arbitrament the experts of the first arbitrament shall not intervene nor may the experts be of an official rank lower than the former;
2. The number of experts for the second arbitrament shall be two more than in the first;
3. If the experts are five then in the absence of agreement each party appoints two and the judge appoints the fifth.

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Article 615 – **Value of the second arbitrament** - The second arbitrament does not invalidate the first. The court may freely appreciate one and the other considering the circumstances and other evidence which may be produced.

SECTION VI
JUDICIAL INSPECTION

Article 616 – **Purpose** - The judge or collective court whenever found necessary, may, by its own initiative or upon the application of the parties, visit the site in question, in order to inspect the site to satisfy about any fact which is necessary for the decision of the case. Such a step may also serve the purpose of the judge appraising the site in order to frame questionnaire to which reference is made in article 515.

- **Articles 616-619** – Judicial Inspection

Article 617 – **Intervention of parties** - The parties shall be notified of the date and time of the inspection and they may themselves or through advocate furnish to the judge the clarification desired by the judge and also to bring to his notice the facts which are of interest for the resolution of the dispute.

Article 618 – **Technical assistance** - The judge may be accompanied by a person who has the technical competence to clarify in respect of examination and interpretation of the facts which require consideration. Such person shall be designated in the order which directs the inspection and requisitioned from the concerned office, if he is a public functionary, or notified to remain present.

§ Sole paragraph: The technician shall also be requisitioned to remain present at the trial, when the inspection has not been carried by the collective court.

Article 619 – **Inspection report** - When such procedural step is not carried by the collective court, record shall be made, in which whatever is relevant for the decision shall be noted.

The result of the inspection shall be recorded and it will be freely appreciated by the judge.

SECTION VII
ORAL EVIDENCE

SUB- SECTION I
ADMISSIBILITY AND VALUE OF ORAL EVIDENCE- WHO MAY BE A WITNESS

Article 620 – **Admissibility** - oral evidence is admissible in all the cases unless expressly prohibited.

- See Article 2506 of the Civil Code.

Article 621 – **Limits of oral evidence** - Oral evidence in contradiction to or beyond the contents of authentic documents is inadmissible in so far as such documents have full evidentary force, except where there is an allegation of falsity, and is contrary to the documentary evidence or beyond the contents of the authentic documents and private documents deemed as true in terms of Article 542, except where there is an allegation of falsity, mistake, fraud, coercion or misrepresentation.

- See Articles 2507 and 2508 of the Civil Code.

Article 622 – **Who may be a witness** - Persons of either sex, not disqualified by natural incapacity or by law, may depose as witnesses.

Article 623 - **Who may not be witnesses** - The following persons are disqualified by natural incapacity:

1. Those interdicted on account of dementia;
2. Those blind and deaf, in the matter the cognizance of which depends on those senses;
3. Minors of 14 years and below.

- See Article 2570 of the Civil Code

Article 624 – Legal incapacity - The following persons are disqualified by law: 1. Those who can depose as parties;

2. The ascendants in the matters of descendants, and vice versa;

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3. The father-in-law or mother-in-law in the matter of the son-in-law or daughter-in-law, and vice versa;
4. The husband in the matter of wife, and vice a versa;
5. The persons who, due to their status or profession, are obliged to maintain professional secrecy;
6. The persons specially debarred from deposing as witnesses on certain facts.

§ Sole paragraph: The provisions of clauses (2), (3) and (4) are not applicable to matters in which the verification of birth or death of the children is dealt.

- See Article 2511 of the Civil Code.

Article 625 – Probative value - The probatory force of the deposition of the witnesses shall be freely appreciated.

- See Article 2514 of the Civil Code.

SUB-SECTION II

PRODUCTION OF ORAL EVIDENCE

Article 626 – List of witnesses - The list of witnesses may not be altered upon the expiry of the period of limitation, prescribed for its presentation save for what is provided in article 634. A party may however desist from the examination of witnesses that have been offered.

The witnesses shall be specified by their names, professions and addresses and any other particulars which are necessary to establish their identity.

Article 627 – Mentioning the judge as witness - If any of the parties indicate the judge in the suit as witness, such judge shall declare on oath in the matter, if he has knowledge of facts which can affect the decision. In the affirmative, he shall cease to be a judge in the suit; in the negative, the indication shall be of no effect.

§ Sole paragraph: There being offered as witness any of the associate judges, the declaration that is referred to in this article shall be made at the hearing in which the suit is continued in view of adjudication by the judge in the suit calling the attention of the other judge to the fact. If the judge is disqualified from functioning, such associate judge shall pass the matter to the judge who shall substitute the judge so disqualified.

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Although the judge in the suit, in view of the simplicity of the case, decides that the examination of the matter is not necessary, an order shall always be passed to the effect indicated in this paragraph when the case foreseen in it arises.

- See also Article 122(7) of this Code.

Article 628 – Place of recording evidence - The witnesses shall depose before the court at the hearing of the trial, except in the following cases:
a) The witnesses that have to be examined in advance, in terms of article 525;
b) The witnesses to be examined by letter;
c) The witnesses, that are in terms of article 631, to be examined at their residence;
d) The witnesses that are unable to appear in the court.

- See also Article 653 (d) of this Code.

Article 629 – Examination at the site - The witnesses shall be examined at the place of dispute when the court, suo moto or on the application of any of the parties, decides it to be appropriate.

Article 630 – Examination by letter - When the witnesses reside outside the judicial division, the party may apply for dispatch of a letter of request for the examination indicating the questions from

the questionnaire on which the witness is to depose. If letter is not sought in the list of witnesses, it shall be understood that the party has undertaken to produce his witnesses at the hearing of arguments and trial.

The judge shall refuse the letter if he has reason to believe that the respective witness can come to depose before the collective court. In this case, the party may apply for the witness to be notified by letter to appear, undertaking to pay the expenses that the witness has to make with the travel.

Article 631 – **Persons to be examined at their residence** - The following persons enjoy the prerogative of being examined at their residence;

1. The President of the Republic;
2. The State Councilors, the Presidents of the National Assembly and the Corporate chambers and the members of the Government;
3. The archbishops and bishops;
4. The diplomatic agents of foreign nations who have granted identical privileges to the representatives of Portugal;

5. The Attorney-General of the Republic, the judges of the Supreme Court of Justice and of the High Courts and the President of Bar Council of the Advocates.

§ 1: When the President of the Republic is offered as a witness, the party shall immediately indicate the facts in respect of which the deposition is intended to be obtained.

The judge shall make respective communication to the Ministry of Justice that shall be transmitted, through the Presidency of the Council, to the President of the Republic.

If the President of the Republic declares that he does not have knowledge of the facts in respect of which application is made for his deposition, the same shall not take place; if he declares that he is ready to depose, the judge shall solicit from the office of the President of the Republic, the indication of the day and time on which the deposition must be carried out which shall be attended by the Attorney General of the Republic with a secretary, so designated.

The interrogation shall be made by the judge in the suit. The parties may attend the examination with their advocates but they can neither formulate questions nor insistent requests, the judge having the power to direct, any clarification or amendment when considered necessary.

The deposition shall be drafted by the judge, if the deponent does not desire to draft and written by the secretary designated by the Attorney General of the Republic.

§ 2: When any of the persons mentioned in clauses (2), (3), (4), and (5), are offered as witnesses, the day and time for examination shall be fixed as is indicated by such persons. The witness shall be notified, observing the common provisions relating to the examination, except in respect of representatives of foreign powers if there is a treaty or convention that stipulates special formalities.

§ 3: If the judge is of the opinion that the deposition of the persons mentioned in clauses (2), (3), (4), and (5) shall take place before the collective court, it shall so decide; but the deposition will no longer be recorded at the residence of the witness on the day and at the time fixed in agreement with the witness.

If the witness has deposed before the judge in the suit and the collective court adjudges as necessary to hear the witness, he shall be examined before the collective court afresh in terms of

the first part of this paragraph.

Article 632 – Examination of persons disabled by illness - The judge may verify, through a physician appointed by him, if the witness is really unable to appear before the court and, in the

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case in affirmative, if he can depose. He being, unable to appear, the deposition shall take place where the deponent is found, it being possible, on the day and at the time fixed by the judge, upon hearing the physician in attendance, if necessary. Only the judge in the suit or the collective court shall remain present for the deposition, as determined.

Article 633 – **Fixing the number of witness to be examined each day** - The judge shall determine, for each day of examination, the number of witnesses which may be possibly examined. The witnesses that the parties agree to bring shall not be notified.

Article 634 – **Consequences of absence** - In the case of absence of any witness that the party does not dispense with, the following shall be observed:

1. If the witness has expired after the list being filed, the party has a right to replace the witness; 2. If the witness is sick and his immediate examination is not possible, the party can substitute him or apply for postponement of the examination by a period that appear indispensable, which is no case shall exceed 30 days;
3. If the witness has changed his residence after being offered as a witness, the party can substitute him, or apply for examination by letter, provided that it is not outside the continent or the island where the cause accrued, or undertake to present the witness on the day that is fixed afresh;
4. If the witness has not been notified, or if he fails to appear due to any other legitimate impediment, the examination shall be postponed, but if it is not possible to examine him within a period of 30 days, the party can substitute such witness;
5. If he remains absent without a just reason, he shall depose under arrest; where he is not found, he can be substituted.

§ 1: The examination cannot be postponed due to the absence of witnesses if the party has undertaken voluntarily to produce the same, and there shall not be a second postponement of examination totally due to absence of the same or other witnesses.

§ 2: When the depositions are to be written, only the examination of the witnesses who remain absent shall be postponed; in other case, the postponement shall be total or partial depending upon the circumstances.

§ 3: The witnesses, which the party has agreed to produce, cannot be substituted, neither can

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witnesses that have to be examined by letter of request, be offered in substitution.

§ 4: The substitution shall be applied for as soon as the party has knowledge of the fact which causes it. The new witness shall not depose before the lapse of 3 days from the date when the opposite party had judicial knowledge of the substitution, save if the witness is withdrawn during this period. If it is not possible to postpone the examination by a necessary period of 3 days, to which the opposite party may apply, the substitution shall be without any effect.

§ 5: The justification for absence shall be done in the very act. This not being possible, it shall be done within a period of 5 days.

Article 635 – Maximum number of witnesses which parties can examine - The plaintiff cannot offer more than 20 witnesses; equal limitation is applicable to the defendants who filed same written statement. The names of the witnesses in the list that exceed the number indicated above shall be considered not to have been written.

Article 636 – **Number of witnesses as to each fact** - On each of the facts specified in the questionnaire, not more than 5 witnesses may be examined, not including those who have declared they know nothing.

Article 637 – **Facts over which oral evidence is not admissible** - The examination of witnesses is not admissible:

a) In respect of facts that are proved by documents or which can be proved only by documents; b) In respect of facts proved by agreement or admission of the parties.

Article 638 – **Order of depositions** - Before the commencement of the examination, the witnesses shall be gathered in a hall from where they shall leave to depose in the order in which they are mentioned in the list, first the witnesses of the plaintiff and thereafter those of the defendant, save if the judge decides that the order be altered or if the parties agree to the alteration. But if any of the functionary of the office appears as witness, he shall be the first to depose, although he has been offered by the defendant.

§ Sole paragraph: While the witnesses are gathered, they shall be watched so that they do not communicate over the facts which are to be subject matter of the dispute.

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Article 639 – **Oath and preliminary interrogation** - The judge, after observing what is provided in the article 57 6, shall proceed to identify the witness and shall question him if he is a relative, friend or enemy of any of the parties, if he has a relation of dependence with any of the parties and if he has interest, direct or indirect, in the suit.

When it is confirmed by answers that the declarant is not fit to be a witness or is not the person who was offered as witness, he shall not be admitted to depose.

Article 640 – **Objections to the admissibility of a witness** - The party against whom the witness is produced can object his admission on the same ground on which the judge shall object to the deposition.

The objection shall be presented when the preliminary interrogation terminates. If admitted, the witness shall be questioned on the matter of fact and, if he does not admit, the opposite party shall prove the same by persons who are witnesses to this act, not being more than 3 witnesses for a fact. The judge shall forthwith decide whether the witness should depose.

§ Sole paragraph: If the party has declared that he has not waived the appeal from the decision passed in respect of the objection, he shall mention the grounds for the appeal, the answers of the witness and the depositions of the witnesses who have been examined in respect of the incident.

Article 641 – **Mode of deposition** - The witness shall be questioned as regards the facts indicated in the questionnaire which have been pleaded by the party who offers the witness, and the deposition shall be precise, indicating the reason for and any circumstances that can justify knowledge of the facts.

If the witness deposes before the collective court, the questioning shall be done by the advocate of the party which has offered the witness and the advocate of the other party shall be able to interrogate in relation to the facts which have been deposed, the instances that are absolutely indispensable for the witness to complete or clarify the deposition.

The President of the court shall object those advocates who treat the witness unceremoniously and put questions and observations, that are irrelevant and suggestive, deceitful or vexatious; the president as well as the associate judges may always put questions that are convenient for bringing out the truth.

The interrogation and the insistence, instead of being made by the advocates, shall be made by the presiding Judge of the 'court when he considers it more appropriate.

§ 1: If the deposition does not take place before the collective court, the interrogation shall be done by judge, and the advocates may apply for the answers to be clarified or completed.§ 2: The reason for knowing cited by the witness shall be specified, as far as possible. If the witness says that he knows by seeing, he has to explain at what time and place he saw the fact, if there were other persons who also saw and what it was; if he say that he knows by hearing, he has to indicate who heard, at what time and place, and if there were other persons there who also heard, and who they were.
§ 3: The witness may, before answering, refer the file or demand that he is shown certain documents that exist therein; he can also present any object or document to corroborate his deposition. Only those objects and documents shall be received and brought on record which the respective party could not have produced.

Article 642 – Applicability of provisions relating to deposition by party - The provisions contained in paragraph 1 of article 577 and in article 579 are applicable to the deposition of the witnesses.

Article 643 – Refutation - The party against whom the witness is produced may refute the statement of the witness, alleging any circumstance which may affect the source of knowledge alleged by the witness or the faith which he deserves.

The refutation shall be put forth when the deposition terminates. If the refutation is to be considered, the witness shall be heard in respect of the matter of fact in the refutation. When this matter of fact is not admitted, the party may prove it by documents or witnesses, not being more than 3 witnesses for each fact.

§ 1: The witnesses have to be presented and examined immediately.
The documents may be offered until the stage at which decision must be passed in respect of the facts.
§ 2: What is provided in the sole paragraph of article 640 is applicable not only when the party has not waived the appeal, but also when the deposition of the refuted witness has to be written.

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Article 644 – Confrontation of witnesses - If there is direct opposition, in respect of certain fact between depositions of the witnesses or between them on one hand and the deposition of the party on the other, the confrontation of the persons who are in contradiction may take place suo moto or on application of any of the parties.

§ 1: If the persons to be confronted are present, the confrontation shall be done immediately; if they are not, a day shall be fixed for the step that shall be before the commencement of the argument in the suit, when the witnesses have not deposed before the collective court.
§ 2: If the witnesses to confront have deposed by precatory letter in the same judicial division, the receiving court is bound to order or authorize the confrontation. If the contradiction between deposition produced in different judicial divisions is confirmed, the collective court may, if it decides as absolutely indispensable, order the persons to be confronted to appear before it, dispatching letters for notification of the person who reside outside the judicial division when the respective party does not take charge of presenting them.
§ 3: When the confrontation does not take place before the collective court, it shall be recorded in writing.

Article 645 – Travel expenses and compensation - The witness who has been notified has right to the expenses of dislocation and to a compensation, fixed by the judge, for each day on which he has

appeared, whether he is residing outside the seat of the court or not ant whether or not he has rendered the deposition.

§ 1: The amount shall be immediately paid by the party that has offered the witness, thereafter entering it in the rule of costs; if the witness does not wish to receive the amount, it shall be deposited to the account of the court.
§ 2: If the witness has been offered by an entity exempted from payment of anticipated expenses and costs, the amount shall be determined for entering in the rule of costs.

Article 646 –**Summoning by the Court** - If it is found, by examination, that certain person not offered as a witness has knowledge of a fact important for the decision of the suit; the court may order that such person be notified to depose. The deposition shall not take place before 3 days, save if the opposite party waives this period.

CHAPTER IV
HEARING OF THE SUIT

Article 647 –**Arguments and Judgment** - The hearing of the suit shall be conducted with the intervention of the collective court.

If the questions of fact are decided by a single judge, when it ought to have been decided by the collective court, the decision shall be annulled.
The findings of the collective court on the questions of law shall be deemed to have not been written.

Article 648 – Time for study of file - Upon the production of evidence that shall take place before the hearing of the arguments and adjudication, or on the expiry of the period fixed in the letters of request, the judge shall allow the advocate of each of the parties, a period of 5 to 10 days for examination of the file. At the end of this period, a day shall be designated for hearing and decision of the suit.

Article 649 – **Study of file by judges** - Before the arguments, each of the associate judges shall examine the file for 5 days, save if the judge decides that the same is dispensable in view of the simplicity of the suit.

Article 650 – **Requisition or designation of technical expert** - When the matter of facts gives rise to difficulties of technical nature, the solution of which depends on special knowledge which the court does not have, the judge may requisition the presence of a specialized functionary or, in his absence, appoint a competent person who may attend the hearing and render necessary clarifications.

The disqualification and reclusion apply to such technical persons, the same way as apply to the experts. The requisition, as a rule, be made by an order that shall fix a day for hearing and decision.
Such technical persons shall be paid the expenses for travel in advance.

Article 651 – Powers of Presiding Judge - The President of the court enjoys all the necessary powers to make the hearing brief and purposive and the decision in the suit just. He is competent, in particular, to:

1. Conduct the proceedings;
2. Maintain order and enforce respect for the institutions in force, the laws, and the court; 3. Take necessary steps for the suit to be conducted with dignity and order;
4. To encourage, with the greatest courtesy and politely, the advocates and the Public Ministry to curtail their applications and submission when they are manifestly excessive, and to confine it to the matter of the suit, and withdraw the liberty when they do not comply with the exhortations; 5. To bring to the notice of the advocates and the Public Ministry the need to clarify certain obscure or doubtful points.

- See also Article 155 of this Code.

Article 652 – Adjournments - The hearing shall be taken up, at the fixed time, after the presence of the persons summoned. But, it may be adjourned:

1. If it is not possible to constitute the collective court.
2. If any person who has been summoned is absent and he cannot be dispensed with, save if his appearance appears probable in the course of the hearing and it is not inconvenient to hear him at the stage when he appears;
3. If the document is offered which the opposite party needs to examine, save if the examination could be made in the very act, suspending the proceedings for some time;
4. If any of the advocates remain absent for a just and unforeseen reason.

§ 1: Adjournment is not permissible by agreement between the parties, neither can the hearing be adjourned more than once due to absence of advocate.

§ 2: What is provided in clause (2) is without prejudice what is provided in paragraph 1 of article 634, as regards the prohibition of second adjournment due to the absence of witnesses.

Article 653 – Procedure at the hearing – If there is no reason to adjourn the arguments the following order shall be observed:

a) The President shall give an opportunity first to the advocate for the plaintiff and then to the advocate for the defendant for each one of them to explain, with great precision and clarity, the case of client in the suit. The advocates shall briefly explain the case of the parties and the grounds that serve as its base. The president may make observations that he thinks convenient.

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b) Thereafter the personal depositions of the parties shall be proceeded with ;
c) The examinations and arbitrament having taken place, the questions and the answers given by the experts shall be read and they shall give clarifications that are asked from them;
d) This shall be followed by examination of the witnesses;
e) Upon the examination, the arguments shall commence. The president shall give an opportunity to the advocate for the plaintiff to make his oral submissions and, thereafter, in the same way, to the advocate for the defendant. Each advocate may reply once. In the submissions, the advocates shall make a critical examination of the evidence produced, shall seek to demonstrate which findings of facts stand established and shall address on the legal aspects of the matter and which fact may be considered as proved applying the law to the facts.
f) The court may, at any stage, before the arguments, during them or thereafter, hear the specialized functionary or the technical person so ordered;
g) Upon the arguments, the President can formulate new queries, when he considers them indispensable for the proper decision in the suit. The court shall assemble at the conference hall to decide. If the discussion is not sufficiently clear, he may return to the court room and hear the persons as he deems fit; he may also order any steps which he considers indispensable.

The factual aspects shall be decided by means of a judgment. Among the facts referred to in the questionnaire, the judgment shall declare what facts the court finds to be proved or not proved; but shall not pronounce in respect of facts proved by admission or agreement between the parties, by authentic or authenticated document, or by the private documents referred to in article 542.

The judgment shall be drawn by the President, without noting the negative opinion. The president, upon the judges returning in the court room, shall read the judgment;

h) Upon reading, any of the advocates may object against the deficiency, obscurity, or contradiction in the decisions passed. The objection has to be filed immediately;

i) There being objections, the court shall assemble afresh to pronounce in respect of such objections. No further objections shall be admissible against the decision passed from such objections, but, there being appeal, the superior court may ex officio annul the decisions of the collective court, when such decisions are considered deficient, obscure, or contradictory.

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§ 1: The persons who have been heard cannot remain absent without authorization from the president, such an authorization shall not be granted when there is opposition from the associate judges, from the Public Ministry, or from the advocates.

§ 2: The advocate may be interrupted during the oral submissions either by the president, or by the advocate of the opposite party, but in this case only with his consent and with that of the president. The interruption has to have as it aim the clarification or the rectification of any affirmation.

- See Article 650, article 69, sole paragraph of the Judicial Statute.

Article 654 – **Requirement of full attendance by all judges** - Only the judges who participate in all the acts of judicial inquiry and arguments conducted at the hearing or hearings of arguments and adjudication can intervene in the decision on the matter factual aspects.

§ 1: If during the arguments and adjudication, any of the judges expire or is permanently incapacitated, all the acts already performed shall be repeated; the incapability being temporary, the adjudication shall be adjourned for a time that is indispensable, unless the circumstances suggest preference to repetition of the acts already performed.

§ 2: The judge who is transferred, promoted or retired shall complete the adjudication, except if the retirement has its ground the absolute incapacity, physical or moral, for exercise of the charge. The substitute judge shall continue the intervention, notwithstanding the return to service of the effective judge.

- See Article 67 of the Judicial Statute

Article 655 – Freedom in adjudication - The collective court adjudicates according to its conviction, formed upon free appreciation of evidence, in order to reach to the decision that appears just to it. But when the law demands any special formality for the existence of or the evidence of a juridical act or fact, the same cannot be dispensed.

Article 656 – Continuity of hearing - The hearing shall be continuous; it may only be interrupted by force majeure or by reason of absolute necessity. It not being possible to conclude the arguments and adjudication in only one day, the president shall fix the continuation for the following day or the next, in a manner that between the start of the proceeding and the adjudication, normally, an interval of more than 10 days does not pass, and in no case more than 20 days, even if for this the court has to function on vacations or on holidays.

Article 657 – **Secret hearing** - In the suits referred in a first part of the second period of article 167, the hearing shall be secret and the depositions, if they are written, shall not be used after the adjudication.

CHAPTER V
JUDGMENT

SECTION I
PREPARATION OF THE JUDGMENT

Article 658 – **Supervision exercised by judge** - Upon the adjudication by the collective court, the suit shall be put up before the judge, who shall examine whether the legal formalities are complied with and if the judicial functionaries were diligent in fulfilling the duties of their office, taking the measures and applying appropriate penalties.

Thereafter, the final judgment shall be passed.

§ Sole Paragraph: The period to pass the final judgment is fifteen days. Such period may be extended only in case of just impediment which must be duly established.

- **Articles 658-676** – Judgement - Corresponding provisions in C.P.C. 1908: - o Judgement and Decree – O. XX

Article 659 – Preparing judgment :- narration, grounds and decision - The judgment shall commence with the narration, in which the names of the parties shall be mentioned and a clear and concise explanation of the prayer and its foundation, as well as the foundation and the conclusions of the defence shall be given, thereafter indicating concisely the occurrences, which may provide for the a background to the litigation. The narration shall end by indicating the state of the suit as has emerged from the arguments, settling with great clarity and precision the

questions to be addressed.

Then come the grounds and the decision. The judge shall take into consideration the facts admitted by agreement, those admitted by non denial, and those which the collective court found as proved. Thereafter, the law shall be interpreted and applied to the facts, concluding by the final decision.

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Article 660 – **Questions to resolve – Order of the Judgement** - The judge shall take cognizance in the first place, and by the order established in article 293, of the questions that may lead to the discharge of the Defendant.

The judge shall decide all the questions which the parties have submitted for its appreciation, excepting those questions, the decision of which does not survive in view of the answer given in others. The questions which are not raised by the parties may not be resolved, save if the law permits or imposes the suo-motto cognizance of such questions.

Sole Paragraph: Not only those which are expressly referred are deemed to be answered, but also others which considering the controversy raised are a requirement or necessary consequence of the judgment expressly pronounced.

Article 661 – **Limits of decreeing** - It is not lawful to grant a relief larger than, or different from what is prayed. If the plaint does not contain particulars to ascertain the object or assess, the quantity, the relief to be granted is what is ascertained and assessed in the execution.

Article 662 – Judgement if obligation is not enforceable - The fact that the obligation is not enforceable at the time when the suit was filed shall not preclude the Court to take cognizance of the existence of the obligation, once the Defendant disputes the liability and that the later be directed to satisfy the liability at the time of the maturity.

If there is no dispute as regards the existence of the liability, the following shall be the directions: a) The defendant shall be directed to fulfill the obligation although the obligation may become enforceable in the course of the suit or on a date after the judgment, but without prejudice to the prescribed period in the later case;

b) When the unenforceability arises from the lack of breach or from the fact that there has not been a demand for payment in the domicile of the debtor, the debt shall be considered to have become enforceable upon the service of summons.

§ Sole Paragraph: In the cases at clauses (a) and (b), the plaintiff shall be directed to pay costs and to settle the fees of the advocate for the defendant.

Article 663 – **Subsequent events** - In the judgment, the facts constituting or extinguishing the right that take place after the filing of the suit shall be taken into consideration in the manner that

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the decision corresponds to the state of things upon the end of hearing. The circumstance of the

juridical fact having arisen or ceased to exist in the pendency of the suit shall be taken into account for imposing costs,

Article 664 – **Judge not bound by parties' arguments** - The judge is not bound by submissions made by the parties regarding the investigation, interpretation and application of the law; but he is to act within the facts pleaded by the parties, subject to what is laid down in article 518.

Article 665 – **Collusion to subvert law** - When the conduct of the parties and material available in the suit creates conviction in the mind of the judge, the plaintiff and the defendant have colluded in the suit to do a same transaction or achieve an objective prohibited by law the judgment of the Court shall obstruct the realization of abnormal objective.

SECTION II

VICES AND REVIEW OF THE JUDGMENT

Article 666 – **When Court becomes 'functus officio'** - Upon passing of the judgment, the jurisdiction of the judge shall, immediately, come to an end as regards the subject matter of the suit.

However, the judge may rectify material errors, supply the deficiency and clarify the doubts existing in the judgment and review the same as regards the costs and fine.

§ Sole Paragraph: What is provided in this article and the following articles applies to orders, to the extent possible.

Article 667 – Rectification of material errors - Where it is found that in the judgment, there are mistakes in writing or of calculation or any material inaccuracies due to the omission or manifest lapse, they may be corrected by a simple order, on the application of any of the parties or suo moto by the judge.

Where appeal lies, rectification may take place before the file is remitted to the appellate court, however, the parties may submit before the appellate court what they deem fit in respect of their right as regards the rectification.

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If none of the parties prefer appeal, the rectification may be done at any time and an appeal would lie there from.

§ Sole paragraph: From the order rejecting the rectification no appeal lies.

Article 668 – **Grounds for nullity of judgment** - The judgment will be null and void in the following cases:

1. When name of the parties and signature of judge is omitted;
2. When the factual foundation and the law on which decision is based are not specified; 3. When the grounds are in contradiction to the decision;
4. When the court failed to address to the questions to which it ought to have addressed, or addressed to the questions to which it ought not to have addressed;
5. When the relief is granted is in excess or in

form different than prayed.

Article 669 – **Curing of omission or nullities** - When the judgment omits to grant the costs or contains nullities, as mentioned in the preceding article, any party may apply, within the time prescribed for filing appeal, that cognizance be taken of the omission or nullity and that the omission be filled and the nullity be cured. The opposite party shall be heard and may file reply within three days and thereupon decision may be passed.

If the application is allowed, the decision passed is deemed as complement of the judgment and shall become integral part of the same.

§ Sole Paragraph: When no appeal is admissible against the judgment, the application may be made within the period of eight days.

Article 670 – **Clarification and correction of judgement** - Any of the parties may also apply for:

a) Clarification of any obscurity or ambiguity existing in the judgment;

b) That the judgment be corrected in respect of costs and fine.

Whatever is provided in the preceding article is applicable to the present article also.

SECTION III

EFFECTS OF THE JUDGMENT

Article 671 – **Binding force of judgement become final** - Once no appeal is filed against the judgment or remedies available and have been exhausted, the decision shall have binding force within the suit and beyond it within the limits prescribed in articles 501 onwards, without prejudice to what is provided in article 771 onwards.

But, if the defendant has been directed to furnish maintenance or to effect other payments dependent on the special circumstances as regards its extent and duration, the judgment may be altered, to the extent that the circumstances that determine the direction are modified.

Article 672 – **Binding force of Orders** - The orders passed on the merits of case shall have the same force as that of the final judgment. The orders that are solely in respect of procedure have binding force only as regards the suit, save where, by its nature, no appeal from order is admissible.

- See also Article 679 of this Code.

Article 673 – **Scope of Judgment Res judicata** - The judgment constitutes res judicata in the precise terms and limits of the adjudication. If the party failed to succeed for not having fulfilled a condition, for a period not having expired, or for certain fact not having been performed, the judgment shall not preclude the party from making the prayer afresh when the condition is fulfilled, the question of limitation is satisfied or the fact is performed.

Article 674 – **Res judicata on questions of status** - The case decided on the question of legal status produces effects in relation to all persons when the suit is filed against all the persons directly interested and there has been opposition.

Article 675 – **Contradictory judgments** - There being two contradictory judgments on the same object, the case decided in the first place shall hold good.

- See also Article 763, paragraph l of this Code.

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Article 676 – Judgment operating as mortgage - The judgment that directs the defendant to effect payment of a certain sum, money or in kind, even before the case is finally decided, creates mortgage, and it may be registered to produce effects in relation to third party.

If the relief granted, the plaintiff may apply for registering the mortgage for security of the amount, within the limits of the value of the suit, which is likely to stand to his credit.

The defendant having been directed to render a thing or a fact, the plaintiff cannot apply to register the mortgage while the obligation of the defendant is not converted into compensation for loss and damages.
§ 1: The mortgage may be registered even in case the plaintiff is secured by means of seizure. In this case, when the mortgage is registered, the registration of the seizure lapses.
§ 2: The registration of the mortgage is not precluded by the fact that the plaintiff may avail of the remedy of execution of the judgment.

- See also Articles 931 and 934 of this Code.

CHAPTER VI
APPEALS

SECTION I
GENERAL PROVISIONS

Article 677 –Kinds of appeals - Judicial decisions may be challenged by way of appeals. Appeals are ordinary and extra ordinary. The ordinary appeals are the appeals from final judgment, (*'apelação'*) appeal from the latter (*'revista'*), appeal from order ('*agravo'*), complaint against rejection of the appeal and appeal to full court. Extra ordinary appeals are opposition of third party and revision.

§ Sole Paragraph: A decision is considered as "res judicata" when it is not permissible under the law to prefer appeal or as soon as ordinary appeals are exhausted.

- **Articles 677-778** – Appeals - Corresponding provisions in C.P.C. 1908: -
  - Appeals - Ss. 96-115, O.XLI, XLII and XLIII
  - Under art.677 there are the following 6 types of appeals:-

    Ordinary appeals are:

    1) **Appeal from final judgment** – ("*Apelação"*) – art.691
    2) **Appeal from the latter** – ("*Revista"*) – art.721
    3) **Appeal from order** (agravo) – ("*Agravo*") - art.733
    4) **Complaint** (against the rejection of the appeal) – ("*Queixa*") art.689
    5) **Appeal to the full court** – ("*Recursoparaotribunal pleno")* -art.733

    Extra ordinary appeals are:

    i)**Opposition of third party** - ("*Oposição de terceiro")*, art.778

    ii) **Revision** - ("*Revisão")*, art.771
  - These are regarded as appeals under Section 104, C.P.C.
  - **Articles 677-782 -** Appeals is a wider variety of appeals than ours.
  - This matter has been dealt with by Judgment dated 22/12/2015, of the full Bench, Bombay High Court, Goa in Misc. Civil Application no. 926/2013, Mrs. Bharti Parkar v/s. Mr. Vilas Mahadev Pilankar & ors. but some types of appeals are not mentioned even in that judgement.

Article 678 – **Cases and matters which admit appeal** - Ordinary appeal is maintainable against the judgment passed in the cases which exceed the pecuniary jurisdiction of the court appealed from.

However, if the ground for appeal is absolute lack of jurisdiction of the court as to subject matter or violation of "res judicata", an appeal always lies whatever may be the value of the cause.

§ Sole Paragraph: From the order fixing for the cause, the incidental proceedings or preventive and conservatory proceedings a value within the pecuniary jurisdiction of the trial court or High

Court, appeal lies on the ground that the value exceeds the pecuniary jurisdiction.

Article 679 – **Non-appealable decisions** - No appeal lies from the orders meant for mere routine prosecution of the case nor against those passed under discretionary powers. In orders which are of mere routine nature, orders meant to regulate procedural steps in accordance with law are included.

Article 680 – **Who can appeal** - With the exception of the appeal named opposition by third party, an appeal may only be filed by one who, being the principal party in the cause, lost the same. However, the persons directly affected by the decision may appeal therefrom, even though they are not parties to the litigation or they are not necessary parties.

Article 681 – **Loss of right to appeal** - It is open to the parties to renounce in advance the right to appeal; but, such renunciation is lawful only when it proceeds from both the parties.

It is not lawful for a party, to prefer appeal when he had accepted the decision. Acceptance may

be express or tacit. Tacit acceptance is that which flows from doing without any reservation any act, incompatible with the desire to prefer an appeal.

§ Sole Paragraph: What is provided in this article is not applicable to the Public Ministry.

Article 682 – **Principal and subordinate appeal** - If both the parties' claims are dismissed, each of them has to appeal if desires to obtain a modification of the decision to the extent it is not favourable to it. However, it may file a principal appeal or a subordinate appeal.

Principal appeal is to be filed within the period and in the manner prescribed for principal appeal as per regular procedure. The subordinate appeal is to be filed within 5 days from the notice of the order admitting appeal filed by the opposite party.

If the first appellant withdraws the appeal or it becomes infructrous (lapses) because the court does not take cognizance of the same, the subordinate appeal lapses and all the costs shall be the liability of the principal appellant.

Article 683 – **Benefit to non-appellants** - The appeal presented by one of the parties benefits the others in case of joinder of necessary parties. Besides the above case it may benefit others also:-1. If the latter parties, to, the extent there is common interest, extend their support to the appeal; 2. If they have an interest which depends essentially upon the interest of the appellant;

3. If the judgment is against them as joint debtors, unless the appeal, as per its grounds, is relating only to the appellant.

§ Sole Paragraph: The support to the appeal may take place, through application until the time fixed for presenting the pleadings of the appellant. With the act of support, the interested party owns up the steps already taken by the appellant and those which he may adopt later.

However, it is lawful to the supporting party, at any time to take the place of principal appellant while prosecuting the matter on his own; therefore, if the appellant withdraws the appeal, he may be given notice of the withdrawal, so that he may prosecute the appeal further as principal appellant.

Article 684 – **Right to restrict appeal to some of the successful parties** - There being several successful parties, all of them shall be notified of the order admitting the appeal. However, it is lawful to the appellant, except in the case of joinder of necessary parties, to exclude from the

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appeal one or some of the successful parties, declaring, in the application for filing the appeal, that he accepts the decision in relation to them.

Article 685 – **Determination of subject matter of appeal** -Where the decision contains distinct parts, the appeal may be limited to some of them, provided that in the memorandum of appeal the portion which is appealed from is specifically indicated. In the absence of such specification, the appeal shall embrace whatever is decided against the appellant.

In the conclusions of the reasoning and submissions, the appellant may restrict the initial object of the appeal.

§ Sole Paragraph: The effects of the judgment, to the extent not appealed from, shall not be defeated by the decision of the appeal, nor by the annulment of the proceeding.

Article 686 – **Limitation for filing appeals** - The limitation for presentation of the appeal is of eight days, counted from the date of notice of the order or judgment. If the party is ex-parte as per second clause of article 255, the limitation starts from the date of publication defined therein. If the case is of oral order or oral judgment, reproduced in the proceedings, the limitation starts from the date they were pronounced, if the party was present or notice was given to the party to remain present; in the contrary case, the limitation starts from the service of the notice of the order or judgment and in the event no notice is served, from the day the interested party had knowledge of the decision.

§ 1: If the default ex-parte has ceased before the passage of eight days subsequent to the publication, the notice or judgment is required to be given and time limit shall start from the date of service of the notice.

§ 2: If any of the parties applies for rectification, completion, clarification or reform of the judgment in accordance with articles 667 to 670, the time limit for the appeal shall start only after notice of the service of the decision passed on such application.

§ 3: In case there is already an appeal filed against the original judgment or order at the time when, on application of the opposite party new judgment is passed by completing, clarifying or modifying the original judgment, the appeal shall lie against the revised judgment; however, it is lawful for the appellant to widen or restrict the scope of the appeal in accordance with the alteration which the judgment or order under review has undergone.

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Article 687 – **How to file appeal** - The appeals are filed by way of application expressing the desire to prefer indicating therein the type of appeal. The application shall be presented in duplicate in the office of the court which passed the judgment which is appealed from. The date of receipt of application fixes the date of filing of the appeal. The duplicate shall be handed over to the opposite party at the time of service of the notice.

Article 688 – **Order on memo of appeal** - Thereafter file shall be placed for orders.

The application shall be rejected if it is found that no appeal lies against the order, or that appeal was presented beyond time, or that the appellant does not satisfy the requirements to file an appeal; but, application shall not be rejected on the ground that there is an error in the indication of the type of the appeal. If the appeal is filed under the wrong category, it will be ordered to be proceeded with under the proper category.

Article 689 – **Appeal by way of complaint** - No appeal lies from the order admitting an appeal. Against a decision rejecting an appeal, the applicant may present a complaint to the Chief Justice of the higher court which is competent to hear the appeal.

The complaint shall be filed, processed and decided in the following manner;

a) Within 8 days from service of the notice of order not admitting the appeal, the party shall present in

the office an application addressed to the Chief Justice of the superior court, indicating the grounds which justified the admission of the appeal and shall indicate the documents of which certified copies are required to support the complaint;

b) The application shall be appended to the proceedings and the same shall be placed for orders and within 48 hours order shall be passed on the same application or annexed to it either admitting the appeal or giving reasons why the decision is maintained.

If the appeal is admitted, the application and the order shall be filed in the proceedings and the complainant shall pay the costs of the certified copies already issued; in the negative the judge may direct issuance of certified copies which are found necessary;

c) If the complaint is to proceed further, the office shall notify the opposite party, disannex the application and grounds given by the judge and upon annexation of certified copies within 3 days account will be made. Once an account is made notice will be issued to the applicant to deposit

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the amount within 48 hours and shall make prepayment of the cost for remission of the file of the complaint for the purpose of decision, failing which it will be treated as abandonment of the case; d) Once the costs and advance are deposited, the file shall be produced within 48 hours in the office or in the post office and opposite party till that time may give his say onto the complaint. e) After the receipt of the proceedings in the higher court, the head of the office shall present it for the decision of the Chief Justice who within 48 hours shall decide whether the appeal is to be admitted, if the Chief Justice is of the view that the subject is not very clear he may ask clarifications or direct production of the certified copies which are found necessary, provided that the decision is not delayed for more than 8 days;

f) The decision does not admit of any further appeal, but, when the complaint is admitted the superior court is not prevented from deciding the main matter and dismiss the same;

g) The proceedings of the complaint shall be returned within 48 hours. If the complaint is allowed the respective proceedings shall be incorporated in the main file and the judge shall pass the order admitting the appeal; if not, the complaint shall be filed. The costs paid and the deposit made shall be given due destination.

§ 1: Against the complaint addressed to the Chief Justice of the Supreme Court of Justice, what is provided in the previous clauses shall be applied, with following modifications;

1. The complaint is admissible only when it is refused by the collective decision;

2. Once the application is appended, the office shall present it in the first session and there the assignee judge and other companion judges shall draw up the collective judgment either admitting the complaint or giving the reasons why the previous decision is maintained.

In the last case the collective judgment shall indicate the parts of the record of which certified copies shall be issued.

§ 2: On the ground that the appeal from order should be forwarded immediately to the superior court, also complaint can be lodged against the decision by which the appeal from order has been retained by court whose decision is appealed from.

In such case, with necessary adaptations, the rules prescribed in the clauses of this articles and its paragraph 1 shall be applicable.

Article 690 – Burden to argue and frame grounds - The appellant shall present his submissions with reasons in which he will indicate in brief the grounds based on which he seeks modifications

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or reversal of the judgment or order. In the absence of the reasoning and submissions, the superior court shall not take cognizance of the appeal; if the submissions and reasonings do not contain conclusions or in the same there is no indication of the law infringed the judge or the assignee judge

shall invite the advocate to indicate the grounds of the appeal and specification of the law violated, failing which no cognizance of the appeal shall be taken.

SECTION II

APPEAL FROM JUDGEMENT (*"APELAÇÃO"*)

SUB-SECTION I

FILING AND EFFECTS OF THE APPEAL

Article 691 – Appealable judgements - Appeal from judgement lies:

1. From the final judgment and from the curative order, when they take cognizance of the merits of the case.

2. From final judgment passed on the incidental proceedings of the falsity (forgery), on the declaration of the heirship passed in accordance with article 378, and of the judgment which decide objections against seizure, listing or against the injunction on new construction, when cognizance has been taken of the subject of the incidental proceedings or of the opposition.

Article 692 – Appeal operating as stay or otherwise - Appeal preferred from a court which does not have pecuniary jurisdiction has the effect of staying the execution of the judgment. The appeal arising from the court of judicial division, shall as a rule, stay the operation of judgment, but it shall not operate as stay:

1. When the judgment is based on bill of exchange, promissory note, cheque, postal order , invoice (bill of sale) or any other writing signed by the defendant;
2. When the judgment orders demolitions, repairs and other equally urgent steps;
3. When it is passed in suits based on contracts of deposit, transport, boarding, domestic service, salaried employees and contract of work;
4. When maintenance is awarded;
5. When the judge is of the view that the suspension of the execution may cause to the

unsuccessful party considerable prejudice. But, the unsuccessful party may, in such case, avoid the operation declaring, when heard that he is ready to furnish security.

Article 693 – Application that judgement be not stayed - The operation of the judgment without stay shall not be granted in any of the cases of previous articles without an application by the successful party. Such application shall be made within the period of three days from the date of service of the notice of the order admitting the appeal from judgment. In the same application request will be made to keep authentic integral copy of the judgment.

When the successful party does not want or cannot get provisional execution of the judgment, he may apply, within aforesaid period that the appellant furnish security, in the event he had not already given the guarantee by way of mortgage, in accordance with article 676. The security may be applied for within the period of three days from the date of notice of the order which had granted stay of the operation of judgment.

Article 694 – Steps for declaring that the judgement was operative - Once the application is made that operation be granted without stay of the judgment, the appellant shall be heard as per clause no. 5 of article 692. The decision passed may be challenged only in the respective reasonings in the submissions. After the application has been granted time shall be fixed to extract integral list of the impugned judgment for the record which will comprise solely of impugned judgment.

§ Sole Paragraph: The respondent may apply that in the certified copy other portions of the record be included at his own cost.

Article 695 – **Basis for fixing security** - The security referred to in clause no. 5 of article 692 and article 693 shall be furnished in any other manner and for this purpose the following shall be taken into consideration:

a) The amount decreed when furnished in cash or in kind;

b) The value of the assets calculated as per the value of the cause when it is a case of delivery of mobiliary assets;

c) The income from the assets for two years when it is a case of delivery of immobile assets and the income shall be calculated at the rate of 5% of the value of the assets based on value of the cause.

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§ Sole Paragraph: If the appellant has been directed to deliver the part of the assets and there is difficulty in fixing the security, a valuation by an expert appointed by the judge shall be done to determine: in which proportion that part is in comparison with the totality.

Article 696 – **Guarantee to Respondent where security not furnished by Appellant** - In the case of article 693, if the appellant does not furnish security within the time fixed for the purpose, the respondent may apply for mortgage or seizure for his guarantee.

Article 697 – **Authentic copy for furnishing security** - Where the furnishing of security or omission to do so results in a delay exceeding ten days, authentic integral copy of the judgment shall be extracted and kept on record for the purpose of pursuing further the incidental proceedings and the appeal against the judgment shall take own course.

§ Sole Paragraph: The authentic copy of the judgment shall include besides the judgment other records absolutely indispensable, specified in the order.

SUB-SECTION II

FORWARDING THE RECORDS OF THE APPEAL

Article 698 – **Intimating the account** - Once the application for presenting appeal has been granted, after complying with the provisions of the previous subsection the proceedings shall proceed the accounts and thereafter notified to the appellant within 24 hours.

If he does not have an advocate appointed in the seat of the court and he has not chosen domicile, the account shall be sent to him by post within same time the quantum of the cost accompanied by acknowledgement due.

Article 699 – **File inspection for filing submissions** - Any party may within 5 days after the deposit of the costs apply for examination of the file for preparation of submissions and reasonings before remitting the file of the appeal to the Superior Court. The time limit for the examination of the file shall be between 10 to 20 days.

If both the parties have applied for examination of the file, the file will be handed over first, to the appellant and thereafter to the respondent. After the return of the file, the same shall be sent to the

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superior court or remitted within 48 hours. If none of the parties applied for examination, the time limit for the delivery or remittance shall start from the time when limitation starts.

SUB-SECTION III

HEARING OF THE APPEAL

Article 700 - **Assignee Judge - ("Relator"): function - forwarding proceedings to the Bench** -The judge to whom the file has been allotted becomes the Assignee ("Relator") and it is for him to pass all orders until final judgment.

In the decision on the object of the appeal and all the questions arising therein the judges following the Assignee Judge shall intervene, as per their order,

§ Sole Paragraph: When a party is aggrieved by any order passed by the Assignee Judge, other than a purely administrative order for prosecuting the appeal, he may apply that a collective judgment be passed by intervention of other two judges,

The Assignee Judge shall submit the case papers to the conference in the first session, subsequent to the presentation of the application. From the judgment of the bench, appeal may be filed by the party who is arrived by the judgment, but appeal would be forwarded to the Superior Court after the final judgment.

Article 701 – **Preliminary examination by the Assignee Judge** - As soon as prepayment of costs is done, the office shall examine the file and thereafter the papers shall be placed before the Assignee Judge, who shall satisfy whether in the trial court all the legal provisions have been complied with, so as to reach final judgment as well as whether it is within the prescribed period of limitation. If there is any breach which is not found justifiable, he shall order that copy of his order shall be remitted to the Superior Judicial Council.

At the same time the Assignee Judge shall examine whether the appeal is maintainable, whether the order passed as to the operation of the final judgment is to be maintained and if there is any circumstance which comes in the way of taking cognizance of the appeal.

Article 702 – **Procedure in the case of error as to type of appeal** - If the Assignee Judge is of the view that the competent appeal is appeal from order ("*agravo"*), he will take up the matter to

the conference to decide this issue immediately. If it is decided that appeal should proceed as appeal from order, such judgment shall be notified to the parties who had not submitted their submissions, in order to file their reasoned submissions within the time fixed in article 743. The Assignee Judge shall remain the same.

Article 703 – **Procedure in case of error as to operation of judgement** - If the Assignee Judge is of the view that the operation of the judgment needs change, he shall forward the proceedings to the conference.

Where the point has been raised by any of the parties in the respective submissions, he shall direct that opposite party be heard, if such party has not yet replied and only thereafter, the file shall be placed before the conference.

If it is decided that the appeal from final judgment was received without stay as to the operation, but there was a case to grant stay as to the operation, he shall direct that the communication be sent to the lower court to stay the execution, if the appellant prayed such relief. The direction shall indicate only the identification of the judgment, execution of which should be stayed. If it is decided that appeal arising from judgment has been received partly with stay of the operation and partly without stay ought to have been made without stay, the Assignee Judge shall issue integral copy of the order if the respondent so applies. The integral copy of the decision shall contain the collective judgment and will be sent to the trial court.

Article 704 – **Where the appeal is barred** - If the Assignee Judge is of the view that there is bar to take cognizance of the appeal, he shall give his opinion in writing and shall hear for the period of 48 hours each of the party if they have not given their submissions. Thereafter, the file goes for 48 hours to the immediate next two judges and the preliminary question shall be decided in the first session.

If the question has been raised by the respondent in his submissions, only advocate for the appellant shall be heard and thereafter, file will proceed for the necessary steps.

Article 705 – **Appointment of advocate by Court** - When there is a case for taking cognizance of the appeal, the Assignee Judge shall appoint an advocate for the absentees, incapables and uncertain, if they cannot be represented by Public Ministry, and thereafter shall fix time limit,

between 10 and 20 days for submissions in writing by the parties who have not given the submissions in the trial court. During that period the examination of the file shall be permitted to the advocates.

If there are appeals by both the parties, the first appellant shall be given time to submit the submissions and thereafter the second appellant but only to meet the points raised in the second appeal.

Article 706 – Filing of documents - With the written submissions the parties may produce the documents when there are exceptional circumstances foreseen in article 550 or the production had become necessary as a result of the judgment of the trial court.

§ Sole Paragraph: Subsequent to the submissions it is permissible to produce supervening documents.

Article 707 – **Examination by Judges** - Thereafter the file shall be sent for examination by two judges next to the Assignee Judge and lastly to the latter; for 28 days to each of them. Such period does not run during the holidays of Christmas, Carnival and Easter.

But, if the Assignee Judge is of the view that on account of simplicity of the cause, it may be decided independent of examination by the judges, he shall take the file to the conference and the matter will be proceeded with as decided at the conference.

Article 708 – Need for steps - If the Assignee Judge or any of the following judges are of the view that any procedural steps are necessary, the matter shall be decided in the conference. If the majority is of the view that such procedural steps are necessary, order shall be passed by the Bench and after such procedural steps are taken, the file shall be placed for examination by the judges for the purpose of the hearing. The judges who already had examined the file, will have further examination for 5 days after the examination by third judge in order to examine the result of the procedural step given.

Article 709 – **Preliminary questions by other judges** – The other two judges may raise any preliminary question mentioned in article 702 to 704 and whatever is provided in those articles shall be followed.

Article 710 – **Hearing on object of the appeal** - The judges after having examined the file shall affix their signature under the date and duly signed. After the end of the examination, the file shall be posted for hearing.

On the day of the hearing the Assignee Judge shall read his opinion and thereafter it will be put for vote of two adjunct judges as per the order of the examination by them. The discussion amongst them shall be directed so as to produce the best result within the minimum time, with dialogue if required. The decision shall be taken by majority; and when there is no majority the Chief Justice shall have the casting vote.

§ Sole Paragraph: When along with the appeal against final judgment there are appeals from orders filed by the parties previously, their cognizance will be taken up first but their cognizance will be taken only if it is found that the breach committed has bearing on the decision of the case.

Article 711 – **Adjournment or replacement of Assignee Judge** - If the Assignee Judge is absent or has some impediment to participate, the hearing will be adjourned for following session; however, if there is a ground to believe that the impediment or absence may be longer, the first adjunct shall exercise the functions of the Assignee Judge.

Article 712 – **When can High Court alter decision of collective tribunal** - The High Courts shall not alter the decision of the collective tribunal, except;

1. If from the file all the particulars of evidence which have been the basis for the decision are available;
2. If the particulars obtained from the file compel a different decision which cannot be countered by

any other evidence;
3. If there is a case foreseen in clause no.3 of article 771.

Article 713 – Preparation of judgement - The Assignee Judge shall draw up the final judgment in accordance with discussion and voting of the majority.

The collective decision shall begin with a report, then all the grounds shall be mentioned, ending with the decision, and to the extent applicable in accordance with the provision of Article 659;

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thereafter, it shall be signed by the judges who participated in the discussion and the declaration of the dissenting judge shall not be permitted.

Article 714 – **Publishing the result of the voting** - If it is not possible to write the judgment immediately, the result of the decision shall be noted in the book of remembrance, which shall be signed by the judges and published immediately. The concerned judge shall retain the file and shall produce the judgment in the first session. The judgment shall bear the date of said session and shall be signed by the judges who participated.

If any of them is not present or is not able to sign, the reason for not signing shall be stated.

Article 715 – Provisions relating to judgements to apply – The provisions of articles 660 to 667, 669 and 670 shall apply to the appellate court. Even though the appellate court declares the judgment passed in the Trial Court as null and void, shall not fail to take cognizance of the object of appeal against final judgment.

Article 716 – **Oral arguments** - If the parties have not filed their submissions in the trial court they may agree to have oral discussion up to the stage when the Assignee Judge directs the examination for the purposes of filing the submissions.

In this case the Assignee Judge shall fix period between **5 to 10days,** the period for the purpose of examination of the file for each party and thereafter, the file will go for examination to the Assignee Judge and thereafter following judges, for 20 days each.
After the examination is over the file will be posted on the board for hearing. The arguments shall be heard and the Chief Justice will ask first the advocate of the appellant and then the advocate of the respondent and thereafter may seek any explanation which may be necessary.
After the arguments are over, the court retires to the conference hall for deciding the case.§ Sole Paragraph: The advocates may submit the submission in writing till the time given to them for examination of the file.

Article 717 – **Nullity of collective judgement** - The collective judgement is null and void when any of the circumstances mentioned in article 668 is satisfied and also when it is recorded against the negative vote or without the majority.

Such nullities also shall, like those prescribed for the trial court orders be raised according to the procedure established in article 669. The Assignee Judge after hearing the opposite party shall take the file to the conference to decide on the submissions.

§ Sole Paragraph: A judgment is considered to have been written against the minority when it is delivered in a manner different from what is recorded in the book of the remembrance and has been pronounced at the end of the session in which the case was discussed. In case there is disagreement between what is announced and what is recorded in the book, the later record will prevail.

Article 718 – **Modification of the collective judgement** - If the Supreme Court of justice annuls the judgment and direct its modification, the same judges shall, if possible, intervene in the hearing of review.

The judgment shall be reviewed in precise terms as directed by the Supreme Court.

Article 719 – **Return of file to the lower court** - If from the judgment no further appeal is instituted, the file shall be sent to the Trial Court, without keeping in the High Court any integral copy of the judgment. The return of the file shall be by order of the Assignee Judge independent of application or opinions.

Article 720 – **Steps against attempts to delay** - If the Assignee Judge is of the view that the party with a particular application is trying to obstruct the implementation of the decision or the return of the file to the competent court, he shall put up the subject to the conference and the conference may order that incident is processed in separate and steps to be taken accordingly.

SECTION III

APPEAL TO SUPREME COURT (‘*REVISTA’*)

SUB-SECTION 1

PRESENTATION OF APPEAL AND

FORWARDING THE APPEAL PAPERS

Article 721 –**Decisions appealable before Supreme Court** - The appeal to the Supreme Court lies:

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1. From the judgment of appellate court arising from the final judgment of the Trial court, while deciding the case on merits, the requirement of second part of the article 678 are satisfied. 2. From the collective judgment of the High Court arising from the final judgment of the trial court while taking cognizance of the merits of the appeal.

Article 722 – Grounds of appeal - The ground of appeal to Supreme Court is the infringement of substantive law on interpretation or application of the law; besides it is open to plead any of the nullities foreseen in article 668 and 717 as accessory ground upon passing of the trial court judgment or appellate court judgment, on such plea of nullities.

§ 1: By substantive law it must be understood: The norms of law of substantive character originated from the organs of sovereignty, national or foreign; the usages and customs when they have force of law; the international conventions and treaties.

§ 2: The error in the appreciation of evidence and selection of material facts shall not be object of appeal to Supreme Court, except where there is express provision of law which requires a particular type of proof for the existence of an act or fact or which lays down specific type of proof as having binding force.

§ 3: If the appellant is challenging the judgment of the trial court or of the appellate court solely based on nullities of article 668 and 717, he shall file an appeal from order (“*Agravo”*). In such case, if the final judgment of the trial court or collective judgment of the appellate court is annulled, from such judgment, it is open to make further challenge by way of appeal to Supreme Court (*“Revista*”) on the ground of violation of substantive law.

Article 723 – **Effect of appeal** - The appeal under this section (“*Revista*”)’ stays the effect of the judgment on questions relating to the status of persons.

Article 724 – **Order of Assignee Judge** - The Assignee Judge shall pass the order admitting or rejecting the appeal declaring whether the operation of the judgment is stayed or not, when the appeal is admitted.

If the appeal is admitted and the operation of judgment is stayed, the respondent may demand security and in such a case the provision of article 693 and following ; if the effect is without stay of operation, the respondent may within the time limit prescribed in article 693, apply that the

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entire text of original order. The Assignee Judge shall fix time for the issuance of copy which will include only the collective judgment of the appellate court except where the respondent proposes to include copies of other records, undertaking to pay the cost of the same.

Article 725 – **Forwarding of appeal** - The provisions of articles 698 and 699 are applicable in the matter of forwarding the appeal to the superior court.

SUB-SECTION II

THE DECISION OF THE APPEAL

Article 726 – **Applicability of norms for appeals to High Court from final judgement** - The provisions relating to the appeal from the final judgment decided by High Court with the exception of, what is provided in article 712 and second part of article 715 and also excepting what is prescribed in second part of article 715, and further excepting what is provided in the following articles.

Article 727 – **Annexing of documents** - With the arguments, it is open to produce supervening documents, without prejudice to what is provided in paragraph 2 of article 722 and in the second paragraph of article 729.

Article 728 – **Examination by judges and ascertainment of majority** - The file will be sent for examination to the four judges next to the Assignee Judge and lastly to the Assignee Judge himself. The majority shall be determined by the number of judges present.

Article 729 – Ascertainment of majority and order if it is found that there was violation of substantive law - It is necessary that, there should be 5 votes in order to arrive at the conclusion that there was violation of substantive law. Whenever there is a majority with less than 5 votes never the less, the judges who have seen the records shall vote and sign.

The decision of the appellate court as to matters of fact shall not be altered, save as an exceptional case, foreseen in paragraph 2 of article 722. As to the material facts settled by the appellate court, the Supreme Court shall apply definitely the juridical regime, which is found adequate.

The file will come back to the appellate court when the Supreme Court finds that the decision on

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point of facts may and must be amplified in order to constitute sufficient basis for the decision on point of law.

Article 730 – New judgement in the High Court - In exceptional cases, referred to the last part of the previous article, the Supreme Court after having decided law applicable, will direct rehearing of the case in accordance with the decision point of law by the same judges who intervened before the appellate court.

§ Sole Paragraph: If on account of absence of factual data, the Supreme Court is not in the position to settle with precision the juridical regime applicable, the fresh decision of the second instance shall admit the appeal to the Supreme Court in the same manner and terms like the first one.

Article 731 – **Modifications to the collective judgement in case of nullities** - When the nullities of articles 668 and 717 are raised, the Supreme Court, in the event of an annulment of judgement of trial court or of the appellate court shall order modification of the judgment if necessary, by the same judges, decide the law applicable and observing on this part what is provided in the previous article and what is provided in article 729 as to the number of votes necessary to have majority.

If the ground of annulment is rejected or there be no need to interfere as to modification, as to the hearing of point of breach of substantive law, the same procedure which is stipulated in two proceeding articles shall be applicable.

§ Sole Paragraph: The file need not be sent back for the purpose of modification when the court is of the view that the judgment was written against the majority or that there is nullity indicated in clauses no. 3 and 5 and second part of no. 4 of article 668. In these cases, the Supreme Court shall declare, in what manner, the decision annulled is reviewed.

Article 732 – **Nullities in collective judgement** - The article 717 is applicable to the judgment of Supreme Court.

SECTION IV
APPEAL FROM ORDER ("*AGRAVO*")

SUB-SECTION I
APPEAL FROM ORDER FILED IN THE FIRST INSTANCE

DIVISION I
FILING OF APPEAL AND EFFECTS OF STAY OF THE OPERATION OF THE IMPUGNED JUDGMENT

Article 733 – **Appealable decisions** - An appeal from order lies from the decisions which are otherwise amenable to recourse but from which appeal from final judgment does not lie.

Note: This article refers to orders which are not appealable under Art.691 which deals with '*Apelação'* or appeal from final judgement. This provision covers what are generally known as appeals from order in Indian Civil Procedure. The word appeal and appealable in Portuguese Law primarily refer to appeals from final judgement under Art.691 which is called '*apelação'*. The word for appeals in the wider general sense is '*recurso'* or recourse. It must also be noted that even from certain orders of procedural administration, no further recourse (appeal) lies under Art.679.

Article 734 – **Appeals forwarded immediately and those forwarded later** - The system of forwarding appeals from order to the appellate court shall be as follows:

a) The following appeals are forwarded immediately:

i) From the order which rejects the plaint "in limine".

ii) From a curative order which puts an end to the proceedings.

iii) From a decision passed on the objections against the questionnaire.

b) When the curative order puts an end to the proceeding, the appeals filed from earlier orders shall be of no effect if no appeal is filed against such curative order; otherwise all the earlier appeals are to be forwarded along with appeal filed against the curative order;

c) When the curative order does not put an end to the proceedings, the appeal filed against the said curative order, as well as appeals filed against previous orders shall be forwarded only when the appeal referred to in number 3 of clause (a) is forwarded. If there are no objections against questionnaire or none of the parties appeals from the order passed in respect of the same, the appeals filed against previous orders shall be sent together as soon as the questionnaire has been finalised;

(d) The appeal filed against orders passed after the decision on the objections against the questionnaire shall be forwarded only alongwith the appeal from final judgment.

Article 735 – Other appeals forwarded immediately - Besides the orders mentioned in clause (a) of the previous article, the following appeals from order shall be forwarded immediately; 1. From the order by which the judge recuses himself or rejects the plea of disqualification against him raised by some of the parties.

2. From the decision passed on conflict of jurisdiction or competence.

3. From the order which annuls entire proceedings or which holds the court incompetent.§ Sole Paragraph: Equally the judge should forward immediately the appeal from order when it is manifest that if it is retained, it will be absolutely futile.

- See also Articles 120 and 123 of this Code.

Article 736 – Appeals forwarded alongwith respective proceedings – The following are forwarded to the superior court along with the main file:

1. Appeals from order referred to in clauses (a), (b) and (d) of article 734 and clauses (2) and (3) of the preceding article;

2. Appeals from order referred to in clause (c) of article 734, except where there is no appeal filed against order passed on the objections nor against the curative order.

§ Sole Paragraph: If there is an appeal from the order deciding objections against the questionnaire, after the same is decided by the High Court the proceedings shall be remitted back to the trial court, after keeping the records necessary for forwarding to the Supreme Court the appeals filed from previous orders.

Article 737 – Appeals forwarded separately – The following appeals are sent separately from the main file:

1. Appeals from orders referred in clause (1) of article 735;

2. Appeals from order referred to in clause (c) of article 734, when the exception foreseen in clause no. (1) of the preceding article occurs;

3. Appeal from order referred to in clause (a) of article 739.

§ Sole Paragraph: Of the appeals from orders mentioned in clause no.2 a single file shall be prepared.

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Article 738 – **Appeals in preventive injunction orders** - When there are appeals from orders passed in preventive or conservatory proceedings, the following shall be observed:

a) If the order does not grant the interim relief or rejects '*in limine*' the respective application, the appeal shall be forwarded immediately in the same file;

b) If the interim relief is granted, the appeals from orders arising from different previous orders passed shall be forwarded at the end along with appeal filed against the decision putting an end to the proceeding or the same proceedings have come to the end.

Article 739 – Appeals in incidental proceedings - In relation to the incidental proceedings as such designated by law, the system shall be as under:

a) If the order does not admit the incident, the appeal from order which is preferred against the same, shall be forwarded immediately;

b) If the incident is admitted, the appeals filed from different orders will be sent at the end in accordance with clause (b) of previous article if the incident has been processed as attached proceedings; if the incident is processed along with main cause, the appeals from orders filed against the orders in the incident shall be forwarded along with appeals from orders in the principal cause.

§ Sole Paragraph: When the incident is processed as an attached proceeding, there being appeals from orders which are to be sent at the end, the file, shall be detached from the principal file and shall be forwarded to the superior court. The appeal from order referred to in clause (a) shall be forwarded in the same way in the incidental proceedings.

The party may apply that to the incidental proceedings the certified copies extracted from the main matter be attached.

Article 740 – Appeals operating as stay - An appeal from order which is forwarded immediately in the same file, shall operate as stay; however, the judge may decline to attribute the effect of stay to the appeal filed against order deciding objections against questionnaire. As to others they will have the effect of stay.

a) If the law expressly declares so;

b) When the appeals are from order which impose fines;

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c) When it is found that the immediate execution of the order may cause to the appellant, loss which is irreparable or difficult to recover.

§ 1: Besides the special cases in which the law attributes the effect of stay to an appeal from order, the following appeals from orders shall also have the effect of stay:
1. From the decision which orders cancellation of any registration;
2. From the order which directs payment of money or imprisonment provided the money is secured by depositing or furnishing security in the Court.
§ 2: The stay of operation on the ground of irreparable loss or difficult recovery shall not be declared unless the appellant has prayed for in the application for appeal and without the respondent being heard.

Article 741 – Declaration as to forwarding and stay - In the order admitting the appeal it should be declared whether the file has to be forwarded immediately or not and in the first case, whether it is to be sent along with the file or in separate. It shall also declare the effect of the appeal, when it operates as stay of operation of the impugned order.

DIVISION II

FORWARDING OF THE APPEAL TO THE APPELLATE COURT

Article 742 – **Notice of the order and annexures to appeal** – Admission order shall be notified to parties in 24 hours.

If the appeal is to be forwarded immediately but in separate from the main file, the parties shall indicate by way of application within 48 hours, subsequent to the service of notice, the records from the file of which the certified copy is required in support of the appeal.
In support of the appeal there shall always be transcribed, at the cost of the appellant, the copy of the impugned decision and application for preferring appeal from order in which following particulars in summary about the date of presentation of the application preferring appeal, date of the service of the notice or publication of order or judgment and the value of the proceedings, date of the presentation of the appeal, date of the notice or a publication of the order or final
judgment and value of the cause. If any of such particulars are absent, the superior court shall solicit from the lower court the particulars by simple office letter.

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Article 743 – **Filing of submissions** - Within 8 days from the service of notice of admission of appeal, the appellant may present in the office his submissions supported by the documents which he is permitted to file. The respondent shall have right to file his submissions supported by documents which he is permitted to produce within 3 days from the time fixed for the appellant to present the submissions.

§ Sole Paragraph: During the time limits fixed in this article, the office shall make the file accessible to the parties without prejudice to the normal prosecution of the case when the appeal is without stay of operation and shall issue the certified copies which have been asked. Within the time period referred to in the last paragraph of the body of this article, the file shall be made available to the respondent.

Article 744 – Support to the Order or reversal - When the period for submission of arguments on both sides has expired, the office shall prepare the file with respective certified copies and put up before the judge either to sustain the order or to reverse it. In the event the judge maintains the order, he may direct to issue the certified copies of portions he thinks fit.

If the judge reverses the order, the respondent may within 48 hours from the notification of the order of the reversal make a prayer to forward the file to the court to decide the question over which the conflicting orders are passed. From this time the respondent assumes the position of the appellant.

§ Sole Paragraph: In the event of the reversal, the original order appealed from was not suspending the execution of the order; the certified copy of the order of the reversal shall be retained for its implementation.

Article 745 – **Accounts** - The file thereafter will be sent for the accounts and provisions of article 698 shall be followed.

Article 746 – **Procedure when appeal is forwarded immediately in the same file** –When the appeal from order is forwarded immediately along with the file, whatever is provided earlier shall be applicable with the exception of issuance of certified copies and processing of submissions

and documents separately. Such records shall be incorporated in the file of the proceedings.

Article 747 – **Procedure when appeal is not forwarded but submissions are filed** – If the appeal from order is not forwarded immediately, the appellant may file his submissions within 8 days from the notice of the order admitting the appeal or when the appeal is to be forwarded to the appellate court.

In the first case, the steps prescribed in articles 742 to 744 are to be followed with the exception of the references to issuing of certified copies and filing of records and documents. Once the order upholding the impugned order is passed, the subsequent steps shall remain suspended till the time the appeal from order is forwarded to the appellate court; if the impugned order is reversed, all the subsequent steps shall stand suspended or the appeal will stand concluded depending upon the stand taken by the respondent in availing the remedies available under Article 744.

When the stage to forward the appeal from order comes, if appeal is not to be forwarded along with the main file, the parties shall be notified to indicate within 48 hours, the certified copies which are required and the office shall comply with article 742.

§ Sole Paragraph: In the account there shall be separation as to the cost payable from each appeal from order and the cost to be payable by each appellant; however, the payment of cost for forwarding the appeal shall be made solely by last appellant.

If for any reason, the main appeal alongwith which the appeal from order should have been forwarded, does not succeed, the next immediate appellant may request to forward his appeal after paying costs within 5 days from the date of knowledge of the fact which prevents the other appeal from being pursued. With the said appeal from order other previous appeals shall be forwarded which have not become unfructuous.

What is provided in the second clause of this paragraph is not applicable to the case where appeal from order is to be forwarded along with the appeal against the final judgment or with the appeal from curative order which has put an end to the case.

Article 748 – **Procedure when appeal is not forwarded immediately when submissions are not made soon** - When the appeal from order is not forwarded immediately and the appellant

does not present his submissions within the time fixed in the article 743, upon suspension of the steps of the appeal subsequent to service of the order which admits the appeal, the submissions

may be presented along with the appeal which causes the forwarding of the file to the higher court and becoming only one complete proceeding. The position of each of the parties in these proceedings shall be defined by the position which they hold in the appeal giving rise to take up previous appeals along with, without prejudice however of what is provided in the sole paragraph of previous article.

Thereupon the proper steps of the appeal shall be followed along with other appeals which are

forwarded; but if these steps were of articles 743 and following, the judge may reverse the last order under appeal.

§ Sole Paragraph: When the case foreseen in the second part of clause (c) of article 734 arises, the last appellant and last respondent shall be notified that they may prosecute their appeals. Such notice is equivalent to the order of admission of the appeal.

DIVISION III

HEARING OF THE APPEAL

Article 749 – **Procedure as in appeal from final judgement to be followed** - The provisions of appeal against final judgment shall be applicable to the hearing of appeal from order, to the extent applicable, except what is provided in the following articles.

- See also Article 700 and 720 of this Code.

Article 750 – **Advance payment** - In the event an appeal from order has been declared abandoned for non-payment of prepayment, there being previous appeals from order which have been forwarded alongwith, the immediate preceding appellant may within 5 days from service of notice of the order of abandonment, may effect the prepayment of costs for the prosecution of his appeal, with which shall be decided the previous appeals from order.

§ Sole Paragraph: Provisions of this article do not have application when the appeal from curative order putting an end to the main file has been declared abandoned.

Article 751 – Preliminary questions - If there is a change in the effect of the appeal, the interested party may pray that the file may be sent back to the trial court for implementing in the trial court the change made by the superior court. If the Assignee Judge is of the view that no cognizance can be taken of the appeal, he may hear only the advocate for the appellant.

Article 752 – File examination and hearing - When the Public Ministry has to intervene in the file, all the papers will be sent to it for seven days to express its opinion within the said period of seven days and, thereafter, the file will go for examination by the judges composing the bench, and then to the Assignee Judge for the preparation of final judgment, however the period shall be seven days for each of the first two and fourteen days for the second.

There being several appeals from order, the court shall take cognizance as per the order of filing of the appeal before the trial court; but if they have been forwarded along with appeals from order, which has put an end to the proceedings, the appeal is to be allowed when the breach committed is likely to modify such decision.

To the judgment which decides the appeal, the provisions of Articles 717 to 719 apply.

Article 753 – Cognizance on merits in place of trial court – If it is an appeal from order against the final judgment and the trial court has not taken cognizance of the same on merits for any reason, if the court is of the view that such reason is not well founded and there is no reason for not taking cognizance of the case on merits, the court shall take cognizance of the same, reversing the judgment of the trial court.

However, if the appeal to be filed from the decision of the trial court was appeal from final judgment, it may be directed by a bench judgment that procedure of appeal from final judgment be followed. Such determination shall have the following effects:

1. The file shall be transferred from the category of appeal from order to the category of appeal against final judgment;
2. The file will come back with examination by other judges composing the bench and to the assignee judge for the period necessary to complete the period assigned to appeal from final judgment;

3. The appeal to be filed from the final judgment of the appellate court shall be appeal to Supreme Court *('Revista')*.

SUB-SECTION II

APPEAL FROM ORDER FILED BEFORE THE APPELLATE COURT

DIVISION I

PRESENTATION OF THE APPEAL, OBJECT AND EFFECT OF THE APPEAL AS TO THE STAY OF OPERATION

Article 754 – **Decisions appealable to Appellate Court** - Appeal from order lies before the Supreme Court:

1. From the judgment of the trial court referred to in the exception provided in last part of the article 796;
2. From the judgment of appellate court which admits appeals except in cases where appeal is"*Revista"* (Appeal to Supreme Court) or appeal from final judgment.

Article 755 – Grounds for an Appeal from Order - An appeal from order may be on the following grounds:

1. The nullities mentioned in articles 668 and 717;
2. Lack of jurisdiction of the court or breach of res-judicata;
3. Infringement or erroneous application of substantive law or the procedural law.

§ 1: The appeal from order shall be governed by paragraph 2 of the article 722.

§ 2: The nullity in the final judgment or in the judgment of the appellate court and the nullity in the proceedings may be raised as a ground of appeal after they being raised and heard in the appeal from order filed from the judgment passed on the point.

Article 756 – **Appeals from order which are forwarded immediately** - Following proceedings coming from trial court shall be forwarded immediately:-

1. The appeal from order referred to in clause no.1 of article 754;
2. The appeal from order from the judgement of the High Court which has taken cognizance of appeal from order or declined to take cognizance of appeal from order or from appeal from final judgment.

Article 757 – Appeals from order which are forwarded only at the end - The appeals from order filed from the judgment of the appellate court passed in the course of proceedings in the High Court shall be forwarded, when the appeal from the final judgment of the appellate court which puts an end to the proceedings, is forwarded.

The appeals from order filed from the judgment of the appellate court on the issue of lack of jurisdiction, which are forwarded immediately in separate, stand excluded from above.

§ Sole Paragraph: In the incidental proceedings, processed by appendage, the appeal from order arising from the judgment of the appellate court which has not admitted the plea shall be forwarded immediately, and same will happen in relation to appeal from order from judgment of appellate court which has put an end to the proceedings, and along with it the incidental proceedings which shall be separated there from an appeal from order of previous judgment from appellate court.

Article 758 – Stay resulting from Appeals from Order - The appeals from order which have come to the appellate court, have the effect of staying the operation in the cases of principal matter and proceedings referred to in clauses (a) to (c) of article 740 and the numbers of paragraph 1 of same article.

Article 759 – Fixing of stage of forwarding and its effect - Whatever is provided in article 741 is applicable to the appellate court.

DIVISION II

FORWARDING THE APPEAL

Article 760 – **Forwarding of the appeal when done immediately** - As soon as notice is given to the parties within the period of 24 hours of the order which has admitted the appeal, if this has immediately forwarded and in separate what is provided in articles 742, 743 and 745 shall be applicable.

When the file has been forwarded along with the main file, the same steps shall be taken with the exception of those referring to issuance of certified copies and preparing separate record of the submissions and documents.

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Article 761 – **Steps when appeal from order is not forwarded immediately** - If the appeal from order is not forwarded immediately, the steps of the appeal subsequent to the notice admitting the appeal shall stand suspended and the submissions pertaining to appeal from order shall be presented along with the submission of the appeal which causes the same to be forwarded, thereby making two appeals in one file.

The Appeal from Order will be without effect if for any reason the appeal alongwith which it was to be forwarded is not prosecuted further.

DIVISION III

HEARING OF APPEAL

Article 762 - **Procedure for hearing** - The procedure for the hearing of the appeal from order shall follow the steps prescribed in articles 749 to 752.

If the High Court for any reason has refrained from taking cognizance of the object of appeal, the Supreme Court shall revoke the decision if it is of the view that the reason for it is not tenable and shall direct the High Court to decide the matter again through the same judges.

§ Sole Paragraph: The provisions of sole paragraph of article 731 are applicable to the hearing of appeal from order.

- See also article 753 of this Code.

SECTION V

APPEAL TO THE FULL COURT

Article 763 – **Grounds for appeal to Full Court** - If in the same field of legislation, the Supreme Court has passed two diametrically opposite judgments, over the same question of law, it is permissible to appeal to the full bench of the Supreme Court by preferring appeal from the later judgment.

§ 1: The contradictory judgments should have been delivered in two different cases or two different incidents in the same case. In the later case, however, if the first judgment has constituted res-judicata in relation to the parties, the appeal is not admissible, but provisions of article 675 are to be followed.

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§ 2: As ground for appeal, it is permissible to place reliance on the previous judgment, which has become res-judicata. However, it is presumed that there is res-judicata, except where the respondent pleads that appeal is pending and no res-judicata is operating.

- See also article 677 sole paragraph of this Code.

Article 764 – **Application for Full Court hearing** - In the application for presentation of appeal, indication will be given with full particulars of the two cases demonstrating that the earlier judgment is in conflict with the second and giving the place of publication or registration or the proceedings in which the same was passed, failing which appeal will not be admissible.

Article 765 – Submissions on preliminary question - In the event, the appeal is admitted, the appellant within 5 days from the date of service of notice shall present the submissions in writing, so as to demonstrate that in between the judgment appealed from and the previous judgment, referred to in the application, there is a conflict as required under article 763.

The opposite party shall reply within 3 days, following the end of the period fixed for submission of the appellant.

§ Sole Paragraph: The appeal shall be declared as abandoned in the event, the appellant does not present his submissions.

Article 766 – Examination and judgement of preliminary question - Thereafter the proceedings shall go for examination for 48 hours to each of the judges of the section next to the Assignee Judge. The latter shall have the final examination at the end for 5 days and in the first session immediately thereafter; it will be decided in conference, if there is a conflict as referred to in article 763.

§ Sole Paragraph: If the Respondent pleads that the previous judgment has not become res-judicata, the section shall verify what is the situation on the date when decision on the point of opposition is to be rendered and in the event it is found that really the judgment has not become res-judicata, it shall refrain from deciding the point and appeal will be of no effect. Till the session is over, the appellant may plead whatever he has to say on the point of judgment becoming res-judicata.

Article 767 – Submissions and examination on the solution to conflict of jurisprudence - If it is decided, there is no conflict, the appeal is considered as closed.

In the contrary case, each of the party shall have ten days to examine the file and present his submission on the object of the appeal, thereafter, there will be examination for equal period by the Public Ministry which shall always express its opinion over the solution to the problem of conflict of jurisprudence. Thereafter, the proceedings will go to all the judges of the court from the one next to the Assignee Judge and ending with him. The period of examination shall be same as in the case of appeal from order.

§ Sole Paragraph: The judgment which recognizes the existence of the conflict does not debar the full court from deciding the contrary.

Article 768 – **Judgement on conflict – Final binding effect** - In the judgment of the appeal shall intervene, at least four fifths of the judges which comprise the sections of the court.

There being many grounds of the appeal, the court shall pronounce on the points in which there is a conflict. The Chief Justice shall have casting vote.

The legal doctrine affirmed by the judgment which resolves the conflict of jurisprudence shall be binding on all the courts until altered by another judgment pronounced in accordance with the following article.

§ 1: Once it is found that there is a conflict of jurisprudence, the tribunal shall resolve such conflict and pass the "*assento*" (decision of the full court), even though the resolution does not have practical utility to the concrete case in dispute because the decision of the judgment appealed from shall have subsisting effect, whichever may be the doctrine laid down by the"*assento*".

§ 2: The judgment which resolves the conflict shall be published immediately in the first series of Government Gazette and in the Official Reporter. The Chief Justice shall send to the Ministry of

Justice one copy of such judgment, along with the reply of the Public Ministry, of the previous judgment relied upon as a ground for the appeal and of any other considerations which it deems fit.

Article 769 – Modification of Full Court decision settling law - When in the subsequent judgments of the Supreme Court the majority of the judges who intervene in the decision are in

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favour of a modification of the jurisprudence fixed by full court ("*assento")*, the file shall be presented to other judges until it secures seven votes for maintaining the jurisprudence established or for the need to modify it.

In such case the Chief Justice shall direct that the file be sent for examination by remaining judges and the question shall thereafter be decided in full court.
If the final view is in favour of a change of the jurisprudence, a new judgment ("*assento"*) shall be drawn, to which the provisions of the previous article and its paragraphs shall apply.

Article 770 –Appeal by Public Ministry - The appeal referred to in this section may be filed by Public Ministry, even when is not party to the litigation. But, in such case it shall not have any influence on the decision and is meant solely to call for a law settling judgement ("*assento"*) over the conflict of jurisprudence, and in such case it is permissible to file the petition even after the later decision has become res-judicata for the want of appeal.

SECTION VI

REVISION

Article 771 – **Grounds for Revision** - Review of any decision which has become res-judicata may be applied for only on any one of the following grounds:-
1. When it is shown by a judgment passed in a criminal case and which has become res-judicata that the judgment sought to be reviewed was passed by bribe, graft, corruption or embezzlement; 2. When the forgery of a document or of a judicial act on which the judgement was based is alleged and this issue was not considered in the proceedings in which the decision was or when by a final judgment or order a court holds that the depositions or reports of experts, which have determined the decision are false;
3. When a new document is produced which was neither in the possession nor known to the party and such document by itself is sufficient to destroy the evidence on which the decision is based; 4. When the admission, withdrawal or compromise on which the judgment is based is revoked or there is a valid ground for revoking the same;

5. When the admission, withdrawal or transaction referred to in article 298 and following is null and void on account of insufficiency of powers of attorney or insufficiency of the power of the

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attorney except where the judgment of homologation has been notified personally to the donor of the power of attorney.

6. When the proceedings went ex-parte and the party was not summoned or service of summons was null.
7. When judgment is contrary to another judgment which constituted res-judicata and the party proves that he had no knowledge of the judgment during the pendency of the proceedings.

Article 772 – **Time for filing** - The revision may be filed before the court, which passed the decision sought to be revised. The time limit for filing the revision is of thirty days counted from: a) In the case of No.1 and second part of No.2 of the previous article, from the date when the judgment on which revision is based becomes res-judicata.

b) In other cases, from the date the party obtained the document or got the knowledge of the fact which is the basis for the revision.
§ Sole Paragraph: The provision of the second part of article 779 and respective sole paragraph is applicable, with necessary adaptations.

Article 773 – **Mode of filing** - In the petition for revision, the grounds for the revision shall be set out and along with the same, in the case of clause no.(1), second part of clause no.(2), of clause no.(3), first part of clause no.(4) and of clause no.(7) of article 771, the certified copy of the judgment or the document on which the case is based; in the case of first part of clause no.(2) and of second part of clause no.(4), summary evidence of veracity of ground pleaded is required to be placed on record; in case of clauses (5) and (6), the petition shall demonstrate that the ground pleaded is satisfied.

Article 774 – **Special cases of immediate dismissal** - Without prejudice to what is provided in article 688, the petition shall be rejected when it has not been drawn or supported in accordance with the provisions of the preceding article and also when it is found that there is no reason for revision.

If the petition is admitted the opposite party shall be notified to reply within ten days.

Article 775 – **Adjudication in specific cases** - With the exception of cases of the first part of clause no.2 and second part of clause no (4) of article 771, immediately after the reply is filed by the respondent or expiry of the time limit fixed, the court shall take cognizance of the ground of the revision.

If the ground is held tenable, it shall order:
a) In the case of clause no.7 of article 771, that the impugned judgment is of no effect;
b) In the case of clause no.6, that all the steps taken after the service of summons stands cancelled and that fresh service of summons be made on the defendant;
c) In the cases of no.1 and 3, that new final judgment be passed upon absolutely indispensable necessary steps being taken and each of the party being given time of 8 days to file their submissions in writing;
d) In the case of the second part of clause no.2 of the first part of clause no.4 and of clause no.5 that necessary steps be given afresh, saving only whatever may be useful.

Article 776 – **Steps for adjudication in other cases** - In the case of first part of no.2 and of second part of no.4 of article 771, after the reply is filed or expiry of the time limit fixed, the court after examination of the evidence led and any other steps which are found necessary, shall decide whether the petition should be proceeded with. When the inquiry has to proceed, required steps will be taken so as to take cognizance of the ground raised and to decide the case afresh.

Article 777 – **Furnishing of security** - If there is any execution pending or initiated from the judgment, the applicant for the execution or any creditor shall not be paid in cash or in mobiliary assets without furnishing security.

SECTION VII

OBJECTION BY THIRD PARTY

Article 778 – **Ground for third party objection** - When the parties had made use of the proceedings in order to do a simulated act (sham transaction) and the court has not used the power conferred by article 665, because the existence of the fraud did not come to the notice of the court, the judgment may be challenged by way of objection of third party, if the judgment is

passed to the prejudice of the third party. The objection may not be filed unless the judgment becomes res-judicata and the file is not remitted to the trial court.

Article 779 – Limitation - The time limit for filing the application is of thirty days counted from the date the file was remitted back to the lower court or from the date the applicant had knowledge of the judgment.

When the application is presented within six months from the date of the remittance of the file to the lower court, it shall be presumed that the applicant got the knowledge, thirty days before filing the application; if six months have passed, the applicant shall adduce evidence to satisfy that the application is in time.

Article 780 – **How the application is drawn up** - The applicant shall satisfy that it is a third party and that judgment passed is prejudicial to him and shall plead the facts which permit to draw inference:

1. That case involves an act of simulation (sham transaction);
2. That the simulation has a purpose of obtaining a judgment which is prejudicial to the applicant.§ Sole Paragraph: There is bar for filling application when more than five years have elapsed from the date the judgment became res judicata.

Article 781 – **Dismissal 'in limine'** - Without prejudice to what is provided in article 688, the application shall not be allowed when the same application has not been filed in accordance with previous article. Once the application is allowed, the parties shall be served a notice to answer within 10 days.

Article 782 – **Steps in case the appeal proceeds** - After the reply, based on the pleadings of the parties, it will be decided whether the application has to be proceeded with and summary proof of the facts pleaded may be asked and procedural steps deemed necessary be taken. If the application has to proceed, it will proceed as if pleadings are over and steps of the suit shall be taken and then finally judgment will be passed.

- See also Sole paragraph of Article 777.

SUB-TITLE III

SUMMARY PROCEEDINGS

Article 783 – **Time for reply and penalty for default** - The defendant shall be summoned to contest within 10 days, failing which prayer as prayed, shall be granted.

Article 784 – **Consequences of absence of contest** - If the defendant does not contest after having been regularly summoned in person, the file shall be concluded within 24 hours and judgment passed granting the relief in the precise terms of the prayer, except for what is provided in clause no. 3 of article 489. However, in the event of it is found the case fits in clause I and 2 first part of clause no. 3 of article 481 or it is found that the plaintiffs trying to achieve an object prohibited by law, the plaint shall be dismissed.

§ Sole Paragraph: In the case foreseen in clause no.1 and 2 of article 489, the penalty shall be applicable to the respondent or respondents who have not contested and are not legally incapable or are not legal persons and the action shall continue as against others unless it is a case of non-joinder of necessary parties.

Article 785 – **Rejoinder** - If the defences are raised or any incidental proceedings are filed, the plaintiff may file rejoinder within five days, after the lapse of the 10 days given for filing defence. But, this rejoinder is confined only to the subject matter of the incidental proceedings or the defences raised and he may also reply to the counter claim.

Article 786 – **Filing of documents and proof** - With the plaint, written statement and reply which need not be paragraph wise, all the documents shall be annexed and the defendant is entitled to seek personal statement of the plaintiff the arbitrament and production of commercial books of accounts.

Article 787 – Preliminary hearing and curative order - After the last reply, or decision of question of jurisdiction of the court, whatever is said in article 512 and 515 shall be followed with the reference that time limit is reduced to 5 days from 8 days, and 8 days from 10 days and advocates not permitted to seek oral arguments more than once.

Article 788 – **Letters of request** – No letter of request will be sent for arbitrament or for the evidence of the defendant to take place outside the continent or island where the file is pending. For the purpose of service of summons or notice, limitation is 5 days, for other purposes, shall not be less than 10 days and more than 20 days.

Article 789 – **Limit as to number of witnesses** – Not more than three witnesses for each fact total number for each party shall not be more than 10 in the main matter and 5 for each incident and preparatory acts.

Article 790 – **Fixing the hearing of arguments and judgement** - After the necessary procedural steps are taken before the start of the trial or after expiry of the period fixed in the letter of request, in the following 24 hours, the date shall be fixed on any date during the next 10 days for hearing and deciding of the matter.

§ Sole Paragraph: In case of the adjournment, the hearing will take place within the subsequent 10 days and only in agreement with parties there can be second adjournment, whatever may be the ground.

- See also Article 652 of this Code.

Article 791 – **Hearing of arguments and judgement** – The conduct of the proceedings and hearing of the matter shall be done without the intervention of collective court and delivery of the judgment is entirely the function of the judge who decides the matter.

If the parties have not dispensed with the appeal, the evidence shall be in writing, it being understood that the parties have renounced right to appeal when evidence has not been recorded in writing.
In the arguments, each of the advocate have right to argue, once and for a period not exceeding one hour.
After the hearing is over, the judge shall decide immediately the factual aspects as reflected in the questionnaire, recording in writing, which facts are proved and which are not and what provided in article 655 shall apply.

Article 792 – **Effect of appeal from final judgement and forwarding of Appeals from Orders**- From the curative order or final judgment which has taken cognizance of merit of case, appeal from judgment lies without stay as to the operation.

From other decisions, appeal from order lies which is to be forwarded only along with appeal from final judgment.

§ Sole Paragraph: In the event the curative order puts an end to the case or if any decision is passed which has same effect or which causes a case to be transferred to another court, the appeal from order which is filed from the order or decision shall be forwarded immediately along with the file and with it all the appeals from orders filed previously.

Article 793 – **Appeal from final judgement to Court of Judicial Division** - When the appeal from judgment, is to be decided by the court of JudicialDivision to the extent applicable, the procedure followed by the High Court shall be followed except for what is provided herein below.

Article 794 – **Adjudication of prior questions** - If the judge is of the view that competent appeal was appeal from order, he shall take cognizance of the same immediately in the event both the parties have submitted their submissions; if not, he shall direct service on the parties who have not filed submissions to produce their submissions within eight days and will thereafter decide. If he is of the

view that he cannot take cognizance of the appeal, he shall give his reasons and direct that advocate for the appellant file his say within 48 hours and thereafter shall decide the preliminary question.

Article 795 – **Appeal directly to Supreme Court** - From such judgment, no appeal lies unless case is covered by second part of article 678 in which case there shall lie Appeal directly to the Supreme Court ("*Revista*").

Article 796 – **Hearing of Appeal from Order by Court of Judicial Division** - When the judge of Judicial Division is to decide appeal from order, to the extent applicable, what is provided in

respect of appeal from order to the High Court shall apply. The judgment on the object of the appeal shall be delivered within 15 days, save in the case foreseen in article 753 in which the period is 20 days.

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From the judgment, there shall be no appeal, unless the case fits in second part of article 678 and respective sole paragraph, in which case there shall be appeal from order to be presented directly to the Supreme Court.

SUB-TITLE IV

CONCISE PROCEEDINGS

Article 797 – **Initial petition** - The plaintiff shall set out his claim and basis thereof and shall indicate the name and domicile of the defendant and of the witnesses. Necessary orders will be passed immediately within 24 hours.

Article 798 – **Summons, time for defence and list of witnesses** - The defendant shall be served with the summons to file written statement within a period of 8 days failing which relief will be granted immediately.

With the written statement the defendant shall give the list of witnesses.

Article 799 – Effect of non-contest - In the event, the defendant having being summoned personally does not contest, the relief shall be granted as per prayer and whatever is provided in article 784 and its sole paragraph shall be applicable, except in respect of incapable defendant or legal persons who are subject to general rules.

If he contests, date would be fixed for the trial which shall take place within next following 10 days.

Article 800 – **Hearing of arguments and judgement - Effect of non-appearance parties** - If the defendant, having filed written statement, does not put appearance on the day of the hearing, nor is represented by an advocate, relief will be granted against him as per prayer, unless justification is given by sufficient evidence that there is no obligation.

If the plaintiff remains absent and he does not give justification for the absence, the defendant may pray that, suit be dismissed for default and plaintiff be directed to pay costs.

If both the parties or their representative are present, the pleading shall be read as well as document but such reading may be substituted by concise minutes in accordance with clauses (a)

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of article 653, where the parties are represented by advocates, thereafter, the judge shall attempt to settle the matter; if the settlement is not possible, evidence of witnesses shall be led, their number shall not exceed 6 for each party; the advocates shall make brief oral arguments. Lastly the judgment will be passed orally duly supported with grounds. All this shall be recorded in the record of the court, but not the evidence of the witnesses.

§ 1: If the defendant has neither been served personally, nor has contested, the case will be decided with or without his intervention in accordance with evidence led and law applicable.§ 2: The

witnesses shall be produced by the parties without necessity of serving them; but it is optional for the parties to pray that notice be sent to them.

§ 3: If the judge is of the view that it is absolutely indispensable for sound decision of the suit, that there is necessity to take some procedural steps, he shall suspend the proceedings for the time which found convenient and shall immediately fix the date for conducting such procedural steps which cannot be carried by letter of request. Arbitrament, if any, shall be done by a sole expert.

TITLE III
EXECUTION PROCEEDINGS

SUBTITLE I
GENERAL PROVISIONS

Article 801 - **Applicability of provisions relating to suit for declaration** - The provisions regulating procedure for a suit for declaration are applicable to execution proceedings when the need to apply the same arises and they do not contradict the provisions of this title.

- **Articles 801 - 943** – Execution - Corresponding provisions in C.P.C. 1908: - o Execution of Decrees and Orders – O.XXI C.P.C.

Article 802 – **Requisites of executable obligation** - If it is not permissible to initiate execution proceedings unless the obligation becomes certain, liquid and enforceable if the document on its face does not show these characteristics.

Article 803 – **Choice of act to perform** - If obligation is in the alternative and it is the privilege of the debtor to exercise his choice, the latter shall be notified to declare, which alternative he

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would opt. In absence of such declaration, the right of selection reverts to the creditor.

Article 804 – **Obligation conditional or dependent on performance** - If the obligation of the debtor is dependent upon a condition or upon the performance on the part of the creditor, it is for the latter to prove that such condition is fulfilled or that he has tendered or performed such obligation.

§ Sole Paragraph: If documentary proof is not possible, it is optional to the creditor while applying for execution to tender oral evidence and for that purpose, the witnesses will be examined with liberty to hear the debtor if found necessary.

Article 805 – **Liquidation by Decree Holder** - In the event, the amount which the Judgement Debtor is bound to pay to the execution applicant (Decree Holder) is not quantified prior to filing the petition, the execution petitioner (Decree Holder) shall fix the quantum in the initial application for execution if the fixation depends solely on arithmetic operations, as in the case of calculation of interest of credit instruments, on capital, value of commodities or which have a price or official quotation.

§ Sole Paragraph: If date from which the interest is counted is not mentioned, the executing court shall fix the same in accordance with the document under execution, after hearing the parties.

Article 806 – **Procedure for liquidation when Decree Holder cannot quantify** - Whenever there is an illiquid obligation and the case is not covered by the preceding article, the Decree Holder (execution applicant) shall, at a preliminary stage, initiate the proceeding for liquidation, with or without para wise pleadings, depending upon whether the valuation exceeds or not the value of the summary proceeding, the appellant shall list out all the items or objects, which are considered in the generic obligation, giving the justification, why the specification is required and conclude praying for a specific amount or a certain thing. The Judgement Debtor (execution opponent) shall be summoned to reply within a period of 10 or 5 days depending upon whether the prayer exceeds or not the limit me.

Article 807 – **Further steps in case of opposition or otherwise** - If there is no opposition, it will

be held that the obligation according to the amount or thing demanded is liquidated nature and the execution shall be ordered to be proceed with.

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In the event there is an opposition, evidence shall be led and thereafter decision shall be passed.§ 1: Along with the petition or opposition, evidence shall be listed and the number of witnesses shall not be more than 10 for each party.

§ 2: When the opponent has ground to raise objection by way of defences or by simple application, he shall add such prayer while opposing the liquidation.
If the objections are not rejected immediately, the ordinary procedure of such objections ("*embargos")* will follow and the Decree Holder is entitled to file written statement to the objection and the objection raised against the execution. In the case of immediate rejection of objections, the case will be decided depending upon the decision as foreseen in this article. If the Judgement Debtor objects to execution by way of simple application, the procedural steps for liquidation shall be followed in accordance with this article.
If the Judgement Debtor having been summoned for the purpose of liquidation proposes to appeal from the order directing service of summons in accordance with article 812, he may immediately file appeal also.

Article 808 – **Steps when lack of opposition is not penalized** - What is provided in the first part of previous article shall not apply when the Judgement Debtor has not been served personally or when there is a case under clauses 1 and 2 of article 489. If the default is in respect of case included in clause no.1 of said article the defence provided by one will benefit to all the opponents. In other cases, the obligation shall be declared as liquidated or directions will be issued to follow the procedure of arbitrament, depending upon whether the request is reasonable or exorbitant.

If it is decided to hold arbitrament, whatever is provided in the next article shall be followed.

Article 809 – **Liquidation by arbitrament** - The liquidation shall be by way of arbitrament: 1. When the law directs expressly, as in the case of article 1263 of the Civil Code;
2. When the parties are in agreement;
3. When the evidence led by the parties was insufficient and it is found that it is not possible to effect the liquidation in any other manner;
4. When, in accordance with the previous article, there is direction to take up arbitrament.

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The appointment of arbiters shall be done in the same manner as for appointment of experts. The third arbiter shall intervene when there is no agreement between other two, but will not be bound to concur with either of them.
The judge shall approve the report of arbiters and in case of divergence, the report of the third arbiter.

Article 810 – Process when one part is ascertained and the other is unascertained - In the event, one part of obligation was illiquid and other liquid, there shall be execution immediately in respect of the latter. When there is an application for immediate execution of the liquid part, the liquidation of other part shall proceed by appendage, and in case the latter has been forwarded in the appeal, the other part for which there is already an executory title shall be annexed and also of the pleadings when the execution is based on judgment.

SUB-TITLE II

EXECUTION FOR PAYMENT OF AN AMOUNT WHICH IS CERTAIN

CHAPTER I

ORDINARY PROCEDURE

SECTION I
SUMMONS AND OPPOSITION

Article 811 – **Summons or notice for execution** - The Decree Holder (execution applicant) shall apply that the Judgement Debtor (execution opponent) be summoned to, within a period of 10 days, pay or indicate the assets for the purposes of attachment.

Where at the preliminary stage there were proceedings for liquidation, the summons shall be substituted by notice done on the attorney appointed or at the domicile which the Judgement Debtor (execution opponent) might have selected.

So also, service by summons shall be substituted by notice when the Judgement Debtor (execution opponent) having been earlier summoned for the execution of a title, another executory title is added in the pending execution.

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Article 812 – **Means of opposition** - The Judgement Debtor (execution opponent), instead of paying or indicating the assets for the attachment, may object to the execution by way of objections or by simple application. He may also prefer appeal from order against the order which directed his service by summons.

§ 1: It is not lawful to use simultaneously the second and the third means; but it is permissible to use any of them and the first one, provided that there is no reproduction in one of what has been said in the other.

§ 2: The objections are meant specially to plead facts which cannot be proved by way of documents. When the execution opponent is availing of this remedy, he may plead therein all the defences that he has.

Article 813 – **Grounds of defence when execution is based on a judgement** - If the execution is based on a final judgment, the objections may be raised, only on any of the following grounds: 1. Lack of locus standi of the Decree Holder (execution applicant) or of the Judgement Debtor (execution opponent) or his representation;

2. Erroneous joinder of prayers or erroneous joinder of the execution applicants;

3. Non enforceability of the title;

4. Falsity of the proceedings or of the integral copy of the same or authenticity of the later which has bearing on the merits or manner of execution;

5. Absence or nullity of the first summons in the suit when the defendant has not participated in the proceeding;

6. Absence of any requirement necessary to make the obligation certain, liquid and enforceable; 7. *Res judicata* of the judgment operating from a previous judgment different from that under execution;

8. Prescription of the right or of the obligation, or of the installments accrued after the judgment; 9. Any other fact which extinguishes or modifies the obligation, provided that it is subsequent to the passing of final judgment and it is proved by the document.

§ Sole Paragraph: Lack of *locus standi* of the execution applicant or of the execution opponent consists in not being the person or legitimate successor in whose favour the judgment was passed or against whom it is *res judicata*.

- See also Articles 46, 53 and 58 and following of this Code.

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Article 814 – **Special grounds when it is an arbitral award** – In the case of a judgment pronounced by an arbitral tribunal the objections may be raised not only on the grounds mentioned in the previous article, but also on the following:-

1. Nullity of the arbitral clause, arising either from the object or the capacity of persons;

2. Lapsing of the arbitral clause;
3. Nullity of the trial judgment, when the parties have renounced previously to the appeals.

See also Articles 668, 1562 and 1564 of this Code.

Article 815 – **Grounds of objection when execution is based on another title** - When the execution is not based on the final judgment, in addition to the grounds of objection specified in article 813, to the extent applicable, any other grounds which would be available as defence in a suit for declaration.

§ Sole Paragraph: If it is a case of execution of credit secured by mortgage, the *locus standi* of the Judgement Debtor (execution opponent) may be raised on the basis that another person is the possessor of the assets mortgaged.

See also Article 56 paragraph 1 of this Code.

Article 816 – **Time limit for objection** - The objection by way of "*embargo*" or by simple application shall be filed within the period of 10 days from the time of the service of summons, except where the ground is supervening, because in such case the ground should be raised within 10 days subsequent to the occurrence of respective fact.

§ 1: The objections shall be filed in paragraph wise pleadings.
§ 2: The objection by way of simple application shall not be granted without prior hearing of the Decree Holder (execution applicant).

Article 817 – **Norms for the objections** - The objections shall be immediately rejected:
1. When they are filed beyond the limitation;
2. When the ground raised does not really fit in the provisions of articles 813 and 814;
3. Where it is manifest that objection of the Judgement Debtor (execution opponent) cannot be entertained.

If the case does not fit in any of the above clauses, the objections are to be accepted and shall be processed as an appendage. Time of 10 days shall be given to the Decree Holder (execution

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applicant) for inspecting the file of the proceedings in order to contest the objections.

Thereafter without any further pleadings, the procedure of an ordinary suit for declaration shall be followed.

See also Articles 481 no. 3, 811 and 812 of this Code.

Article 818 – Effect of receiving objections - The acceptance of objections filed against the execution based on final judgment shall not suspend the execution, unless the applicant of objections deposits the amount demanded or corresponding value by way of credit instruments with discount of 20% over the quotation, or he furnishes security of the equivalent amount by way of mortgage or bank guarantee of a reputed bank.

§ Sole Paragraph: If the objections do not cover whole amount subject of execution, the execution shall proceed further to the extent is not covered by the objections even where the objector makes the deposit or furnishes the security.
If the objections are filed to oppose execution based on title different from a final judgment, the objector may get stay offering the security by any of the means indicated in article 436 and in no. 2 of article 443.

Article 819 – **Furnishing of security** - When the execution against which objections are in progress, the Decree Holder (execution applicant) or any creditor may not seek payment, as long as the objections are pending, without furnishing the security.

If the Decree Holder (execution applicant) or the creditor is to receive immobile assets, the amount of the security shall be fixed considering two years income of those assets; in all other cases the value of the thing to be delivered is considered for the purpose of furnishing the security.

- See also Article 443 of this Code.

Article 820 - Objections suo-moto - Even though there is no objection, no execution based on conciliation or contract over an object which does not admit compromise, shall be admitted nor allowed to be prosecuted.

SECTION II
ATTACHMENT

SUB- SECTION I
ASSETS WHICH MAY BE ATTACHED

Article 821 – **Object of execution** - Only assets may be the object of the execution. As a rule all the assets of the debtor and only these assets are subject to execution.

Article 822 – **Assets which cannot be attached** - The rule that all the assets of the debtor are subject to execution is subject to exceptions which are enumerated below.

The following assets are not subject to attachment in execution:
1. The assets of the State and of colonies, except where the execution is pertaining to a certain thing or for the payment of debt which is secured by privilege or mortgage;
2. The assets of all the public bodies meant for public purpose, with the exception prescribed in the previous item;
3. Buildings and objects meant for public cult;
4. Tombs;
5. The assets or rights which law declares to be inalienable or are duly compromised is not permitted;
6. Fixed or moveable material of the railways;
7. The object of which seizure would be offensive to the public morality and those objects which have no economic value;
8. Homes of families;
9. The commodities and provisions which are necessary for the sustenance of the Judgement Debtor (execution opponent), of his family and his house personnel for one month and combustible which is to be consumed during the same length of time;
10. The objects indispensable for bed and bedding of the Judgement Debtor (execution opponent), his family and his house personnel;
11. The utensils absolutely indispensable for any household;
12. The dress which the public employees are using for performance of their functions and military equipments;

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13. The books, utensils, implements and any other objects strictly necessary for exercise of function or of profession;
14. Two thirds of the salary of military personnel, of revenue of public officers, earnings, wages and salaries of any employees and workers;
15. Two thirds of family pensions for maintenance (alimony), of the amounts paid by government or by any other establishment or company towards pension retirement, help, sickness, old age, pension fund, insurance, compensation for accident or life time rent, and of any other pensions of similar nature;
16. Any other assets exempted from attachment by special provisions;

§ 1: Private chapels may be attached if there are no other assets; and along with them may be attached the objects which are meant for religious cult.

§ 2: Seizure has no economic justification when there is ground to believe that the proceedings of sale of assets is so insignificant that the seizure is purely for the purpose of causing prejudice to the Judgement Debtor (execution opponent).

§ 3: The assets mentioned under no. 13 may be attached if they are indicated by the Judgement Debtor (execution opponent) or if the execution arises from the purchase price of the said objects. The utensils and the instruments of agriculture may also be attached along with land in which they are permanently used.

§ 4: The amounts and pensions referred to in clauses 14 and 15 may be attached till one half when the execution arises from the purchase of the same food or commodities supplied for maintenance of the Judgement Debtor (execution opponent) or of his ascendants and descendants.

§ 5: The titles and certificates of the public debt are not attachable except where voluntarily offered, and they will be deemed as voluntarily offered when found in the possession of the debtor or even when they are entered in his name.

Article 823 – **Attachment of undivided assets** - It is lawful to attach right of the Judgement Debtor (execution opponent) to undivided assets; but, it is not lawful to attach the assets themselves or one part thereof, unless the execution is instituted against all the co-owners. See Article 2177 of the Civil Code.

Article 824 – **Assets attached in execution against husband** - In the execution instituted against the husband only his exclusive assets may be attached and his right to moiety in the assets under communion.

§ Sole Paragraph: When the debt is of civil nature, upon the attachment of the right of moiety, the execution shall be suspended until dissolution of the marriage or judicial separation of assets is decreed.

See Article 1114 paragraph 1 of the Civil Code.

Article 825 – **Assets to be attached in execution against societies** - In the execution instituted against a Commercial society it is impermissible to attach private assets of the member, when they are subject to payment of the debt; but only after exhausting all the assets of the society. Commercial Code article 153 paragraph 1.

Article 826 – **Assets to be attached in execution against an heir** - In the execution moved against an heir, only the assets which he got from the estate leaver may be attached.

When the attachment falls on other assets, the execution opponent may apply that the same may be lifted indicating at the same time the assets of inheritance which are in his power.

The application shall be granted if, after hearing the Decree Holder (execution applicant), the latter does not raise an objection. If the Decree Holder (execution applicant) objects to lifting of the attachment, the Judgement Debtor (execution opponent) may get it, if he has accepted the inheritance pure and simple, by way of objections of the third party in which it is alleged and proved:

1. That the assets attached have not come from the inheritance;
2. That he has not received from the inheritance more assets other than he indicated or, if he has received more, the others were applied for satisfying the burdens of the inheritance.

See Article 2019 of the Civil Code.

Article 827 – **Assets to be attached in execution against surety** - In the execution instituted against the surety it is not lawful to attach the assets of the latter unless all the assets of the principal debtor are exhausted first, provided that the surety has such right and has actually invoked the benefit of exhaustion.

Even though the surety could not avail of the same benefit, he shall always have the right to

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indicate for the purpose of attachment, the assets of the debtor if he has assets free and without burden, in condition of being attached and situated within the jurisdiction where the execution is pending or in the jurisdiction where the assets of the surety are lying. After the assignment of the assets is made, the attachment will start with the assets of the debtor and the assets of the surety shall be attached only if the assets of the debtor are found manifestly insufficient.

§ Sole Paragraph: When the assets of the debtor must be exhausted in the first place and it has been so done, the surety may stop the execution on his own assets in the event he designates assets of the debtor acquired subsequently or which were not known earlier.

- See Articles 830 and 833 of the Civil Code.

Article 828 – **Attachment of sailing ship** - The ship cleared for journey may not be attached unless it is on account of debt to the State or obtained for acquiring provisions during the journey or for payment of salaries or help or salvage or as a consequence of liability towards collision.§ 1: The vessel is deemed as cleared for journey when the respective captain has with him the clearance of the captain of ports.

§ 2: The judge who orders that attachment shall communicate immediately to the captain of ports to prevent the journey of the ship.

- Commercial Code article 491.

Article 829 – **Attachment of cargo in a cleared ship** - The cargo already stored in the ship cleared for voyage shall not be attached unless the same belongs solely to the shipper and the ship does not carry passengers.

Article 830 – **Conditions for unloading in attachment of loaded goods** - After the attachment of the goods already loaded is done, the unloading may be permitted if the creditor satisfies fully the due freight, expenditure of loading, expenses of cargo, storage, dislocate, delay and discharge or furnish security towards payment of such expenses.

Once the security is furnished, on the aspect of fitness of the security, the captain of the ship shall be heard who will give say within 48 hours.

After the unloading is permitted, endorsement will be made in the document held by the captain and communication will be passed to the captain of the port.

- Commercial Code article 491 sole paragraph.

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Article 831 – Attachment of assets in the hands of third party - The assets of the Judgement Debtor (execution opponent) shall be seized even though for any other title, they are found in possession of a third party.

Article 832 – **Precautions when assets are stated to belong to a third party** - In the event, at the time of attachment the Judgement Debtor (execution opponent) or any other person in his name, declares that particular assets belong to a third party, the official shall inquire under what title they are in the custody of the Judgement Debtor (execution opponent) and shall ask production of the documents in support of the plea.

In case of doubt, the court shall decide, after the hearing the Decree Holder (execution applicant) and the Judgement Debtor (execution opponent) and after necessary inquiry.

§ Sole Paragraph: When the official refrains from effecting the attachment on his own, the notice of the fact shall be given to the Decree Holder (execution applicant) to take such steps as he thinks fit on the matter.

Article 833 – **Declaration of insolvency or bankruptcy** - If the assets of the debtor are not sufficient for the payment of the debts of the execution and the Decree Holder (execution applicant) has no possibility of obtaining, by other way the totality of his credit, any creditor may apply that the insolvency or bankruptcy of the Judgement Debtor (execution opponent) be declared and the file shall be remitted to the competent court to follow required steps making use of the records which are processed.

- See Articles 1135 and following, and article 1355 and following of this Code.

SUB SECTION II

INDICATION OF ASSETS FOR ATTACHMENT

Article 834 – **Terms on which Judgement Debtor (execution opponent) may indicate assets for attachment** - The Judgement Debtor (execution opponent) has rights to indicate the assets which will be subject of attachment, with the following limitations:

1. The assets indicated must be alienable and sufficient for payment to the Decree Holder (execution applicant) and costs;

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2. The indication shall start with moveable or immoveable assets located in the judicial division, without distinction, and thereafter situated in the continent or in the island where execution is pending and lastly the assets situated in the colonies or in a foreign country;
3. Only in the absence of moveable or immoveable assets rights and shares may be indicated. § Sole Paragraph: If the Judgement Debtor (execution opponent) indicates immoveable assets, at the time of indicating he shall furnish the respective title documents or if he discloses that he does not have them, shall indicate the source of the assets.

The title deeds shall remain deposited in the office of the court to be given to the purchaser in auction or to the allotee.

Article 835 – **Assets which need not be indicated** - If the case is of the debt with privilege, mortgage or guarantee on immoveable properties, the attachment shall, apart from the indication, begin with the assets covered by privilege or guarantee and it will fall on other assets only if it is found that those assets are insufficient to achieve the purpose of the execution.

Article 836 – **Cases when the right to specify assets devolves on the Decree Holder** - The right to indicate assets devolves on the Decree Holder (execution applicant):
1. When the Judgement Debtor (execution opponent) does not indicate assets within the time laid down by law;
2. When in the indication, the Judgement Debtor (execution opponent) has contravened the provisions of article 834;
3. When the assets indicated by the Judgement Debtor (execution opponent) are not traced; 4. When there is manifest insufficiency in the assets indicated by the Judgement Debtor (execution opponent). In such cases the indication made by the Judgement Debtor (execution opponent) shall stand and the Decree Holder (execution applicant) shall indicate the assets necessary to move up the insufficiency.

Article 837 – **Indication how made** - The indication may be made either by way of application or by record signed in the proceedings, and in such case as far as possible identification of the assets is to be given.

As to the assets, the denomination or police number, if any, shall be indicated, situation and

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boundaries, and number of description if they are registered in the Land Registration Office. As to the movables, the place where they are found shall be indicated and their particulars, if possible.

As to the credit instruments, name of the debtor, the nature and origin of the debt, the title document supporting the credit instrument and the date of maturity.

SUB-SECTION III

ATTACHMENT OF IMMOVABLES ASSETS

Article 838 – **How attachment of immovables is done** - The order which directs the attachment shall be notified to the Judgement Debtor (execution opponent). From the time of the service of the notice the seizure shall be deemed as done and the Judgement Debtor (execution opponent) shall stand, in respect of said assets in the position of a depositary. In relation to third party the seizure shall produce effects from the date of the registration.

The registration shall have as basis one certified copy in which names of the Decree Holder (execution applicant) and of Judgement Debtor (execution opponent) and the amount for which the execution has been moved and it is declared that attachment of specific assets has been ordered. When such assets are already described, the identification shall consist in indicating the respective numbers. One note with the mention of the date of the registration shall be annexed to the file of proceedings.

Article 839 – **Delivery to a Court receiver** - The Decree Holder (execution applicant) may apply that the attached assets be handed over to a Receiver different from the Judgement Debtor (execution opponent).

The receiver shall be chosen in such case by the judge under information of the office, and person chosen should be of the fitness corresponding to income of the assets for the period of one year. Only with the express consent of the Decree Holder (execution applicant) the depository may be the spouse of the Judgement Debtor (execution opponent) or any relative by blood or affinity, in direct line or in the first degree in the transversal line.

§ Sole Paragraph: Record shall be made in the file of the handing over the asset to the Receiver

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signed by him or by two witnesses when the Receiver is unable to sign.

To the Receiver shall be handed over a list of assets deposited, if he so demands.

Article 840 – **Effective delivery** - If the Receiver finds difficulty in taking charge of the assets or had doubts over the object of the deposit, he may apply that one employee goes to the site of the location of the assets and makes him effective delivery at the site.

When the doors are closed or there is some resistance offered, the employee shall seek the assistance of local administrative authority of the parish and also police force. The doors shall be opened by breaking in the presence of local administrative authority with two witnesses and the report of the occurrence shall be made.

Article 841 – **Special Receiver** - If the assets are rented or under share cropping agreement, the Receiver shall be the tenant or share cropper.

If the asset is let out to more than one person, amongst them one shall be chosen as depository who shall collect the rent from other lessees.

The rent in cash shall be deposited as and when accrued or collected in the establishment where the judicial deposits are made.

Article 842 – **Extension of attachment - Attachment of fruits** - The attachment shall include the property with all its appurtenances, fruits and products which are not expressly excluded or over which there does not exist any privilege.

If the property is destroyed, deteriorated or acquired, right of the execution applicant arising from attachment stands transferred to the compensation which is realized there from.

§ Sole Paragraph: Pending fruits may be attached also in separate as moveable property provided that they do not go beyond one month from the normal time of the collection of the fruits. If it so happens, the attachment of the property shall not include that of the fruits; but they may again be attached without prejudice to the prior attachment.

Article 843 – **Administration of attached assets** - It is the duty of the Recever to look after and administer the assets with diligence and zeal as a good father of the family, and with the obligation to render accounts thereof.

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If the Decree Holder (judgment creditor) and the judgment debtor agree how to explore the attached assets, such agreement shall be followed.

In the absence of any agreement, the building assets shall be let out, if not let out so far, and the rural properties let out, given for cultivation on partnership or cultivated directly as the grant composition to the society or to one or more members of unlimited liability Receiver deems fit.

The Decree Holder (judgement creditor) or the judgment debtor may offer a more advantageous tenant, which the Receiver will be bound to accept; and they can also agree that the tenancy be awarded in public auction or by sealed tenders and in such event they will be liable to pay costs, if nobody offers higher rent.

It is not lawful for the Receiver to create tenancies for a time limit higher than one year.

Article 844 – Remuneration of Receiver - The Receiver has the right to some remuneration which shall be fixed by order of the Court in proportion to inconvenience caused to the Receiver, after hearing the Decree Holder (execution applicant) and Judgment Debtor (execution opponent) but shall not exceed 5% of the net income.

Article 845 – **Removal of Receiver** - The Receiver, who fails to comply with the duties of his office, shall be removed upon the application of any interested party. The procedure for his removal shall follow the terms of article 1439.

Article 846 – **Conversion of seizure into attachment** - If the assets have been seized, by order of the court the same shall be converted into attachment and respective entry shall be directed to be made in the land registration records.

Article 847 – **Guarantee from attachment – lifting of the same** - The assets attached secure the fulfillment of the obligation, even though they have been transmitted, so long as the registration of transmission be subsequent to the registration of the attachment.

However, if, on account of negligence of the Decree Holder (execution applicant), the execution is pending for more than six months, the Judgement Debtor (execution opponent) may seek the lifting of the attachment, the cancellation of its registration and the direction to the execution applicant to pay the costs to which he gave cause.

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§ Sole Paragraph: Execution shall be treated as stopped even if it has been remitted to draw up the account of costs or the costs have been paid.

SUB-SECTION IV

ATTACHMENT OF MOVEABLE ASSETS

Article 848 – **How attachment of moveables is done** - The attachment shall be done by actual seizure of the assets which shall be handed over to a Receiver with a financial capacity corresponding to the probable value of the movables, unless they can be shifted to office of the Court or any place of public deposit or they may be kept in any compartment of the house where they were found.

In the latter case such room shall be sealed.

There shall be a record of the attachment made in which mention has been made of the time, that is, when the steps were taken describing specifically the assets and indicating their value and their destination of all the attachments which may have been made on the same date, one record shall be maintained.

The money, credit instruments, stones, precious metals which might have been seized shall be deposited in the establishment where the judicial deposits are made on the orders of the Court. If there are assets in the conditions of no. 3 of article 433 whatever is said in that number shall be complied with.

Article 849 – **Physical obstruction** - If the Judgement Debtor (execution opponent) or person who represents him refuses to open the door or movables or if the house is deserted and the doors and movables are within the closed place, whatever is said in article 840 shall be observed.

Article 850 – **Liability for malafide concealment** - The Judgement Debtor (execution opponent) or other person of the house who has been found to have maliciously hidden some objects for the purposes of avoiding the attachment shall be subject to penalty corresponding to the offense of theft.

When the official, at the time of attachment suspects that there is concealment he will direct

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production of the objects with a warning to the person that he will be liable for the offence of concealment.

Article 851 – **Assets which may be sold** - The depository shall sell the assets which cannot be preserved being subject to deterioration or depreciation.

He may also sell live stock on his own initiative or upon the application of any of the parties, but the sale must be authorized by the court after hearing both the parties or persons other than the applicant.
§ Sole Paragraph: It is lawful, at the instance of Decree Holder (execution applicant) with notice to Judgement Debtor (execution opponent) to permit the sale of any assets whenever the delay becomes prejudicial.

Article 852 – **How a Receiver can cause an attached ship to navigate** - The Receiver of an attached ship may make the ship navigable if the Judgement Debtor (execution opponent) and Decree Holder (execution applicant) are in agreement to get judicial authorization.

If the authorization has been applied for, those interested parties shall be notified if they have not given their assent seeking their reply within 48 hours.

If the permission is granted notice will be given by official letter to the captain of the port.

Article 853 – **How any creditor can cause an attached ship to navigate** - Irrespective of conditions required by the preceding articles, any creditor may apply that an attached ship continue to navigate until it is put in auction, provided that security is furnished with usual insurance against the risks.

The security shall be guarantying the debt subject of execution and costs of the proceedings. The Decree Holder (execution applicant) and the captain of the ship shall be served the notice to give their say on the suitability of the security and sufficiency of the insurance.
If the application is allowed, the ship shall be handed over to the applicant, who shall stand for all the purposes in the position of depository and the notice of this fact shall be given to the captain of the port, by office letter.

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Article 854 – **Duty of Receiver to produce assets - Sanction** - The Receiver is bound to produce,

when so directed, the assets which he received, save for what is provided in the preceding articles. If he does not produce the same within 5 days, he shall be detained for the period corresponding to value of the deposit, calculated at the rate of 10 escudos per day and the prison shall not exceed two years; at the same time execution shall be taken in the same proceedings for the payment of the deposit value. The imprisonment shall cease as soon as such payment has been made or the Receiver begins to undergo the penalty to which he has been sentenced in criminal proceedings.

Article 855 – **Application of provisions relating to attachment of immovables** - In all the rest to the extent possible, what is provided in previous sub-section shall apply.

SUB-SECTION V

ATTACHMENT OF CREDITS OR RIGHTS

Article 856 – **Attachment of credits and rights: how made** - The attachment consists of notice to the debtor that the credit stands attached. The effect of such notice is that the credit stands subject to the order of the court of execution, and the debtor is not exonerated from making the payment to the creditor. The debtor shall be warned of such effect, at the time of service of the notice.

The debtor is bound to declare whether such credit exists, what guarantees support the same, on which date the debt is payable and any other circumstances which may be relevant to the execution. In the event the debtor is unable to make above declarations at the time of service of the notice, he may do it thereafter by record before the court or by simple application.

In the absence of any such declaration, it is understood that the debtor acknowledges the existence of such obligation in accordance with terms provided in the assignment of the credit for the purpose of attachment.

If the debtor does not disclose the truth, he shall incur the liability as litigant in bad faith.

See also Article 465 of this Code.

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Article 857 –**Attachment of installments of credit** - In case of an instrument of credit, the notice shall be issued to the judgement debtor to deliver the instrument; in case of refusal, steps will be taken for seizure.

The same procedure shall apply if the debt is evidenced by an instrument which for any other reason, needs to be seized.

All steps necessary for the preservation of the right to the credit may be ordered.

§ 1: If the credit is guaranteed by pledge, the same shall be attached by applying the provisions relating to attachment of the movables or shall be made by the transfer of right in favour of Decree holder (execution creditor); in the event the credit is guaranteed by registered mortgage, necessary endorsement of attachment shall be made in the records of the registration.

§ 2: If it is a case of debt instrument or certificates of public debt, subject to the execution with restrictions imposed by paragraph 5 of article 822, the attachment shall consist of registration made in favour of credit of the execution.

The court shall requisition the registration before the Board of Public Credit by means of official communication, accompanied by the instruments of title or certificates, indicating the Receiver.

Article 858 – **When debtor denies existence of credit** - In the event the debtor denies the existence of the credit, notice shall be issued to the Decree Holder (Execution creditor), Judgement debtor and the debtor to appear before the court on the date fixed for the purposes of hearing.

If the debtor persists in denying the existence of the credit, the Decree holder (execution creditor) shall declare whether he maintains the prayer for the attachment or withdraws the same.

If the Decree holder (execution creditor) insists on the attachment, the credit which has been attached shall be considered as litigious and as such shall be awarded or auctioned; if he withdraws, the

Judgment debtor may apply that the attachment may subsist, and in such case he shall indicate a fit person who undertakes to offer the bid in the auction of the credit with the indication of the price offered.

Article 859 – **When Judgment Debtor needs to perform an obligation** - If the debtor declares

that the fulfillment of his obligation depends upon the Judgement debtor performing obligation on his part, the Judgement debtor shall be given notice to perform the said obligation within the period of ten days.

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When the Judgement debtor does not comply with it, the Decree Holder or the Debtor may demand the fulfillment, by prosecuting the respective execution. The Decree Holder may also substitute himself in the place of Judgment debtor in the matter of fulfillment, in which case he will be subrogated in the rights of the debtor.

If the Judgment debtor challenges the declaration of the debtor and it is not possible to end the controversy, the provision of preceding article shall be followed with necessary modifications.§ Sole Paragraph: In the cases referred to in the second clause of this article, the enforcement of the condition may be demanded in the same proceedings by way of attached proceedings without necessity of issuing summons to the Judgement debtor, and the order passed in terms of the first clause shall operate as executive title.

Article 860 – **Attachment of allowances and salaries** - When the attachment covers any allowances or salaries, notice shall be issued to the entity entrusted with preparation of necessary papers connected with allowances or salary, to effect the deduction corresponding to the credit attached.

Article 861 – **Deposit in the Treasury** - The person notified when he does not contest the debt, and as soon as the same matures, shall be bound to deposit the respective amount in the establishment where the judicial deposits are made, at the order of the Court, and the document showing the deposit shall be annexed to the file.

If the obligation does not consist of payment of an ascertained amount, the person notified, shall be considered as a Receiver of the consideration, in accordance with the previous sub-sections.§ Sole Paragraph: In the case foreseen in previous article the deposit shall be made by the entity entrusted with the payment.

Article 862 – **Attachment of amount deposited with the establishment where the judicial deposits are made** - The attachment made of the amount deposited in the establishment where the judicial deposits are made shall be done in the very document of the deposit, by maintaining the record in the file in which it exists, before the authority having jurisdiction over the deposit.

Article 863 – **Attachment of rights to undivided assets** - If the attachment has as its object the right to assets under indivision, the steps shall consist solely in giving the notice of the fact to the administrator of the assets, if any, and to the co-owners. At the time of service of the notice, or within the period of 3 days, the noticees shall make declaration which they deem fit, as to the right of the execution debtor and to the manner in which it may be made effective.

When the right is contested, the attachment shall subsist or shall end as per the decision of the execution creditor and execution debtor, in accordance with article 858.

SECTION III

NOTICE TO THE CREDITORS AND VERIFICATION OF THE CREDITS

Article 864 – **Notice to creditors and spouse** - As soon as the attachment is done, the creditors of the execution debtor shall be summoned to file their claims in the execution, and also spouse of the

execution debtor shall be summoned whenever attachment relates to immoveable assets. The creditors in whose favour there is registration of any burden over the attached assets and all other known creditors are summoned by registered letters addressed to their domicile, which is reflected in the registration, except where they have different known address.

The unknown creditors shall be summoned by way of publication for 20 days.
§ Sole Paragraph: The absence of summons directed in this article has the same effect as absence of service of summons on the defendant, but does not amount to annulment of the sales, adjudication or redemption already effected, nor even of the payment already made, and the spouse or the creditor who have not been summoned have the right to be paid compensation for the loss by the execution applicant.

- See also Article 194, no, 1 of this Code.

Article 865 – **Claim by creditor** - The creditor who desires to obtain payment shall file his claim within 10 days from the date of the service of summons, indicating the nature, quantum and

origin of his credit and leading all the evidence.

If the creditor has privilege or preference over the attached assets, he shall be admitted in the execution even though his credits have not matured, and in such case in the matter of calculation

of the interest, the deduction corresponding to the time which falls short for the maturity shall be made.

If there is no privilege or preference over the attached assets, claim shall be admitted only when the credit is matured.
§ 1: If the attachment on the assets has taken place, subsequent to the time limit fixed in this article, the creditor with a privilege or preference shall file his claim within the period of 10 days from the service of summons or if he is not summoned, from the date when he has knowledge of the attachment.

§ 2: The creditor shall be admitted even though he is not armed with executive title.
§ 3: If the obligation is not certain or is illiquid, the creditor shall make it certain and liquid using the remedies available to the execution creditor.

- See also articles 46, 803 to 806 of this Code.

Article 866 – **Objections over reclaimed credits** - After the period of filing the claim of the creditor, the same may be contested within 8 days, by any creditor, by execution creditor or execution debtor.

The objections may have as a ground the nullity, prescription, simulation, falsity and any other cause which extinguishes or modifies the obligations. However, if the credit has been recognized by final judgment, the objection may be based on any of the grounds mentioned in article 813, to the extent applicable.

§ Sole Paragraph: With the objections all the evidence shall be produced.

Article 867 – **Reply** - The creditor, whose credit has been challenged, may reply within 5 days of the period fixed for filing objections.

§ Sole Paragraph: What is provided in sole paragraph of the previous article is applicable to the reply.

Article 868 – **Subsequent steps: verification and grading of credits** - Thereafter, the procedural steps of ordinary proceeding or summary proceeding of declaration, subsequent to the pleadings are to be followed, depending upon whether claims have been filed for an amount

higher than the limit prescribed for summary proceedings.

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The credits shall be verified and marshalled as per legal provisions which are applicable and the credits not objected are deemed to be recognized.

Article 869 – **Right of creditor with a pending suit** - If the creditor has his suit pending, he may apply up to the time fixed for filing of his claim of the credits, that the suit file may be transferred to the Court of execution and incorporated in the former, except where the date for arguments and judgement has been fixed.

After the file is transferred, the suit shall, as regards subsequent steps, be subject to the formalities of the procedure of verification of the credits.

§ 1: If the creditor has privilege or preference on specific attached assets, the execution shall be suspended in respect of the said assets, as soon as the documents proving the pendency of the suit are annexed and it will only proceed after the final judgment having executory force. But if the suit is not moving on account of negligence of the plaintiff, for more than 20 days, the execution creditor may apply the further steps of the execution petition.

§ 2: If the transfer of the file is not permissible on account of fixation of the date of the arguments and judgement of the suit, the creditor, if desires to intervene in the execution, shall produce within the time limit for filing the claims, documents to prove the pendency of the suit and stage at which is reached.

After the suit is decided finally in his favour the creditor shall be admitted in the execution.

Article 870 – **Indication by creditors of other assets for attachment – Declaration of Insolvency** - The creditors, whose credits have been verified or recognized, may assign for the purpose of attachment assets other than those which have been already attached.

As soon as it is found that the assets are lesser than the liabilities, the insolvency of the execution debtor shall be decreed and the proceeding shall be transferred to the competent court for the purpose of declaration of insolvency, if the court is different, for the purposes of following there the respective steps, making use of whatever has been processed.

§ Sole Paragraph: When other assets have been attached, the creditors in whose favour burdens over such assets have been registered shall be summoned personally, if they are not parties to the proceedings.

- See also Article 1355 and following of this Code.

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Article 871 – **Multiple executions over assets** - If there is more than one execution proceeding over the same assets, the execution in which the attachment has been done subsequently shall be stayed and Decree Holder (Execution Creditor) shall file his claim in the file where the assets have been attached in the first place.

The execution petition shall be stayed only as regards the assets attached in the other file.

SECTION IV

PAYMENT

SUB SECTION I

MODES OF PAYMENT

Article 872 – **Modes of payment** - Satisfaction may be effected by payment of money or by certificate of public debt, by allotment of assets, by allotment of their income or by realization of sale price.

SUB-SECTION II

DELIVERY OF MONEY OR OF CERTIFICATE

Article 873 – **Payment by money or by delivery of certificate** - If the attachment has fallen on currency or credit in money deposited, the Decree Holder or any creditor who has priority shall be paid of his credit in cash.

If documents of public debt are attached and the creditor proposes to receive the money by way of certificate, the judge shall declare to whom the sale certificate shall be given, in order that the creditor may obtain the endorsement in his favour. If the certificate has been issued in favour of different creditors they may apply to the board for the respective splitting.

- See also Article 822 paragraph 5 of this Code.

SUB-SECTION III

AWARD

Article 874 – **Requisites for award** - Once the credits are accepted and marshalled, the Decree Holder (Execution creditor) or any creditor may demand that assets attached be awarded to them to the extent they are sufficient for the satisfaction of their credit.

If the judicial sale has been announced, the sale shall not be stayed and the request shall be taken into consideration only where there are no bidders or participants.

The applicant shall indicate the price he is offering which may not be less than that for which they would be put for sale in auction, whenever the award has been asked before the biding for second time.

Article 875 – **Adjudication where there are no bidders** - When an application is made for awarding the property, the fact shall be made public by way of public notices and also notices in the newspaper in the same manner as for the auction and notice will be issued to the judgement debtor, to the creditors with the exception of the execution creditor and to the persons who have preferential right over the assets.

Within the time of 10 days counting from publication of last notice any person may offer the highest price. If any communication is done after the publication of the last notice, the time limit starts from the date of the notice.

If there is no offer within the time and within that period there is nobody to exercise the right of preference, the assets shall be awarded to the Decree holder (execution creditor) when he deposits what has to be deposited, in accordance with article 906.

The Decree Holder (execution creditor) shall be notified to make the deposit within the period of 8 days.

Article 876 – **Award where there is bid** - There being a more advantageous proposal, a date shall be fixed for the auction, by making necessary publications and issuing notices.

The auction shall be opened on the basis of the highest bid, and the assets may be awarded to the highest bidder, but those who have preferential right may exercise the same in the proceedings of the award.

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Where there are two offers of equal price which have not been exceeded at the auction the creditor who is on the first place in the list of marshalling shall be preferred, except where his credit is lesser than half of the price and other creditor exceeds such half. Where the creditors are in the same position or the proposals being of third parties, the assets shall be awarded in common to the proposers, except any one of them applies that licitation be held amongst them.

Article 877 – **Lapse of encumbrances and rights** - The assets shall be awarded free from any burdens and rights, which are to lapse.

Article 878 – **Application for adjudication of incomes** - The creditor who is marshalled at the first place may demand that, instead of awarding the ownership of the assets, he may be awarded their income only.

On such request the judgement debtor shall be heard as well as other creditors whose claims have been acknowledged, and at that time of the award if none of them makes request to put the assets on auction; but if there is an auction for the second time no such application shall be entertained, so long as there is no bidder who is offering price of the assets equivalent to that for which they are put for the auction for the second time or to the creditor who is marshalled at the first place, or there is no deposit of the amount of such credit.

Article 879 – **Requisites necessary to award to creditor below the first** - The award of the income may also be asked by the creditor who is not at the first place, provided that there is express consent of the previous creditors or the same creditors are paid of the amount of their credits.

Article 880 – **Award of incomes how made** - When there is a request for awarding the income, the assets shall be leased in public auction or by closed envelopes and other formalities relating to judicial sale shall be observed, except where the debtor and the awardee agree that lease may be granted privately.

After the costs of the execution are paid, the rents shall be collected from the awardee and the assets shall continue leased, until the awardee is reimbursed of the amount of his credit.

The awardee shall be in the position of lessor, but he shall not evict the lessee, nor shall he take

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any resolution in connection with the assets, without consent of the Judgment debtor and of other creditors.

When it is not possible to arrive at an agreement, the matter shall be decided by the court.

§ Sole Paragraph: If a fresh lease is required, what provisions of this article shall be followed.

Article 881 – **Register of Awards** - The award of income may be registered as an encumbrance on the assets on the basis of order which sanctions it.

SUB SECTION IV

SALE

DIVISION I

KINDS OF SALE

Article 882 – **Kinds of sale** - After the claims of the creditors are accepted up to time when the claims could be filed, there shall be sale of the assets attached, if the assets have not been disposed by way of award. Sale may be judicial or extra judicial.

Article 883 – **Modes of judicial and extra judicial sale** - The extra judicial sale may take following forms:

a) Sale in Stock exchange or commodity exchange;

b) Direct sale to entities which by law have right to acquire specific assets;

c) Sale by way of private negotiations;

d) Sale through establishment of auctions;

Judicial sale may be made by written tenders of offers made in closed envelopes or by licitation in public auction.

DIVISION II

EXTRA JUDICIAL SALE

Article 884 – **Sale through exchanges** - The credit instrument shall be sold in exchanges where

the sales have quotation in the market.

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In the judicial divisions where there are exchanges for commodities, such commodities or other assets which are quoted there, shall be sold.

Article 885 – **Direct sale by force of law** - If the assets are by law to be handed over to specific entities they shall be sold to them directly.

Article 886 – **Sale by private negotiation** - The sale shall be done by private negotiation: 1. If all the interested parties are in agreement or there is agreement between judgement debtor and creditors who represent majority of the credits;

2. If the sale is ordered by the court or upon the application of any interested party when the assets by their insignificant value cannot bear expenses of public auction or when there is urgency.

§ Sole Paragraph: The interested parties to whom this article refers are the judgement debtor and the creditors.

Article 887 – **Sale by private negotiation: how done** - When the assets are to be sold by private negotiation, a person shall be appointed, who shall be entrusted with the sale, price of which is fixed immediately at the minimum.

The person so appointed shall act as an agent and the resolution passed by all the interested parties or by order of the court shall act as creation of an agency.

If there is no minimum price fixed, the agent shall not make sale for the price inferior to that for which would go in auction and plus one fourth, except by special permission of the source which created the agency.

§ Sole Paragraph: If there is an appeal pending, ordinary or extra ordinary, against the judgment which is sought to be enforced by way of execution declaration of the same circumstance shall be made at the time of the sale.

- See also Article 677 of this Code.

Article 888 – **Sale in auction house** - Movables shall be sold in an establishment of public auction when there is one such in the judicial division where the assets are, or nearby where they may be transported without deterioration or excessive expense.

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The sale shall be effected by the staff of the establishment and as per the rules in force. The manager of the establishment shall deposit the net amount in the establishment where the judicial deposits are made, at the order of the Court and the supporting documents shall be annexed to the file.

The creditors, judgement debtor and any licitator may complain against the irregularities which are committed at the time of the auction. In order to decide the objection the judge may examine or direct the inspection of the books of the establishment, hear the respective personnel and examine the witnesses which are offered and then take any other procedural steps.

The auction shall be annulled if it is found that irregularities committed vitiate it substantially and the owner of the establishment shall be directed to reimburse the money without prejudice to the losses and damages caused. The act shall be repeated in another establishment and if there is none, there shall be judicial sale or sale by private negotiation.

DIVISION III
JUDICIAL SALE

Article 889 – **When auction is to be proceeded with** - When there are no cases foreseen in the preceding articles 884 to 888, the assets shall be sold in public auction, except where in accordance with article 886, it is decided to effect the sale by means of closed tenders.

Article 890 – **Public notice and Advertisements for Judicial sale** - In order to give greater publicity the date and time shall be fixed for auction or opening of the tenders, with necessary anticipation by way of Public notices and advertisements.

The public notices shall be affixed, with anticipation of 10 days, one on the door of the executing court and other at the door of the house of administrative authority of the village, where the assets are located. If it is a case of buildings, a Public notice shall be affixed on the door of the building. The Advertisements shall be published, with the same anticipation, in two issues of the most widely read newspapers of the locality where the assets are situated or in the nearest locality if in that there is none.

In the Public notice and advertisement, mention shall be made of the name of the judgement debtor, the office of the court where the file is pending and the day, time and place of the auction

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or opening of the closed tenders. If the assets are immovable, they shall be summarily identified and value for which the assets are going under auction shall be indicated.

If the case is movables, only the type of movables shall be specified.

§ 1: Outside Lisboa, Porto and Funchal the auctions shall take place on Sunday, except where it is convenient to hold on any other day.

§ 2: If the judgment which is under execution is under appeal, special mention of this fact shall be made in the publications and notices.

- See also article 887 sole paragraph of this Code.

Article 891 – **Duty to show assets** - During the time of the public notices and advertisements, the Receiver is bound to show the assets to those who intend to examine them; but he may fix the time at which during the day inspection shall be given making them public by any means.

Article 892 – **Notice to preference holders** - The persons to whom the law recognizes the right of pre-emption shall be notified of the day and time of the auction or of the day and time of the delivery of the assets to the proposer, in order to enable them to exercise the right at the time of the auction or of the award.

§ Sole Paragraph: The absence of notice has the same consequence as the absence of notice or prior communication in a private sale.

If the person who exercised preference has been notified by way of publication he may file the suit for pre-emption on general terms provided that there are circumstances which lead to presume that the notice did not reach to him so as to exercise his right at the time of the auction or the award.

- Civil Code article 1566(1), 1678,1694,l703,1708, 2195, 2039 paragraph 1.

Article 893 – **Opening of tenders** - The tenders shall be opened by the Superintendent of the Court in the presence of the judge and those who are given offers and who had appeared, making a record where mention is made of the name of who had made the offers and how much price is offered and which are the assets.

If the highest price is offered by more than one proposer, immediately licitation will be open between them in case they are present recording in the report the result. If the proposer does not want to have the licitation, it is understood that they propose to acquire the assets in co-ownership.

§ 1: The assets shall be identified with reference to the particulars of the respective attachment.§ 2: The irregularities in relation to the opening of the offers or to the licitations shall be raised in the same act.

§ 3: It is not open to the proposer to withdraw the proposals once the offer is made.

Article 894 – **Deliberation on the proposals and adjudication** - The proposal shall be considered within 8 days by the Judgement debtor and by the creditors who shall be invited for that purpose.

If the interested parties are not in agreement, the vote of the creditors, who represent the majority of the credits, shall prevail. However, the Judgment debtor may oppose the acceptance of any proposal, provided he immediately offers any proposer who undertakes to pay higher price. After acceptance of any proposal, the proposer shall be given notice to appear in a day and time to deposit one tenth ($1/10_{th}$) of the price and sign the act of transfer and delivery of the assets by following what is provided to the auction bidder.

§ 1: If the accepted proposal has been presented, in separate, by more than one proposer and there is no auction amongst them because all of them are not present, the licitation shall take place on the date of the transfer and delivery of the assets for which all shall be notified. If they do not bid in the licitation the assets shall be awarded to them in common.

§ 2: If the preferred proposer or proposers do not deposit one tenth ($1/10_{th}$) of the price, they shall be liable for penalty provided in article 904 in the case of default of payment of 9/10 ths.

Article 895 – **Place of auction** - The auction of immoveables shall always be done in the premises of the court where they are situated; the auction of the movables shall be done either in the court where the movables are found or at other place which is found more convenient by express agreement of the Judgment debtor and of the creditors or by the decision of the court.

Article 896 – **Fixing of value at which the assets are going on auction** - The immovables are put to the auction as per the value arising from taxable income as per the record of "matriz", (Land Tax Register) except where the Decree Holder and Judgement Debtor agree on a different value.

The movable assets, the credits and immovables not described in the matriz (Land Tax Register)

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shall be put up on auction as per the value fixed by agreement between Decree holder (Execution creditor) and Judgement debtor or by Decree holder (execution creditor) alone, in the absence of agreement.

Article 897 – **How auction is carried out** - The auction shall be presided over by the judge who shall announce the opening of the auction.

The movable assets, credit instruments may be put up in auction, individually, by lots or in bulk, as agreed between the parties or found convenient by the judge. The immovables shall be put on auction one by one, except where there are special reasons of proximity or dependence, so as to make the joint auction presumably more profitable.

Once the bid is open in relation to each object or lot the bailiff shall exercise the function of crier announcing in loud voice the first bid which is above the value and the succeeding bids, taking note of respective bidders. The licitation is considered final when the bailiff announces three times the highest bid.

Once the licitation is over the persons who are entitled to exercise the right under article 892 to declare whether they wish to exercise the right of pre-emption. When there is more than one person with equal rights, there shall be licitation amongst them and award shall be done in favour of the highest bidder.

§ Sole Paragraph: The auction may be adjourned *ex-officio* or on the application of any interested party, when there is reasonable suspicion of collusion between the participants in the public auction.

Article 898 – **Record of auction** - The auction shall come to an end, as soon as the price of the assets in auction is sufficient-to cover the expenses of the execution and for securing the payment to the Decree Holder and to the other creditors whose rights have been acknowledged.

Article 899 – **Auction of whole or part of property** - Unless there is agreement between the parties to the contrary, the immovables shall be put to the auction as land and buildings property, which ever may be the relation between its value or amount for which execution has been initiated.

However, when the property is susceptible of division, then the judgement debtor may pray that

only the part which is sufficient to cover the payment due, be put for auction. In the event for the first time there is no bidder for such value, the entire property shall be auctioned.

Article 900 – **Contents of auction proceedings** - Of all the auctions which have taken place on the same day or the same proceedings shall be recorded in only one record.

Article 901 – **Steps where there are no bids** - If after one hour there is no bid above the value which has been put for auction, the same shall be closed and fresh date shall be fixed for the second auction for half of the value by recording the same fact in the report.

§ Sole Paragraph: Instead of putting the assets for the second auction, the interested parties may deliberate, in accordance with clause no. 1 of article 886 or by the court suo moto that assets be sold privately or by inviting closed tenders.

Article 902 – **Time gap between auctions and notice thereof** - From the first auction to the

second auction there shall be a gap of minimum seven days.

The notice of the second auction shall be given by only one public notice which shall be affixed, with the anticipation of three days at the places indicated in article 890 and by only one advertisement published with the same anticipation.

§ Sole Paragraph: There is no further notice to those who have right of preference.

Article 903 – **Where there is no bid in second auction** - If the second auction is also abandoned, steps should be taken for the sale by closed tenders or by private negotiation, as the judge thinks fit.

Article 904 – **Payment of bid price – sanction for non-payment** - The bidder shall deposit, at the conclusion of the auction, a one tenth ($1/10_{th}$) part of the price and amount corresponding to the probable expenses of the licitation without which the assets shall not be awarded to him. The balance price shall be paid within 15 days on penalty of imprisonment of the bidder and the assets going again for auction to be auctioned for any amount and the last bidder of the first auction being liable for the difference of the price and to pay costs arising from the omission. Of the second auction notice will be given by public notice and advertisement with anticipation of 7 days.

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The imprisonment shall not last for more than one year and shall cease as soon as the amount which was liability of the auction holder is recovered

Once the office quantifies such liability, the bidder shall be prosecuted in the same execution at the instance of any interested party and the proceeding again the bidder shall be carried out by way of appendage for that the certified copy of the service of summon shall be the basis for further prosecution.

§ 1: The defaulting bidder shall not be allowed to bid in the second auction; but the auction shall stand if the auction bidder deposits the price till the time of opening of the second auction.§ 2: If the bidder is the State or any other local authority the imprisonment shall not take place but the civil liability shall be made effective by appropriate means. If it is any other collective body, the imprisonment shall be against person responsible for offering the bid in the auction.

Article 905 – **Certificate of auction** - Once the price is deposited and transfer tax is paid, if due, the bidder may pray that he may be issued a document of the auction in which the assets shall be identified and it will be certified that payment of the price as well as transfer tax has been paid and date of the transfer, which will coincide with the date of auction in which the assets have been awarded.

§ Sole Paragraph: The bidder shall have right to have out of execution proceedings half of the transfer duty, if before the auction he has not made a declaration to the contrary.

DIVISION IV

COMMON PROVISIONS

Article 906 – **Exemption of deposit by creditors** - The creditor, who acquires assets through execution, shall be liable to deposit only the part of the price necessary to pay the creditors who are placed above him and which is in excess of the amount he is entitled to receive.

Article 907 – **Transfer of assets shall be free from encumbrances** - The assets shall be transmitted free from any encumbrances which have not been registered prior to any seizure, attachment or mortgage, except those which have been created and produce effect in relation to third party apart from registration.

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Immediately after the payment of price and property transfer tax (sisa), direction shall be issued to cancel all the registrations of the rights to the property which stand lapsed, as well as the registration

of any seizures, attachment, mortgages, pledges, consignment or allotment of the income or other rights of guarantee which stand transferred as a product of auction, inclusive right of the respective creditors.

Article 908 - **Rescission of sale or compensation** - When, after the sale is effected the existence of some burden on the property is found which was not taken into consideration and which cannot be said to have lapsed, or that there was an error over the object which has been transmitted or over characteristic of the same object on account of discrepancy in the announcement, the purchaser may ask in the proceedings of execution either rescission of the sale or damages for the prejudice caused to him.

The question shall be decided after hearing the Decree holder, Judgement debtor and interested creditors and other evidence produced except where the particulars are insufficient because in such case the purchaser shall be directed to institute competent suit against creditor or creditors to whom price of sale had been allotted or otherwise sale had been allotted or otherwise should go. § 1: Once the prayer which is referred to in this article has been made before withdrawing of sale proceeds, the same shall not be handed over without security being furnished.
The purchaser having been remitted to file competent suit, the security given shall be lifted if the suit has not been filed within 30 days or suit is kept in abeyance by negligence of the plaintiff for the period of 3 months.

§ 2: The suit referred to in this article shall be dependence of the proceeding for execution.

- See also Article 443 of this Code.

Article 909 – **Cases in which sale shall be of no effect** - Besides the case foreseen in the previous article; the sale shall be without effect only:
a) If the judgment which has been executed is annulled or revoked by way of appeal, except if, the revocation being partial, the subsistence of the sale is compatible with such revocation; b) If the entire execution is annulled on account of lack or nullity in the service of the Judgement debtor by summons, that he has been ex-parte, with exception provided in the second part of sole paragraph of article 921;

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c) If the assets have been redeemed: art.912
d) If some preferential owner has not been notified and he succeeds in the suit for pre-emption instituted subsequently; article 892, sole paragraph;
e) If the thing sold did not belong to the Judgement debtor and was recovered by the owner; f) If there has been collusion amongst the bidders;
g) If the highest price has been offered by more than one proposers and no licitation has been held amongst them, nor the property was awarded to all in common.
§ Sole Paragraph: In the case foreseen in clause a) the restitution of the assets had to be asked within the period of 30 days from the time the decision of appeal becomes final, and the purchaser should be reimbursed firstly with the price and the expenses of the purchase. If the restitution was not asked within the time indicated above, the appellant shall only have the right to receive the price.
The right to apply for rescission of sale in the cases of clauses (f) and (g) also should be exercised within 30 days from the date of the sale.

Article 910 – **Rights of purchaser in case of eviction** - When there is eviction, the purchaser has right only to seek the restitution of the price from the persons to whom the same was given except where execution debtor or the creditors had acted in bad faith or assumed expressly the liability of the eviction, because in such cases the purchaser may demand from them the respective compensation in accordance with provisions declared in the Civil Code Articles 1047 and 1048.§ Sole Paragraph: If at

the time of the auction or before the sale is effected, the owner had protested to seek revindication, necessary record of the protest shall be made; and the purchaser, being evicted, may only claim restitution of the price, save where the creditors or the Judgement debtor have assumed liability towards payment towards compensation.

Article 911 – **Precautions in case of protest for revindication** - Upon the owner raising the protest referred to in sole paragraph of the previous article, the movable assets shall not be handed over to the purchaser, without the precautions established in number 2 and 3 of article 1423 and proceeds from the sale shall not be paid without security being furnished.

But if the protester does not file a suit within 30 days or if the suit is not being prosecuted for 3 months due to negligence of the protester, it is permissible to apply for extinction of the

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guarantees meant to secure the restitution of the assets and payment of money. In either case the purchaser, in case the suit succeeds, has a right to retain the thing purchased until he is refunded the price, and the owner may have it from those responsible if he had to repay to obtain the delivery of the thing which is revindicated.

§ Sole Paragraph: What is provided in this article applies equally, to the extent applicable to the case of the suit being filed without previous protest before the delivery of the movables or of the withdrawal of the proceeds of the sale.

SECTION V

REMISSION

Article 912 – **Who has the right of remission** - The right to redeem all or part of the assets adjudicated or sold, for the price for which award or sale has been made, is recognized to the spouse who is not separated judicially in persons and assets and to the descendants or ascendants of the judgement debtor by consanguinity.

The price shall be deposited at the time of the redemption.

Article 913 – **Time limit to exercise right of redemption** - The right of redemption shall be exercised:

a) In the case of award without auction, regulated in article 875, within 3 days from the time fixed in the second part of the same article;

b) In the case foreseen in article 876 and in the case of sale by public auction, immediately after the decision which directs delivery of the assets to the awardee, auction holder or pre-emptor, and before signing the respective record;

c) In the case of sale in exchange till the time of delivery of the assets;

d) In the case regulated in article 887, till the time of delivery of assets or of signature on the title deed or within 10 days from the date in which the redemptor had knowledge of the sale;

e) In the case of sale by sealed tenders, till the signature in the record of the transmission and delivery of the assets.

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Article 914 – **Prevalence of right of remission over right of preference** - The right of redemption prevails over the right of pre-emption. However, if there are several pre-emptors and there is a licitation amongst them, the redemption shall have to be done as per the price corresponding to the highest bid.

Article 915 – **Order in which right of remission devolves** - The right of redemption belongs in first place to the spouse, in the second place to the descendants and in the third place to the ascendants of the judgement debtor.

When for the purpose of redemption there are several descendants or several ascendants, preference is to those of the nearest degree than those of remote degree.

§ Sole Paragraph: If the applicant for the redemption is unable to prove of the marriage or the relationship, reasonable time shall be given for the production of the respective documents.

SECTION VI

EXTINCTION AND ANNULMENT OF THE EXECUTION

Article 916 – **Right to stop execution by voluntary payment** - At any stage of the proceedings the judgement debtor or any other person may put an end to the execution, upon payment of costs and the debt.

Whoever wants to make use of such right should apply that the file be sent to the accounts section in order to ascertain the liability of the judgement debtor and thereafter deposit the amount so calculated. Upon the presentation of the application, the execution shall be suspended if the applicant produces the documents to prove the deposit of the amount for which execution proceedings were instituted.

Article 917 – **Dismissal of execution** - If the application was made before any of the creditor filing his claim, the liquidation will be done only of the Decree Holder and quantum of costs; and after hearing the creditor over total quantum, the execution shall be dismissed, as soon as the respective amount is deposited. If there is claim of the creditors, the liquidation and the payment shall include amongst amount claimed those which were admitted by the execution debtor or recognized by the Court.

The notice of the liquidation shall be given to the creditor and to the other creditors interested to complain against any error.

§ 1: The voluntary payment referred to in this article does not wipe out the auctions or awards already made.

§ 2: If the payment is done by third party, the latter shall stand subrogated in the rights of the execution creditor showing that he acquired this right in accordance with articles 778 and following of the Civil Code.

- See also Article 868 of this Code.

Article 918 – **Deposit of the debt** - If any of the creditors refuse to receive the amount which belongs to him, despite the notice issued to him for the purpose, the said amount shall be deposited at his cost in the establishment where the judicial deposits are made and by order it will be declared that the judgement debtor stands exonerated from the date of the deposit.

Article 919 – **Other modes of extinction** - The execution shall also be declared extinct, after hearing the interested creditors and payment of costs, as soon as by coercive payment the obligation stands satisfied or as soon as the judgement debtor produces in the file the document substantiating the payment, discharge, renunciation on the part of the creditors or any other extinctive document.

Article 920 – **Renewal of execution when cause of action is continuing** - The extinction of the execution when the instrument of debt has continues cause of action, does not prevent that execution be renewed in the same proceedings for the payment of the installments accrued subsequently.

- See also article 276 of this Code.

Article 921 – **Annulment of execution for failure of, or invalid service** - If the execution has gone ex-parte against judgement debtor and the latter was not summoned, despite being necessary to be summoned, or there being ground to declare the nullity of the service of summons, the judgement debtor may pray at any time, in the same execution proceeding, that the same be annulled.

Once all the steps of execution are suspended, cognizance will be taken of the objection; if the

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same is found tenable, the entire proceedings shall be annulled.

§ Sole Paragraph: The objection may be made even after the execution is declared concluded. However, if after effecting the sale there has been a lapse of time necessary for positive prescription, the judgement debtor is not entitled to seek delivery of the assets, and the only right left to him is to demand from the Decree Holder, in case of fraud or bad faith on his part, the compensation for damages, if the same also is not prescribed.

- See also articles 195 and 198 of this Code.

SECTION VII

APPEALS

Article 922 - **Appeal from final judgment** - Appeal lies from final judgment which decides liquidation, objections of execution debtor and which verifies and marshals the credits, when any of them takes cognizance of merits of the case.

The appeal does not have the effect of staying the operation of the final judgment when filed against the final judgement passed by the court of Judicial Division, except where the appeal from final judgment passed is from objections of the judgement debtor and the objector has furnished security to stop further prosecution of the execution.

§ Sole Paragraph: If the liquidation has been done exclusively by way of arbitrament, from the order homologating the report of the experts appeal from order lies.

- See also Articles 691, 692 and 809 of this Code.

Article 923 – **Appeals from Orders** - As to the appeals from order following shall be observed: a) In cases of liquidation and claims of the creditors, the appeals from order filed against such orders passed in the course of these two proceedings shall be forwarded at the end with appeal from judgment which decides liquidation or objection on appeal from order, referred to in sole paragraph of previous article;

b) In appeals from orders passed in the objections of judgement debtor, provisions of article 734 onwards shall apply;

c) The appeal filed from order which allows the challenge to the enforceability of the instrument of debt and the appeal from order passed from the order bringing heirs on record, in accordance with article 56 are forwarded immediately;

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d) All other appeals from order shall be forwarded in two distinct stages: those arising from orders passed until conclusion of attachment shall be forwarded together when this stage is concluded; those filed against orders after marshalling the creditors, shall be forwarded jointly when the award, auction, remission of the assets are concluded.

§ Sole Paragraph: When there is a liquidation or objections from the judgement debtor, along with final judgment shall be forwarded not only the appeals from order referred to in clause a), as well as the appeals from orders filed against previous orders are not among those mentioned in clause (c).

CHAPTER II

SUMMARY EXECUTION PROCEEDINGS

Article 924 – **Summons – Time for defence** - The judgement debtor shall be summoned within 5 days to pay or indicate the assets for the purpose of attachment. Within same time objection may be filed.

Article 925 – **Steps in objection proceedings** - The period of limitation for contesting objections of judgement debtor is of 5 days and thereafter, without further reply, the steps of summary proceeding shall follow.

Article 926 – **Forwarding of appeals from orders** - To the appeals from orders filed against objections of the judgement debtor the provision of article 792 shall apply.

CHAPTER III

CONCISE PROCEEDING

Article 927 - **Steps in concise proceedings** - Once the final judgment is passed and costs are calculated, if the judgement debtor does not pay the costs and the debt within 10 days, the attachment shall be carried out independently of service of summons. Upon the attachment, the execution debtor may file objection within 5 days.

- Code of Judicial costs article 114.

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SUB-TITLE III

EXECUTION FOR THE DELIVERY OF SPECIFIC THING

Article 928 – **Summons for execution for delivery of specific thing** - In the execution for the delivery of a specific thing there should be request that the judgement debtor be summoned within the period of 10 days to effect the delivery.

Article 929 –**Grounds and effect of objections for the judgement debtor** - The judgement debtor may file objections against the execution on the grounds specified in articles 813, 814 and 815 to the extent applicable, and besides this the ground of improvements carried out to which he had right.

If the improvement authorized the lien, the acceptance of the objections shall stay the execution until the payment of amount of the cost of improvement, except where the Decree Holder (creditor) deposits the money or furnishes security to the extent of amount claimed.

The objections raised on any other ground shall result in stay of the execution proceedings if the objector furnishes security corresponding to the amount demanded in the execution.

Article 930 – Delivery through Court - If the judgement debtor does not effect delivery, the same shall be done through the court, after carrying out searches and other steps which may be necessary.

In case of movables to be determined by accounting, by weight or measure, the functionary shall compel in his presence the necessary operations and deliver to the Decree Holder (creditor) the quantity due.

If it is a case of immovables, the functionary shall deliver the possession to the Decree Holder (creditor), handing over to him the documents and the keys if there are any, and shall issue notice to the judgement debtor, to the lessees and any other occupiers that they respect and acknowledge the right of the Decree Holder (creditor).

If the thing belongs in co-ownership with other interested parties, the Decree Holder shall be given possession of his share judicially.

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Article 931 – **Conversion into execution for payment** - If the thing which the decree holder ought to have received is not paid, he may, in the same proceedings obtain liquidation of its value and the compensation arising from default in the delivery, in terms of articles 805 onwards, however the service of summons referred to in article 806 shall be substituted by notice.

As soon as the liquidation is done, immediately thereafter as per indication done by the decree holder the attachment of the assets necessary for the payment of the amount quantified shall be carried out and thereafter subsequent steps prescribed in articles 864 and following shall be followed.

Article 932 – **Forwarding of appeals** - The appeals from orders not comprised within clauses (a), (b) and (c) of article 923 shall be forwarded only after delivery of the property through Court.

SUB-TITLE IV

EXECUTION FOR DOING AN ACT

Article 933 - **Summons to judgement debtor for doing/ abstaining from an act within a specified time** -If anyone is bound to do or abstain from doing an act within specific time and fails to do so, the creditor may apply for the same to be rendered through others, there being no stipulation to the contrary, or for damages for the loss caused.

The debtor shall be summoned within 10 days to file the defence which he deems fit. The objection shall operate if the judgement debtor furnishes security of the quantum of the execution.§ Sole Paragraph: If the execution is subject to summary procedure, the objection shall be filed within a period of 5 days and thereafter what is provided in article 924 to 926 shall be followed. Civil Code article 712.

Article 934 – **Conversion into execution for recovery of certain amount** - After the limitation referred to in the previous article or after the rejection of objections is over and when the latter stay the operation of the execution, if the Decree Holder (execution applicant) demands for compensation for loss caused, provisions of article 931 shall be followed.

Article 935 – **Valuation of cost of act or abstention and recovery of this amount** - If the Decree Holder (execution applicant) opts, being lawfully permitted, for the rendering of act or abstention through another, he shall apply for appointment of experts to make evaluate the cost of doing such act or abstention.

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After carrying out the valuation, immediately the Decree Holder (execution applicant) shall indicate for attachment the assets necessary to secure the amount which has been quantified and the amount of the costs, and following thereafter the attachment the steps prescribed in articles 864 and following shall follow.

Article 936 – **Performance by Decree Holder** - Even before the conclusion of the valuation or of the execution regulated in the preceding article, the Decree holder may perform or obtain performance under his direction and supervision, the construction and works necessary to be carried by way of performance, with the obligation to render the accounts to the court of execution.

In the say on the accounts submitted by the decree holder the judgement debtor may allege that there was an excess in doing the work.

Article 937 – **Payment of estimated credit to Decree Holder** - Once the accounts are approved, the credit in favour of the Decree holder shall be paid by the proceeds of execution referred to in article 935.

If the amount calculated is not sufficient for the payment, the procedure in the said article shall be followed to secure the balance.

Article 938 – **Right of Decree holder when cost of valuation is not realized** - Having exhausted all the assets of the judgement debtor without obtaining the satisfaction as per the judgment theDecree Holder(execution creditor) may give up execution for the doing of the act if it is not yet initiated and apply for withdrawal of amount secured.

Article 939 – Time limit for performance - If the time limit for the doing of the act is not stipulated in the document under execution, the Decree Holder may indicate time which is sufficient and apply that the judgement debtor be summoned within 10 days to give his say so that time is fixed by the court.

§ Sole Paragraph: If the judgement debtor has ground to oppose the execution, he should immediately file the appeal against the order which directed summons to him or file objections or defence by simple application alongwith his say on the time limit.

Article 940 – **Steps after time limit is fixed** - If the judgement debtor does not render the service

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during the time fixed, whatever is provided in articles 933 to 938 shall follow, but the objection on the part of judgement debtor can have as the ground either the illegality of the prayer to get service rendered by another or any fact which occurred subsequent to the service of summons referred to in the preceding articles and which in terms of articles 813 onwards may be legitimate ground for opposition.

Article 941 – **Verification of default when judgement debtor is bound to refrain from doing a certain act** - When the obligation of the judgement debtor consists in not doing some facts, the Decree holder may apply, in case of breach, that same may be verified by way of examination or arbitrament.

The judgement debtor shall be summoned to nominate experts and he may within 10 days file the objections urging whatever he has to say in accordance with article 813 and others.
§ Sole Paragraph: When the experts conclude that there is a breach they should indicate the probable expenses towards the demolition to be carried out.

Article 942 –**Steps after breach is ascertained** - If the judge is satisfied that there is a breach, the judge shall direct that work be demolished at the cost of judgement debtor and that Decree holder should be compensated for the loss sustained.

Thereafter, with necessary adaptation what is prescribed in articles 934 to 938 shall be followed.

Article 943 – **Appeals** - The appeal from order not comprised within clauses (a), (b) and (c) of article 923 shall be forwarded only after the act is done.

TITLE IV
SPECIAL PROCEEDINGS
CHAPTER 1
INTERDICTIONS
SECTION 1
INTERDICTION DUE TO DEMENTIA, OR DUE TO DEAF-DUMBNESS

Article 944 – **Requisites of initial petition for an action of interdiction for dementia** - The initial petition for interdiction founded on mental anomaly, after pleading the locus standi of the applicant, shall specify the facts that reveal the psycopathy and the partial or total incapacity of

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the interdict to govern his person and administer his assets and shall indicate the persons, who according to law shall constitute the family council and exercise the tutelage.

- Articles 314, 318 and 320 of Portuguese Civil Code.
- **Articles 944-958** – Special proceedings – Interdiction due to mental unsoundness:
  - Covered byMental Health Act 1987, earlier the Lunacy Act 1912.

Article 945 – **Publication. Annulment of acts** - Upon receipt of the petition, two public notices shall be affixed, one on the door of the court and the other on the door of the village authority of the domicile of the opponent, in which name of the latter and the object of the action shall be disclosed on the same terms, a notice in the newspaper of the seat of the Judicial division or there being none, in a newspaper of the locality closest to the seat of the Judicial division shall be published.

If the interdiction is finally ordered the acts performed by the defendant from the date of the publication of the public notice and those that are included within the limits of the prohibition, shall be annulled in the same petition for interdiction it being sufficient to show that they have caused prejudice to the interdicted.

The petition being rejected or the action being dismissed, on merits, such notice of the dismissal shall be published by way of notice affixed at the same places and on the same newspaper.§ Sole Paragraph: The advocate for the respondent in the proceedings may, by his own initiative or upon the application of any of the interested parties, cause the appointment of a provisional tutor, who may perform on behalf of the respondent, the acts which cannot be deferred.

The provisional tutor shall exercise his functions until the appointment of the permanent tutor or until the prayer of the interdiction is finally rejected.

- Article 334 and 335 of the Portuguese Civil Code.

Article 946 – **Notice to respondent in case of partial incapacity** - When the interdiction is applied for on the ground of partial incapacity, the opponent shall be summoned within 5 days to appoint an advocate to represent him in all stages of the proceedings.

The advocate so appointed shall give his say as regards the locus standi of the applicant and the constitution of the family council.

If no advocate is appointed, the applicant shall be represented by the Public Ministry, or he being the applicant, by an advocate appointed by the judge; and the file shall be entrusted to each of them for 3 days for examination, to give his say as regards the two points mentioned in the first part of this article.

§ Sole Paragraph: When the opponent appoints an advocate, the Public Ministry, if it is not the applicant, shall render assistance to the opponent like an accessory party.

The opponent, if he does not immediately appoint an advocate, is not debarred from appointing one, at any stage. As soon as an advocate is appointed, the representation of the appointed defence advocate ceases and if the representation has been made by the Public Ministry, it shall intervene as an accessory party.

Article 947 – **Defence of respondent when incapacity is total** - When total incapacity is pleaded the service of the summons prescribed in the preceding article shall not take place, and the file shall immediately be made available for study to the Public Ministry, or to the assigned advocate for the purposes foreseen in the same article.

But if the interdicted appoints advocate as attorney on record, after the filing of the proceedings, provisions of the last part of the sole paragraph of the preceding article shall be observed. If the opponent does not issue power of attorney, any of the succeeding relation of the opponent may appoint a counsel for him, who shall have the same power of representation, as if issued by the opponent himself; the payment of fees shall, however, be of the responsibility of the person who appoints in case the interdiction is allowed.

Article 948 – **Appointment and summoning of family council** - Once the locus of the applicant is satisfied, the judge shall appoint the family council and convene it to express its opinion as regards the relief prayed and its grounds. The members of the family council shall declare all that they know and which may be useful to ascertain the mental state of the respondent. For the meeting of the council, the applicant and the advocate for the respondent shall be notified and may be heard and make observations as they deem fit.

The respondent may attend the session along with his counsel.

Article 949 – **Reasons to reject petition** - If the opinion of the council is contrary to the applicant, the applicant shall seek examination of the opponent and also the sanity hearing of the opponent failing which the petition is liable to be dismissed.

The petition shall be also dismissed if the opinion of the council is confirmed in the examination of the opponent and sanity hearing.

Article 950 – **Questioning of the respondent and examination by experts** - If the opinion of the council is favourable to the applicant, the court shall appoint two doctors specialized in psychiatry, when they are within the area of the Judicial Division, and this shall be followed by the interrogation and hearing of the opponent.

The interrogation shall be done by the judge, with the assistance of the applicant, the representative of the opponent and the two doctors, and any of them may ask specific questions to the opponent, and the questions as well as the answers and whatever may have bearing on the determination of the mental state of the opponent, shall be recorded in the file with greatest fidelity.

The sanity hearing by the doctors shall follow immediately after the questioning of the opponent is over. If the experts immediately arrive at their conclusion, the conclusions shall be recorded in the file in the records. If that is not possible, time shall be fixed for the submission of the report, continuing the examination at the place which the experts deem fit.

The experts are permitted to take steps and conduct enquiries as they deem fit and may hear persons who are able to provide clarifications in respect of the behaviour of the opponent and in hereditary deficiencies.

The doctors shall declare in the report, investigations done by them and the conclusions there from, and may record the information which they obtained, indicating the persons who furnished it.

If they conclude that interdiction is needed they shall specify to the extent possible, the kind of mental condition and the extent of the incapacity, the probable date when it started, the precautionary measures and the means of treatment which they propose.

If they do not arrive at a definite conclusion as regards to the capacity or incapacity of the opponent, the applicant who has applied for the interdiction shall be heard. He may apply either that, at his cost, the respondent be admitted in a specialty clinic for his examination to be conducted by the respective head, within a period of one month or that the steps prescribed in the article 953 be followed.

§ Sole Paragraph: Provisions of this article are applicable to the case where the opinion of the council is contrary to the applicant and the latter proposes that questioning or hearing of the respondent be proceeded with.

Article 951 – **Immediate Interdiction Order** - If the interrogation and the examination confirm the opinion of the council that is favourable to the applicant, the order for interdiction shall be immediately passed.

Article 952 – **Provisional interdiction** - If the examination confirms the opinion of the council that is favourable to the applicant but the interrogation does not disclose mental anomaly, provisional interdiction shall be ordered, and notice shall be served on the opponent to contest within a period of 10 days, allowing the examination of the file by the advocate.

The interdiction shall become definitive if there is no contest. There being contest, the terms of ordinary proceedings shall be followed.

§ 1: If the opponent has already been summoned or if he could not be summoned on account of total interdiction, his advocate/ attorney shall be notified to contest.

§ 2: The provisions of the ordinary suit relating to first examination shall be applicable to any examination of the mental state of the opponent.

Article 953 – **Steps in the ordinary proceedings** - There being difference between the opinion of the council and the one resulting from the investigation, the provisions contained in the preceding article shall be observed with the following modifications:-

1) No order of the provisional interdiction shall be passed;

2) The matter shall proceed, although there is no contest, it being incumbent on the petitioner to prove the facts pleaded.

§ Sole Paragraph: What is provided in this article is applicable to the case where one of the experts concludes the opponent as fit and the other that he is unfit, whatever might be the opinion of the council.

Article 954 – **Contents of the Interdiction Order** - The judgment which orders the interdiction, provisional or definitive shall fix the extent and the limits of the guardianship in the case of partial interdiction, shall fix, if possible, the probable date of the commencement of the

incapacity, shall appoint a guardian to the interdicted or convene the family council to this effect, when it falls within its competence shall always convene the council for appointment of the pro-guardian.

If the interdiction is allowed in the appeal, the appointment of the guardian and the pro-guardian shall be done at the first instance when the file is remitted back.

- Article 320 and 330 of the Civil Code.

Article 955 – **Appeal** - An appeal lies from the order of permanent interdiction or provisional interdiction which, due to lack of contest, immediately converts it into permanent. The applicant may also appeal as regards the extent and the limits of the incapacity.

§ 1: The guardian appointed may intervene in the appeal as assistant.
§ 2: The period to prefer appeal, in the case of provisional interdiction converted into permanent, shall start from the day the defence could be presented.

§ 3: The appeal shall not stay the operation of the order.

Article 956 – **Sealing and listing of assets** - Once the judgment directing interdiction has becomes res judicata sealing and listing of the assets of the interdicted shall take place, if the interdiction is general and cases foreseen in situations envisaged in article 324 of the Civil Code. Scaling and listing of the properties may also take place and the enrolment of the interdiction is ordered; but the application shall not be granted without satisfying the existence of prima facie, bonafide in the application and case of irreparable 1055.

- See also Article 431, Paragraph 2 of this Code.

Article 957 – **Prosecution of proceedings even after death of opponent** - Upon the death of the opponent in the course of the proceedings but after the investigation and sanity hearing referred to in article 950, the applicant may demand that the matter shall proceed to verify whether there was a case of alleged incapacity and in the affirmative since when it existed.

In such case there is room to entertain any application to bring on record the heirs of the opponent, who shall continue to be represented in the suit by the advocate. The persons, who have interest in sustaining the validity of the acts performed by the opponent, may intervene as principal parties.

Article 958 – **Procedure for lifting the interdiction** - The interdicted person may apply to put an end to the interdiction, on the ground that the cause has ceased to exist.

Upon the application being brought on record, the council of the family shall be called upon to give its opinion, with the assistance of the Public Ministry, of the interdicted person, of his guardian and of the applicant for interdiction. The guardian shall give to the council the information and the

clarifications that have been asked from him, This shall follow the examination of the interdicted by 2 physicians.

When the opinion of the council and the opinions of the experts are concurrent, the same shall be approved immediately, either dismissing the application or vacating the interdiction; if there is difference between the opinion of the council and the result of the examination, the steps of the ordinary suit shall be followed, and the applicant for the interdiction, and in his absence, the Public Ministry, and the presumed heirs of the interdicted shall be notified to contest.

§ Sole Paragraph: The lack of contest shall not dispense the applicant from proving his locus standi.

Article 959 – **Applicability to interdiction of deaf-dumbness** - What is provided in the preceding articles is applicable to the interdiction on account of deaf-dumbness with the necessary adaptations.

- Article 337 of the Civil Code.

SECTION II

INTERDICTION ON ACCOUNT OF PRODIGALITY

Article 960 – **Procedure for interdiction for prodigality** - The initial petition for the interdiction on account of prodigality must satisfy the requirements of article 944, with required modifications due to the special nature of such incapacity.

When the application is filed and notices are issued, in terms of article 945, the opponent shall be summoned, to give his say, within 5 days, as regards the locus standi of the applicant and as to the constitution of the family council.

Thereafter, the council shall be appointed and convened to give its say. The opponent shall be notified to be present for the meetings of the council and may by himself or through his advocate, justify the acts of the prodigality that are attributed to him.

If the council gives opinion favourable to the applicant, confirming all or some of the facts that are pleaded, provisional interdiction shall immediately be granted, if it is found that there exists sufficient ground to grant the same. Independent of the provisional interdiction being granted or not, the opponent shall soon be notified on to contest the application within a period of 10 days, and thereafter without further pleading, the steps of an ordinary suit shall be followed. There being no contest, permanent interdiction shall soon be granted or the provisional interdiction shall be converted into permanent interdiction.

If the opinion of the council is contrary to that of the applicant, the opponent shall, in the same manner be notified to contest, and the provision of the preceding paragraph shall be observed, but the lack of contest shall not amount to the admission of the facts pleaded.

§ Sole Paragraph: What is provided in the second and third paragraphs of the Article 945 and in the Article 956 is applicable to such applications; and also, as regards the appointment of the curator and the extent and limits of curatorship, the provision contained in the sole paragraph to article 945 and 954 shall apply.

Article 961 – **Lifting of interdiction** - If the interdicted person applies in accordance with article 352 of the Civil Code and its sole paragraph for vacating of the interdiction, upon the application being brought on record, the family council shall be called upon to give its opinion in the presence of the interdicted persons, his curator and the applicant for interdiction. Thereafter, the applicant for interdiction, and in his absence, the Public Ministry, and the presumed heirs of the interdicted shall be notified to contest the application.

If the opinion of the council is favorable to the applicant and there is no contest, the interdiction shall be immediately vacated.

If the opinion is contrary, whether or not there is contest, the steps of ordinary suit shall be followed without further pleadings.

SECTION III

RESTRAINT ON PARENTAL POWER OR OF GUARDIANSHIP FUNCTIONS

Article 962 – **Pleadings in a petition for restraining power of parent or guardian** - In the petition for partial or total restraint of the paternal power or guardianship, the defendant shall be summoned to contest within a period of 10 days.

With the petition and defence, the parties shall file the list of witnesses and apply for leading any other evidence.

§ 1: Not more than 3 witnesses may be allowed examined for one fact and their total number for each party shall not exceed 10 for the main petition and 5 for the preventive or incidental proceedings.

§ 2: The witnesses residing outside the Judicial Division which the party does not volunteer to produce shall be examined only if the judge finds them indispensable.

- Article 141 and Article 161 of the Civil Code, Decree dated 27/05/1911 and complementary diplomas.

Article 963 – **Curative order** - Upon presenting of the defence or at the end of the period, within which it can be filed, an order shall be passed within 10 days for the following:

1. Taking cognizance of the nullities and the locus of the parties;
2. Decide any other questions even though on the merits of the case, provided the material before it enables the court to pass a conscientious decision.

Article 964 – **Hearing of arguments and judgement** - If there are no preliminary objections, the steps that have to be taken before the trial and which the court finds necessary shall take place, and it shall always be mandatory to the judge to enquire the moral and economic positions of the parties, the facts pleaded by the party and everything else which is found useful to know to clear the position of the parties.

This shall be followed by the trial in the following manner:-

a) The parties being present by themselves or otherwise represented, the judge shall enquire so as to find out whether the matter can be settled;

b) If he does not succeed in conciliation, he shall proceed for examination of the parties when applied for, and thereafter to the examination of the witnesses;

c) At the end of the examination, the curator of the minors and the advocates shall be heard and each one of them may use the opportunity only once and for a time not exceeding half an hour.§ Sole Paragraph: The hearing may be adjourned only once and on account of justified absence of any of the parties or of the witness which the party does not desire to drop.

Article 965 – **Judgement** - The final judgment shall be passed within a period of 20 days and the court shall direct to what extent restraint of the powers has been imposed and fixing the maintenance due to the minors by exercising discretion judiciously and taking into consideration all the circumstances.

§ Sole Paragraph: If the restraint is put by the court, the council of the family shall be called upon to appoint the guardian.

Article 966 – **Appeal** - From the final judgment, appeal from judgment lies to the High Court. The appeal may or may not have the effect of staying the operation of the order, as the court may direct.

§ Sole Paragraph: The provisions contained in this article are equally applicable to appeal from order referred to under article 963, when such order puts an end to the proceedings.

Article 967 –**Incidents** - The substitution, recusal, exclusion and removal of the guardian appointed by the tutelage shall be conducted as incidental proceeding and dependant on the application for restraint on powers.

§ 1: The substitution shall take place in the case of death or when guardian is disabled from exercising tutelage. In the first case, the substitution shall be applied by the curator of the minors or by parents, friends or neighbours of the minor immediately producing on record the death certificate; in the second case, the substitution shall be applied by the guardian.

§ 2: The excuse may be applied by the guardian, with the specific indication of the grounds for an inquiry of which necessary steps shall be taken.

§ 3: The exclusion and removal may be applied by the persons who may apply for the substitution in the case of death, immediately producing the proof on record.

Article 968 – **Suspension of power of parent or guardian and deposit of minor** - As an act preparatory or incidental to the application of restrain of the parental control or on guardianship, the suspension of the power and the deposit of the minor may be immediately ordered, if the summary inquiry shows that the father or the guardian is manifestly incapable either physically or morally, to take care of the son or of the pupil.

These steps lapse if the application for inhibition is not filed within 15 days or if, due to the negligence of the plaintiff, the proceedings are kept pending for more than 30 days.

§ 1 : The deposit shall take place in the house of a suitable family, preference being given to the relations bound to provide maintenance; such course being not possible, the minor shall be placed in the custody in a boarding school or institute of beneficence. Provisionally, pension which the parents or the tutor are directed to pay for the sustenance and education of the minor, shall be fixed immediately.

§ 2: The custody of the minor shall be made by the means of a record that shall specify the conditions of the deposit.

Article 969 – **Lifting of inhibition** - The vacating of the inhibition shall be applied before the tutelage and shall be processed by way of appendage to the file of inhibition.

Such prayer may be made only upon passage of 3 years from the order of inhibition or the decision which has rejected the previous prayer.

Upon the guardian and the curator of the minors being notified to contest within the period of 10 days, the petition shall follow the steps prescribed for the inhibition.

CHAPTER II
TERMINATION OF THE TENANCY AND OF THE SHARE CROPPING AGREEMENT

SECTION I
REMEDIES AVAILABLE TO THE LANDLORD[7]

Article 970 – **Modes in which landlord may terminate tenancy after its capacity** - When the landlord wishes to terminate the tenancy at the end of the stipulated period or the period which the law deemed to be, the tenant shall be notified as per the agreed anticipation, and in the absence of the agreement, 60 days before the termination of the contract of tenancy of one year or more, 30 days prior in case where the tenancy is for more than 3 months and less than one year

[7] *Termination of tenancy – (Art. 970 – 998) redemption of mortgages (999-1006), sale of pledged goods (Art. 1007-1011). These are procedures which are not part of Civil Procedure Code in our system.*

and 10 days in case of tenancy for a period up to 3 months.

The notice shall be served by means of service of summons for the suit for eviction or by means of miscellaneous judicial notification.

The landlord may in addition to the notice of termination call upon the tenant to affix the placards, if the property is building and denoting vacancy of the tenancy if locally such practice is followed. The fixation of placards imposes obligations on the tenant to permit inspection of the premises between 1 p.m. to 4 p.m. to whosoever proposes to take the premises on the tenancy.§ 1: If the tenancy is for residential purposes, the service of summons or notification may be made on any person of the house when the tenant is not found in the premises, which shall have same effect as if the service is made on the tenant in person. If the house is locked the general rules shall be observed.

§ 2: The landlord may also notify the tenant out of the court. But such a notice shall only produce effects if the tenant affixes such placards or if the landlord obtains from the tenant a written declaration that he is deemed as evicted or equivalent.

Article 971 – **Initial petition for eviction** - With the petition for the suit for eviction or with the application for the judicial sundry notification, the landlord must annex the document of tenancy, if it exists.

When the law requires the document and the landlord does not annex it, nor plead that he can supply the deficiency, the service of summons or the notification shall not be ordered when by simple inspection of the document it is found that the tenancy does not terminate on the date indicated by the petitioner or if the service is applied for without due anticipation prescribed in the law.

Article 972 – **Defence and rejoinder** - If the landlord gets the service of summons done on the tenant, for eviction, the defendant may, within 5 days, file the written statement and it may plead therein nullities, exceptions or incidents, and raise any other defences, or ask including for improvements or compensation for damages.

The plaintiff may file rejoinder to the plea raised in the written statement, within a period of 5 days.

In the written statement and in the rejoinder all the steps to be taken shall be listed and the list of witnesses shall be submitted, and the witness residing outside the Judicial Division shall not be accepted unless the parties volunteer to present them before the court.

Article 973 – **Curative order and questionnaire** - In the following five days, the curative order referred to under article 514 shall be passed.

When the suit is to proceed further, provisional eviction shall be ordered, when the written statement does not stay its operation and the order shall be passed in compliance with the provision of the article 515, and objections against such order are to be filed within 48 hours and each of the parties shall have 24 hours to give their say to such objections. The objections shall be decided in the following 48 hours by an order which may only be challenged in appeal from the final judgment.

Article 974 – Arguments and judgement - Only the procedural steps which the judge finds indispensable shall be ordered and thereafter date will be fixed for the trial.

Judgment shall be delivered within 8 days subsequent to the trial.

Article 975 – Eviction by notice - In the event the landlord makes use of sundry notice through the court, the concerned employee shall inquire from the tenant at the time of service of the notice, whether he accepts or not the eviction and shall record in the report of the service the reply obtained from the tenant.

When the notice does not reply or gives evasive answer, it is presumed that he accepts the eviction, if he within 5 days does not make it known to the landlord, by way of notice through registered letter with acknowledgement due or inland letter in duplicate or telegram that he will not vacate the premises on the date indicated in the notice.

Article 976 – **Rights of landlord when tenant does not receive notice** - If the tenant does not accept the eviction sought by way of sundry notice, the tenant may use the suit for eviction referred to in articles 971 to 974 or apply on the ground mentioned in the notice, at the end of tenancy period, that eviction order be passed against the tenant.

If the notice has been sent with the anticipation indicated in article 970, the summons for eviction shall have effect even though it might have been done beyond the limitation prescribed therein.

Article 977 – **Procedure for immediate termination of tenancy** - When the landlord or the purchaser of the property, proposes to have immediate eviction, he will take steps to serve summons on the tenant or his successors to, within the period of 5 days, contest the prayer or vacate the premises.

Such suit shall follow the steps prescribed in the articles 971 to 974;

§ 1: The procedure established in these articles is applicable to all the cases in which it is intended to immediately put an end to the tenancy, which ever may be the ground.

§ 2: If the prayer is based on non-payment of rent, which ought to have been done in advance, the eviction shall take place at the end of the period till the time rent have been paid, without prejudice to the loss which was incurred by the tenant on account of non fulfillment of the contract. In such case, and being a case of premises, the landlord even may pray that the tenant affixes the placards and gives his inspection from 1 to 4 pm to the person who propose to take it in tenancy.

Article 978 – **Effect of contest** - The written statement suspends the eviction. However, if the case of eviction is based on non payment of rent and the document of the tenancy having been annexed, the defendant does not prove immediately by way of document any of the following facts:

a) He has effected at appropriate time the payment or the deposit of the rent;

b) The rent is not accrued in view of change in the date of payment of the rent;

c) Having deposited, beyond the limitation, when it is a case of building premises, three times the rents already accrued.

§ 1: If the case is of rural properties, provisional eviction may be ordered if there is a reasonable ground to believe that the written statement is merely a dilatory tactic.

§ 2: If there is dispute as to the quantum of the rent, the eviction shall be suspended provided that the tenant proves that in accordance with clauses a) and c) having paid or deposited amount not less than which is found in the contract or that which by way of document established may be demanded legally.

§ 3: In the case of clause c) the defendant is liable to pay the costs of the proceedings and fees of the advocate of the plaintiff which shall be awarded as per the practice of Judicial division.

The eviction shall be stayed, even when the documents referred to in the clause are produced after the order in the eviction, provided that the eviction has not been given effect.

§ 4: When the defendant claims improvements which permit retaining lien the eviction shall not be ordered until the plaintiff proves by way of document, the payment or deposit of the amount claimed.

Article 979 – **Rents accrued during pendency of proceedings** - Which ever may the ground of eviction, in the event the defendant fails to pay the rent which accrues during the pendency of the suit, the plaintiff may apply, on such ground for immediate eviction.

Upon the hearing the tenant, if he does not prove, by way of document, that he did the payment or deposit, the eviction shall be ordered.

To this case is applicable what is provided in clause c) and paragraph 3 of the previous article.

Article 980 – **Judgment against Plaintiff as being in bad faith** - When the ground for eviction is non payment of the rent and it is proved that the tenant has paid it or deposited in due time, the

plaintiff shall be held as litigant in bad faith, except if he establishes that he was ignoring the fact; in any case he shall indemnify the defendant for loss caused.

The same will follow when the tenant proves any of the facts designated under no. 1 to 5 of article 759 of the Civil Code.

Article 981 – **Liability of landlord for fraud** - When it is found that the landlord filed the suit or applied for eviction through notice served on dummy tenant, in order to achieve through his connivance or silence, the eviction of true tenant he will be directed to pay fine as litigant of bad faith and to pay compensation for loss, and beside that subject to along with supposed tenant for a criminal liability for the offence of defamation.

Article 982 – **Use of summary procedure** - In whatever is not prescribed specifically in this section and in the following, what is provided for summary proceedings shall apply and recourse will be taken to the ordinary proceedings and the general provisions to the extent the summary proceedings is silent.

But, there shall be stay as to the operation of the judgment when appeal is filed from final judgment ordering eviction from premises meant for residence and subject to special regime of the protection of tenant.

Article 983 – **Applicability to agricultural partnership** - Whatever is provided in this and other articles of the chapter is applicable to the rural properties, for the lease, as well as of contract sharecropping.

- Civil Code article 1303.

SECTION II

REMEDIES AVAILABLE TO THE TENANT

Article 984 – **Means for tenant to terminate tenancy at the end of term** - Whenever the tenant proposes to put an end to the tenancy at the end of the period stipulated or which is deemed as terminated, he shall inform the landlord with the anticipation fixed in the article 970.

The notice shall be issued through court, except in the case of a building and where there is a practice in the land to affix placards, because in such cases the notice shall be substituted by affixation of placards.

What is provided in article 971 and in the first part of article 975 is applicable to the service of notice. The employee shall retain the certified copy of the report of service to the landlord if he so demands.

§ 1: The landlord may satisfy through any officer of the court, the fact of affixation of the placards without need of any order. The officer shall make a record signed by him and two witnesses which he will hand over to the landlord, keeping one copy to the tenant.

§ 2: The tenancy is considered as ended, irrespective of notice or affixation of writings, if the tenant vacates the premises out of court and the landlord declares in writing that he accepts the eviction.

Article 985 – **Means for tenant to end tenancy immediately** - What is provided in the previous article excepting what is said about the anticipation of the affixation of placards is equally applicable to the case of the tenant, who for which ever reason intends to put immediate end to the tenancy.

SECTION III

EVICTION, AFFIXATION OF PLACARDS AND REOCCUPATION THROUGH ORDER OF THE COURT

Article 986 – **Eviction warrant** - After the eviction is ordered, if the tenant does not vacate the property at the end of the tenancy or within 5 days, as per article 970 or article 977, the landlord may apply that the eviction warrant be passed and have it enforced through court employee or any authority.

The applicant shall put at the disposal of the executor all the means necessary for the removal, transport and deposit or movables and objects which are found.
If it is necessary to break open the door or control the resistance offered, the person entrusted with execution of the order shall requisition the intervention of police and assistance of any administrative authority and in their presence the door‘ will be broken open and the same shall be recorded in the report.

Article 987 – **Stay of eviction** - The warrant of eviction shall be executed who ever may be the person found in the occupation of the premises, except:
a) If such person produces document of lease or document of any other lawful enjoyment originated from the execution applicant;
b) If he produces the document of sub tenancy arising from the execution opponent.

Upon the verification of any of the circumstances foreseen in the above two clauses, the executor shall stay the eviction, making a report and keeping on record the title.
The occupant shall within 3 days apply for confirmation of stay of eviction, failing which the warrant shall be executed immediately. The applicant shall produce the documents and the judge after the hearing the landlord shall decide summarily. Whether the suspension is to be maintained or whether warrant should be executed. In case of clause b) the judge shall examine whether sub tenancy is in condition of producing effects against the landlord.
§ Sole Paragraph: The eventualities mentioned in the clauses a) and b) cease to operate when the occupant has been heard and decision passed.

Article 988 – **Stay of eviction on ground of sickness** - There shall also be stay of eviction, in a case of tenancy of building premises for habitation, when it is found by certificate issued by the physician under oath or solemn affirmation that if the execution is carried out, the life of the person is in risk in view of the disease he is suffering. In the certificate period during which the stay of eviction should operate shall be stated.
The certificate may be presented to the judge before passing the warrant of eviction and also may be shown at the time of execution of the eviction. In such case the executor shall follow whatever is provided in the previous article. The court shall hear the landlord and shall decide what is appears to be just.
The landlord may apply that at his cost the patient is examined by two doctors appointed by the judge.

Article 989 – **Warrant for fixing placards** - If the landlord has applied for the affixation of the placards in accordance with article 970 and Paragraph 2 of article 977 and the tenant has not put after eviction having been ordered, the lessor may apply that the order will be passed to make for the fixation.

For the execution of the order, provisions of article 986 and 987 are applicable.

Article 990 – **Other cases of warrant of eviction** - What is provided in articles 986 and 987 is equally applicable:
1) To the case of landlord applying service of notice to the tenant or vice versa and the notified person accepting eviction;
2) To the case of tenant affixing placards and the landlord making the record of satisfaction of such fact;
In either of these cases, if the tenant does not vacate the premises at the end of the tenancy or within 5 days or if he does not make the affixation of placards, the landlord may apply on the basis of notice served or on the record made that warrant of eviction be issued or at affixation of placards be done.

§ Sole Paragraph: When in the act of execution of the warrant the tenant alleges the placards were placed without his consent and knowledge, the executor shall stay the eviction and the tenant, within 5 days shall apply that suspension be confirmed and tendering the evidence to substantiate his plea. Upon the examination of the documents or evidence of 5 witnesses, if the court is of the view that there is a semblance of truth in the allegation, the landlord shall be notified to within 5 days give his say and thereafter whatever is said in the last clause of subsequent article shall follow.

Article 991 – **Eviction warrant in special cases** - When it is seen that the case foreseen in last part of Paragraph 2 of article 970 is satisfied or when the tenant has not accepted the termination done by way of notice or when the landlord has not satisfied the fact of affixation of placards, if the tenant does not vacate the premises, the landlord may apply that eviction be done after the hearing the tenant.

The applicant shall produce in the first case the placards of the tenant and the second prove of service of notice. In the third case he shall produce three witnesses who are to depose over the fact of fixation of placards.

After the examination of the documents and evidence of the witnesses, the application shall be rejected or notice will be issued to the tenant to give his say within 5 days.

If the summoned tenant contests, date will be fixed for the trial and judgment, which shall take place within 8 days. In the trial what is provided in the case of concise proceedings shall be followed, however, extracts the evidence of the witnesses shall be maintained when the decision admits appeal.

- See also Article 800 of this Code.

Article 992 – **Warrant for re-entry** - The eviction having been ordered if the decision ordering the eviction is reversed and the tenant desires to re-enter in the use and enjoyment of the property, he shall apply that order be passed for his reoccupation. For the execution of such order, the provision of article 986 shall be applicable.

SECTION IV
DEPOSIT OF RENTS

Article 993 – **Deposit of rents** - When the tenant is unable to make the payment of the rent because circumstances mentioned in article 759 of the Civil Code are satisfied, he has right to deposit the rent within 8 days after the accrual.

The deposit shall be made in the establishment where the judicial deposits are made, on the basis of declaration presented in duplicate and signed by tenant or by some other person in his name, in which there is identification of the premises and quantum of rent, period of deposit, names of the landlord and of tenant and the ground for deposit. One of the copies shall remain with the depositor with a note that deposit has been effected.

Article 994 – **Court deciding deposit of rent** - The deposit shall be at the order of the court of the suit for eviction, if suit is filed, and if not at the order of the court of situation of property. Upon the deposit being made, the tenant shall apply that notice be sent to the landlord, if he is known, to contest the deposit, except where he has been summoned in the suit for eviction and not yet filed the written statement. In this last case, upon the production of document of deposit along with the written statement, the landlord may challenge the deposit in the reply.

In the last case if the proof of deposit is annexed to the written statement, the landlord may contest the deposit of rent.

Article 995 – **Challenge to deposit** - The challenge to deposit may be made in the suit for eviction on the ground of non payment of rent when the landlord wants the eviction.

If the landlord is notified before the filing the suit, if he propose to challenge the deposit, he shall institute the suit within period of 10 days from the date of notice and pleading also the grounds of objection to the deposit.

If the suit is already pending, the landlord shall challenge the deposit in answer to the written statement or within the period of 5 days when notice is given after the written statement was filed by the tenant. With the challenge to the deposit all the documents shall be produced and also apply for other evidence.

When the landlord does not want eviction, he may challenge the deposit within 10 days by observing what is provided in articles 1026 and following.

Article 996 – **Effect of deposit** - The deposit made within legal time is a bar for provisional eviction independently of the notice from Court, but does not bar final eviction if not notified. If Eviction suit is filed before Court notice of the deposit, the tenant shall be ordered to pay costs and plaintiff advocates fees in terms of Art. 978, if the deposit is not challenged.

§ Sole Paragraph: In the order referred to in article 973, the judge shall take cognizance of the validity of the deposit and its effect except if the decision depends upon evidence which is not yet produced. In such case the order shall be confined to direct that the deposit suspends provisional eviction and in the rest it will be decided in the final judgment.

Article 997 – **Successive deposits** - Until the fact which gave rise to the deposit of a certain instalment of rent, subsists the tenant shall deposit the subsequent installment rents without the need to offer the payment again nor apply for notification of successive deposits. Such deposits shall be considered dependence and consequence of the initial deposit and the respective documents shall file in the proceedings in which the document of first deposit is filed.

Article 998 – **Withdrawal of deposit by landlord** - The landlord may withdraw the deposit by stating in writing that he has not challenged the deposit nor he wants to challenge it. The writing shall be signed by the landlord himself or by his advocate, and the signature shall be identified by the notary when no identity card has been produced. When the deposit is challenged, withdrawal may take place only after the challenge is subsequently decided and in accordance with the decision.

§ Sole Paragraph: If the declaration referred to in the first part is false, the challenge shall be of no effect and the landlord shall incur in the fine equal to double of the amount deposited, without prejudice to the criminal liability for an offense of false declaration.

CHAPTER III
REDEMPTION OF THE MORTGAGE AND EXTINCTION OF THE PRIVILEGES

Article 999 – **Redemption of mortgage in case of full payment to creditor** - Whoever has right to apply for redemption of mortgage and he desires to obtain it in the manner provided under clause no. 1 of article 938 of the Civil Code, shall apply that respective creditors be summoned to receive the amount of their credits.

Upon the production of the proof which permits the redemption and production of certified copy of the mortgage inscriptions and satisfying that thing mortgaged is registered in favour of

applicant, date and time will be fixed for the payment of the credits in the office of the court and after summons to the creditors already entered in the transmission registration records to come to receive on the pain that in default amount shall be deposited. Record shall be made in the file of the amounts deposited.

Once the debts under mortgage are paid and deposited the amounts not collected, the assets shall be redeemed and registration in favour of the creditors summoned shall be cancelled.

 See articles 938 to 948 of the Portuguese Civil Code.

Article 1000 – **Redemption of mortgage in case of judicial sales** - If the property mortgaged has been acquired by way of judicial sale or by way of award in public auction and all the creditors with mortgage registered prior to the registration of transmission have been notified, the applicant shall deposit the price of auction or of the award and after the redemption of the properties from the mortgages the rights of the respective creditors shall stand transferred to the price. Thereafter they will be summoned to enforce their rights in the same proceedings in accordance with article 865 and following.

- Civil Code article 938 no. 2

Article 1001 – **Redemption of mortgages in other case** - In all other cases, the applicant of the redemption shall declare the value for which the assets are acquired by him or the value which he estimates, if they are acquired by gratuitous title or by way of exchange and shall summon the creditors in order to contest the fact within 10 days, failing which it will be deemed that they are accepted.

There being no challenge, the applicant shall deposit the amount declared and redemption shall be ordered in the manner indicated in the previous article.

- Civil Code article 938 no. 3

Article 1002 – **Disputing of valuation by Creditors** - The creditors may challenge the value if they establish that amount offered is less than the amount of the credits under mortgage registered and under privilege.

After the objection, the assets will be sold in public auction in favour of person offering highest bid compared to value declared by the applicant.

If there is no bidder, the value declared shall subsist and what is provided in the second part of previous article shall be followed.
If there is somebody who offers a price higher than the one quoted by the applicant and after depositing the price or part thereof which the bidder was bound to deposit, what is provided in second part of the previous article shall follow.

§ Sole Paragraph: To the auction provisions of judicial auction shall be applicable.

Article 1003 – **Notice to creditors** - Once the redemption has been granted as in the case of article 1001, the creditors who have chosen the advocate at the domicile of the seat of the court shall be notified to within the period of 10 days, put their claim and rights and thereafter provisions of articles 865 and following shall be followed.

The final judgment of redemption shall produce effects as to other creditors independent of the notice.

Article 1004 – **Redemption of statutory mortgages** - What is provided in the previous articles is applicable to the redemption of statutory mortgages with following modifications:

a) For the redemption of mortgage constituted in favour of minor, absentee or interdicted, the Public Ministry shall always be summoned and the pro-guardian, if there is one;
b) For the redemption of mortgage in relation to dowry created by third party, summons shall be issued to the person who has given the dowries, if they exist;
c) The part of the product corresponding to statutory mortgage for the debt still not matured shall be converted into a certificate of debt registered and endorsed with the declaration of burden in favour of the person to whom the principal belongs.

- Civil Code article 906

Article 1005 – **Redemption of mortgage securing periodical installments** - If the obligation guaranteed by mortgage consists in periodical installments, the product shall be converted into

certificates of the debt of the income corresponding to the amount of the installment, endorsed with the declaration that interest belongs to the creditor until installment is paid.

- Civil Code article 940

Article 1006 – **Applicability to the extinction of privileges over ships** - The proceedings established in this section are applicable to the extinction of the privileges by sale or gratuitous

acquisition of ships and uncertain creditors shall be summoned by publication of 30 days.

- Commercial Code article 579 No.2 and 3.

CHAPTER IV
SALE AND AWARD OF THE PLEDGED GOODS

Article 1007 – **Petition in suits for sale of pledged goods** - The creditor who intends to be paid from the pledge, upon the time limit stipulated for payment or at any time, when no time has been stipulated, shall apply that the debtor be summoned to, within 20 days, pay the debt or state his objection, if any.

The plaintiff need not produce the instrument of the debt and may also ask for payment of compensation for expenses necessary for the preservation of the pledged good.

§ Sole Paragraph: If the pledge has been created by a third party, the third party is also to be summoned for the purpose of the suit and may appear also as principal party.

- See Black's Law Dictionary, 8th Edition page 147.

Article 1008 – **Steps to be followed in the absence of contest** - If the defendant neither pay the debt nor contests the plaint, sale of the pledge shall be ordered. The sale shall be conducted by the court, without need of the valuation, and the debtor as well as third party, who has created the pledge, shall be served with an anticipation of 10 days, by way of publication affixed at the door of the court or published in a newspaper of the locality, if any, and by following the procedure, to the extent applicable of the provisions relating to sale through court in the execution proceeding. From the proceeds of the sale, the creditor shall be paid, after payment of the costs and the balance shall be given to the person who created the pledge.

If the debt is not fully satisfied, the creditor may, in the same proceeding, indicate to the court the properties of the debtor for the purposes of attachment, and thereafter the procedure for recovery of payment of certain amount shall be followed.

§ Sole Paragraph: If the case is of the pledge over credit instrument, the sale shall be done through a broker or any banking establishment on the day fixed with previous notice to the debtor and third party who have created the pledge.

Article 1009 – **Steps to be followed when there is contest** - If there is a written statement, the normal procedure of ordinary proceedings or summary proceedings shall follow, depending upon the value of the suit.

When the defendant pleads that the amount claimed is exaggerated it is for him to prove the quantum of the amount, and in such case the sale of the pledged goods shall not be stayed, unless the defendant deposits the amount which is not contested; but, such provision is not applicable for the compensation referred to in article 1007. If sale of the pledged goods has been done before the trial of the suit, amount shall be deposited to the extent it exceeds the admitted amount.

If the suit is decided in favour of the plaintiff, further steps for the sale of object of the pledge, the provisions of preceding article shall be followed or the deposit of the proceeds shall be appropriated for the satisfaction of the debt for the desired purpose.

Article 1010 – **Procedure for adjudication of the pledge** - If it is agreed that the creditor shall remain with the pledged object as per its value then the procedure established in preceding articles shall be followed.

If there is no contest or the defense case is held not tenable or when the debtor disputes only the quantum of debt, valuation shall be done and thereafter award will be made in favour of the creditor upon the payment of or deposit of excess, if any, over the value .

If the debt does not stand paid, provision of third clause of article 1008 shall apply.

- Civil Code article 864.

Article 1011 – **Redemption of pledge** - At any stage of the suit the person who has created the pledge may redeem the same by paying the debt and costs.

CHAPTER V
RENDERING OF ACCOUNTS

SECTION I
ACCOUNTS IN GENERAL

Article 1012 – **Notice to render accounts** - In the suit for accounts the defendant shall be summoned to present the accounts within 20 days, failing which he will be debarred from

challenging the accounts presented by the plaintiffs. The defendant may pray that period be extended, justifying the necessity for the extension.

- Civil Code article 1339, 1732, 1905 and 2085 etc.
- Articles 1012-1022 – Rendering of accounts
  - These accounts would be relevant in the case of Inventory Proceedings.

Article 1013 – **Preliminary question** - If the defendant, instead of rendering the accounts contests the obligation to render the accounts, after hearing the plaintiff, the preliminary question shall be decided, upon taking necessary procedural steps, which may be found necessary. If it is decided that the defendant is bound to render the accounts, he shall be notified to present the accounts within 10 days, failing which, steps of preceding article shall apply.

Article 1014 – **Steps to be followed when defendant does not submit accounts** - If the defendant does not present the accounts within the time fixed, the plaintiff may present them within 30 days. The defendant shall not be permitted to contest them and the judge shall decide the matter as he deems fit and the court may appoint any other person fit to give his view on the accounts presented by the plaintiff.

Article 1015 – **Steps when defendant submits accounts** - If the defendant presents the accounts in time, the plaintiff may contest them within 20 days. The defendant may rejoin within 10 days and thereafter, without further pleadings, the steps of ordinary or summary proceedings shall follow, depending upon the valuation of the suit.

§ 1: The defendant shall present the accounts as in the manner of current account, specifying the source of income and amount spent indicating the balance, and shall produce the supporting documents except in cases where there is no practice of demanding a receipt.
The entry in the accounts of the items of income, are binding on the defendant. However, the plaintiff may challenge those items alleging that the income ought to have been higher than indicated; and he may insist also that the defendant substantiate the declared income.
§ 2: If the accounts presented by the defendant indicate balance in favour of the plaintiff, the later may apply that the former be notified to within 10 days, pay the balance failing which steps will be taken for the attachment and to follow further steps for the execution for specific amount. Such application, however, does not prevent the plaintiff from challenging the accounts on any other grounds.

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Article 1016 – **Power of judge when accounts are not contested** - If the accounts or some items are not contested by the plaintiffs the judge will appreciate freely as per his knowledge and experience considering the evidence led by the defendant.

If the defendant desires to lead oral evidence by witnesses, by way of arbitrament or examination of the plaintiff, he shall apply the same within 8 days next to the time limit for filing written statement.

Article 1017 – **Procedure in case of voluntary submission of accounts** - If the accounts have been voluntarily rendered by the person who is bound to render them, the opposite party shall be summoned to contest the same within 20 days.

To this case what is provided in the previous two articles shall apply and whatever is provided for the defendant may be read as referring to the plaintiff and vice versa.

Article 1018 - **Ancillary Accounts** - Accounts to be rendered by the head of family, guardian, guardian *ad litem* and any other administrator appointed by the Court, shall be appended to the file where the appointment is made.

§ Sole Paragraph: The head of family is bound to render the accounts annually, from the date of the opening of the inheritance and to deposit in the establishment where judicial deposits are made, the balance which after hearing the parties and curator of orphans is found fit for the expenses of the administration. In the accounts rendered, the amount paid to the heirs, in accordance with sole paragraph of Article 2073 of the Civil Code shall be deducted under the head of amount spent.

 These deposits are made as per paragraph 3 of Portaria No.96 77 dated 30/10/1940.

SECTION II
ACCOUNTS OF GUARDIAN (TUTOR), OF THE CURATOR OR ADMINISTRATOR IN THE CASE OF PRODIGALITY AND COURT RECEIVER

Article 1019 – **Procedure for voluntary submission of accounts by guardian, curator or administrator of a prodigal** - The accounts of the tutor and of the curator or administrator of the

prodigal shall be rendered in accordance with Paragraph 1 of article 1015, without being in duplicate, except where there is protutor.

Once the accounts have been presented, file shall be sent to the Public Ministry, in order to give his say and take such steps as he deems fit, within 20 days. Also, notice shall be given to the protutor, if any, in order to contest the same within same time.

Any relative of the interdicted, eligible to succeed him, may contest the accounts within the time which could be availed by protutor or, within the time of 20 days from the date of presentation if there is no case of notifying the protutor.

With the written statement other evidence shall be listed or applied for.

The tutor or curator may, within 10 days next, reply to the written statement and list the evidence which is to be led.

After complying the above procedural steps which the judge or family council finds indispensible, the accounts shall be decided by the judge or by the council at the trial, following in this case procedural steps of summary proceeding and only the evidence which the court or family council hold to be necessary.

The decision passed shall be included in the record of the hearing.

§ 1: If the accounts are not contested, there is no case to conduct any trial and what is prescribed in the first part of article 1016 shall be followed; but it may be insisted that tutor or curator may lead specific evidence and also may use the power conferred in the last part of article 1014.§ 2: The interdicted on account of prodigality and the minor who is more than 14 years shall be heard on the accounts or at the time of the trial or before passing the judgment, in the case of preceding paragraph.

 Civil Code articles 249, 321, 339, 351 no. 2.

Article 1020 – **Procedure to compel the submission of accounts** - If tutor, curator or the administrator does not voluntarily render the accounts, he shall be notified to present them within 20 days, at the instance of the Public Ministry, of the protutor or any other relation who would succeed the interdicted. The period may be extended, as per the discretion of the judge upon the justification for granting the extension.

If the accounts are presented in time, thereafter, the steps of the preceding article shall follow.

If not, the accounts shall be worked out by the office, on the basis of inventory proceeding. The

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income from the immovable properties, if not known, it shall be computed as 5% of its value.

Article 1021 – **Rendering of accounts in case of emancipation, majority or lifting of interdiction** - What is provided in previous two articles shall not be applicable to the accounts which shall be rendered to the ex-ward, in the case of emancipation or majority, or to the ex-interdict, in the case of lifting of the interdiction.

Such accounts shall follow the steps provided in the preceding section, and before the delivery of judgment, the Public Ministry is to be heard and the protutor if any.

Article 1022 – **Accounts of Court Receiver** - The accounts of a Court Receiver shall be presented in duplicate in terms of paragraph 1st of Article 1015 and thereupon notice shall be given to the person who made application seeking accounts, to contest the same and after the written statement is filed, what is provided in the Article 1019, § 1st shall be followed.

On the accounts, so presented notice shall be given to the opposite party in the suit for accounts and judgment shall be passed.

In case the accounts are not offered suo moto, the Applicant may demand that the depository presents the accounts within twenty days.

The accounts being presented in time, the provisions of this article shall be followed. If not, the procedure prescribed in Article 1014 shall be followed.

CHAPTER VI
PAYMENT IN THE COURT

Article 1023 – **Application for deposit in Court** - Whenever, the debtor proposes to exonerate himself from the liability in any of the cases foreseen in articles 759 and 760 of the Civil Code, he shall apply to the court of place of the fulfillment of the obligation, that the amount due be permitted to be deposited into the court, mentioning the ground for such payment into court. The payment may also be asked by a third party, when the latter proposes to pay on behalf of the debtor and the case fits in either of eventualities mentioned in the aforesaid articles.

§ Sole Paragraph: The payment shall be made in the establishment where the judicial deposits are made. If the deposit is of the thing which is not in conditions of being deposited in the Bank, a

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special receiver shall be appointed to whom the same thing shall be entrusted. To such receiver the provisions relating to deposits of attached properties are applicable.

- **Articles 1023-1031** – Payment in the Court - Corresponding provisions in C.P.C. 1908: - o Payment into Court – O. XXIV rr. 1-4

Article 1024 – **Summons to the creditor** - Once the payment into court has been made, the creditor shall be summoned to contest the same within the period of 20 days. If the creditor is uncertain, the summons shall be served by way of publication, on any person who appears to have right over the amount or the thing deposited, The Public Ministry shall be summoned to contest the case in case no party puts, in appearance, within the period fixed to contest the deposit.

Article 1025 – **Consequences of not contesting** - If there is no defence within the period, immediately order will be passed declaring that the obligation stands extinct and the costs shall be on the account of the creditor.

Article 1026 – **Grounds of contest** - The deposit may be contested:
a) Because the ground is not well founded;
b) Because the amount is higher or the thing is different from that which is deposited;
c) Because suit has or execution has already been filed, for this enforcement when request has been made to make the deposit, even though the debtor has not been summoned;
d) Because the creditor has any other valid ground to refuse the payment which was offered to him.

Article 1027 – **Procedure when contest is not on ground that amount or thing is higher or different** - Where there is no dispute as to the type or quantum of the obligation and the deposit is contested only on any of the grounds mentioned in clauses a), c) and d) of the preceding article, the plaintiff may reply within 10 days, and thereafter the steps to be followed shall be of the summary proceeding.

§ 1: If the defence is accepted, the debtor shall be held liable as if deposit was not there, and the payment was on account of the deposit.
In the matter of the costs of the suit, of the liability of the debtor, will comprise also the expenses made with the deposit and which the creditor had to incur with the vacating of the deposit.

§ 2: If the creditor has filed the suit or instituted the execution, before the service of summons of the proceeding for deposit and if the debtor has applied for the deposit before the service of summons to the suit or execution, the suit filed at the second place, shall be appended to the former and after the pleadings are over it shall be enquired whether the payment was tendered before or after of institution of the suit or execution.
If it is found that there is a previous tender, the obligation shall be considered as extinct in view of the deposit and the creditor shall be liable to pay costs.
If it is found that the tender is subsequent and at the time of offer the creditor make known to the debtor that there was already pending suit or execution, what is provided in Paragraph 1 shall be followed.

Article 1028 – **Procedure when objection is that amount or thing is higher or different** - If the creditor proposes to contest the deposit on the basis of ground mentioned in clause (b) of article 1026, he shall contest the claim and formulate appropriate prayer, except where the court has no jurisdiction to take cognizance of the subject, either on the merits of the matter or of the hierarchy. The debtor shall reply within the period of 10 days and thereafter, depending upon the value of the suit, the provisions of ordinary or summary proceeding, subsequent to the contestation shall follow.

Where the debtor does not reply, what is provided when the defendant does not raise any opposition in ordinary or summary proceeding shall be observed.
If the prayer of the creditor is tenable, the deposit shall be supplemented, except where the amount demanded was higher; if the thing is different, the deposit will be without any effect and the debtor shall be directed to fulfill the obligation.
§ 1: If the creditor possesses the title which is executable he may apply, within the time limit fixed for contestation, that the debtor be summoned to satisfy the obligation or make alternate prayer failing which in the same proceeding steps of execution shall follow.
§ 2: If the creditor, at the time of service of the proceeding of the deposit, has already filed the suit or filed the execution demanding the amount or relief larger or different from that deposited, shall make

a declaration within the time limit fixed for contesting the deposit shall pray that the proceeding of deposit be appended to the suit or execution as the case may be.

§ 3: When the court of deposit has no jurisdiction either on merits or in hierarchy, to take

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cognizance of the prayer, the creditor shall declare, within the same time, that he is going to file a suit or execution in the competent court and then shall apply for the appensation of the files. The suit or execution shall be filed within 10 days.

§ 4: In case of periodical installments, the debtor may deposit those installments which may accrue until the proceedings are pending, without necessity of offering again the payment nor applying for the summons to the creditor. Such successive deposit shall be considered consequence and dependence of the initial deposit; and whatever it is decided in relation to the initial deposit shall apply to the former. If the proceeding has been forwarded in appeal, the successive deposit may be made in the court of the first instance (Trial Court) even though no integral authentic and certified copy of the document has not been kept on record.

Article 1029 – **Procedure where creditor is doubtful** - When there is a case foreseen in article 760 of the Civil Code, the various creditors shall be summoned to assert and substantiate their rights, If within the time limit fixed in article 1024 there is no challenge made to the case of the debtor, the obligation shall be considered as extinct and the amount deposited shall be distributed equally amongst the summoned creditors.

If the deposit is challenged, the steps mentioned in the preceding articles shall apply depending upon the ground of challenge.

§ 1: If there is no challenge to the deposit, but one of the creditors proposes to substantiate his right against other creditors he shall make his claim within the period in which challenge could be made and as many copies shall be supplied as the number of creditors summoned The debtor shall immediately be exonerated from the obligation and the file shall proceed between the creditors, in accordance with article 1027.

§ 2: With the challenge on the ground of clause (b) of article 1026, any creditor may join other prayers mentioned in preceding paragraph. In such case there shall be in the same proceedings two parallel and connected causes, one between the objecting creditor and the debtor, and other between the former and the remaining summoned creditors.

Article 1030 – **Depositing of price of sale or remission of census or fees** - What is provided in articles 1023 and following is applicable to the deposit of the price of the sale in the case foreseen in article 1584 of the Civil Code and to the deposit of the price of redemption of census in Article

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1644 and 1706 or Article 1653 and 1654, all of the Civil Code or of 'Foro when the "census" or"foro" holder do not arrive at the agreement with the holder of "census" or holder of direct dominion or cannot for any other reason get the extra judicial redemption.

§ 1: If the deposit is based on article 1584 of the Civil Code is not contested or if the challenge was rejected, the deposit shall subsist for the purpose of not permitting the seller to lift the same without stopping the interference or without furnishing security. As soon as security is furnished or the vendor demonstrates with the consent of purchaser that the interference stopped, the price deposited shall be collected by the seller.

§ 2: In case of redemption of census or of fore the burden shall be declare extinct and respective registration shall be cancelled, when there is no challenge or same was rejected or the deposit is completed.

- Civil Code Article 1654 Paragraph 1 to 3.

Article 1031 – **Depositing of amount as incidental proceedings** - When there is pending a suit or execution over a debt and the debtor has already been summoned, the later desires to deposit the amount or the thing which he is liable to pay, he shall apply that creditor be notified to receive it, in the court on the day and time fixed on the penalty of the amount being deposited.

§ 1: If the creditor receives the same without any reservation, the proceeding will come to the end.
§ 2: If he receives with the declaration that he is of the view that he is entitled to larger quantity, the suit shall continue but, value of the same shall be reduced to amount in dispute, and the procedure corresponding to such valuation of the suit.
§ 3: If the creditor does not appear to receive the amount, the obligation shall be considered as extinct from the date of the deposit if it is decided that the creditor had right only to the amount or thing deposited; if it is decided to the contrary, whatever is provided in the third clause of article 1028 shall be observed.
§ 4: What is provided in this article is applicable to the cases foreseen in the Paragraph 2 of article 148 of the Commercial Code and in articles 1040 and 1041 of the Civil Code.

CHAPTER VII
POSSESSORY REMEDIES

SECTION I
POSSESSORY SUITS

Article 1032 – **Procedure for possessory suits** - To the possessory suits of prevention, of maintenance and of restitution, after the written statement without further pleading, the provisions of ordinary or summary suit, depending upon the value, shall be applicable, save what is provided in the following articles.

§ 1: When the plaintiff has asked that he be maintained in possession and the court finds that there is room for restitution, the court shall not desist from granting such relief; similar course shall be followed in the inverse case.

§ 2: In the appeal filed against final judgment of the Trial Court, no stay is to be granted.

Article 1032 – Possessory remedies - Corresponds to Specific Relief Act of 1963.

Article 1033 – **Claim of ownership** - The defendant may in the written statement, plead that he has title to the property object of the suit, and seek that such declaration be granted to him. In such case, there may be replication and triplication, if the steps of ordinary suit are to be followed and rejoinder to the written statement if steps to be followed are of summary suit.

Article 1034 – **Subsequent steps** - Where the plaintiff does not contest the right of property pleaded by the defendant, the suit shall come to the end and costs shall be awarded against the plaintiff.

In the contrary case, the dispute shall be decided in the curative order, if the defendant adduces sufficient documentary evidence to prove his right to the property, in which case also costs will be awarded against the Plaintiff.
If the question of title, cannot be decided in the preliminary order, the relief as prayed by the Plaintiff shall be granted against the Defendant, when the Defendant has not contested the possession pleaded by the Plaintiff and the suit shall proceed for a limited purpose of resolving the question of title and the Defendant may pray that the Plaintiff may furnish security.

Article 1035 – **Final Judgment on property and possession** - Where the suit proceeds further to resolve question of title as well as question of possession, in the final judgment both the questions shall be decided. However, where the question of title is decided against the Plaintiff, even if question of possession is in favour of the Plaintiff, the same shall have bearing only in the matter of costs, which in such case shall be paid half by each party.

SECTION II
THIRD PARTY OBJECTIONS

Article 1036 – **Purpose and requirements of Third party objections** - Whenever the attachment, seizure, inventory of the articles, delivery of possession by the court, eviction and any other procedural steps directed by the court offends the possession of third party, the later may seek restitution of his possession by means of objections.

The objector applicant shall plead the possession and demonstrate that he has the position of a third party, and submit the list of his evidence.

§ 1: Third party is one who was not party to the proceedings or to the judicial act in which the offending order of the court was passed, nor represents any party against whom the offending order was passed nor has given any undertaking to comply with the obligation.

The person against whom the court has passed the order or given any undertaking may file objections as third party in relation to the assets which, as per the title of its acquisition, or by capacity in which he was possessing them, could not have been subject matter of the court order.§ 2: The third party objection filed against attachment of the mortgaged assets for payment of mortgaged credit, when the reason for institution of objection has arisen from and act prior to the registration of the mortgage.

Article 1037 – **Filing of objections – Order of admission or rejection** - The objections shall be an attachment to the proceedings in which order has been passed offending possession of the objector and are to be instituted within 20 days from such act or the date on which the objector got knowledge of the same.

After the recording the evidence of the witnesses, not more than five in number and upon the perusal of other evidence produced, to substantiate the possession and character of third party, the

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objections shall be accepted or rejected. The rejection may be dependent on any ground which has bearing on the merits of the objections.

§ 1: No objections shall be accepted if the assets have been sold through court or have been awarded by the court.

§ 2: The objections shall be rejected when the possession of the objector is based upon the transmission effected by the person against whom the court proceeding is pending and it is manifest that as per the date or any other circumstance that the transmission was effected in order that the transferor may escape his liability.

Article 1038 – **Steps after filing** - If the objections have been admitted, all the steps of the proceeding of which the objection proceeding are dependency and the objector may apply provisional restoration of possession, upon furnishing security.

The party who has taken the procedural step which offended the possession of the objector, shall be notified to contest the objection within the period of 10 days. With the opposition list of witnesses will be given, not more than 5 in number and all the documents shall be annexed. In case there is no opposition, the provisional restoration of possession shall be converted into definitive or the objector shall be restored the possession and the order earlier passed which has offended the possession of the objector shall be of no effect.

In the event the objections have been contested, thereafter evidence shall be led and lastly the final judgment it is to be passed within 15 days. Within 5 days after the inquiry is over, parties may present their submissions in support of their right.

§ Sole Paragraph: The objector may modify his list of witnesses up to three days after the period for filing the opposition is over, provided the number does not exceed five.

The parties may also apply, in their pleadings, the cross examination of their adversary and cross examination of the person who initiated the procedural steps which gave rise to the objections. The arbitrament may be applied for within the time given to the opponent to change the list of witnesses.

 1945 in Revista de Direita, vol 4, page 123.

Article 1039 – **Third party objections as preventive relief** - It is lawful to the third party objector to initiate preventive objection after the order is passed but before the same is given

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effect to, as provided in article 1036 and which shall have preventive effect to avoid dispossession. In the rest, the procedure prescribed in preceding articles to the extent applicable shall be followed. No effect shall be given, to the order directing possession until order is passed admitting or rejecting objections. In the event objections are accepted the execution of the order shall he stayed until the final decision on the objections.

Article 1040 – **Disputing of ownership** - The party notified to contest the objection may raise in the written statement the question of ownership, either claiming ownership in himself in respect of assets, subject of dispute or that they belong to the person against whom the proceedings affected by the objection were taken.

If this happens, the provisions of articles 1033 onwards shall be followed.

Article 1041 – **Third party objection by married woman** - The married women, having the position of the third party, in accordance with paragraph 1 of article 1036, may without authorization from the husband, defend her position by way of objection in relation to dotal assets or exclusive assets or common assets.

However, the objections shall not be admissible in relation to common assets when the wife has filed objection of third party:
Clause 1: If the creditor has confined himself to seek the attachment in relation to the rights of the husband alone in the common assets of the matrimonial estate;
Clause 2: If the debt is commercial nature and the creditor had issued summons to the wife to apply for separation of the assets within 10 days from the date of the attachment.

Article 1042 – **Third party objection for securing maintenance** - Whenever, the attachment or seizure is ordered over the income of dotal or exclusive assets of the wife, but administered by the husband, she may avail of third party objection, even though she has liability in the debt and income is joint if in view of the attachment or seizure, she is deprived of necessary maintenance. Civil Code article 1230.

CHAPTER VIII
POSSESSION OR DELIVERY THROUGH COURT

Article 1043 – **Basis for judicial possession** - Law admits the procedural steps of delivery of sundry possession through court. Such procedural steps shall have as its basis a document transmitting property without condition precedent. When the transaction is subject to registration, the documents proving that such registration has been effected or that it is in condition to be effected shall be annexed.

 Civil Code Articles 953 and 984.

Article 1044 – **Petition for sundry possession through Court** - The interested party shall move the petition and pray that the occupant be summoned to contest within the period of 10 days, failing which delivery of possession shall immediately be effected.

Article 1045 – **Subsequent steps** - If the person summoned does not contest, the plaintiff shall be put in possession and record of the delivery shall be made; if he contests, the applicant may rejoin within

5 days after the 10 day period is over, followed by evidence within the 8 following days and judgment being passed within 10 days.

§ 1:In the written statement all the defence shall be raised and after the rejoinder all documents shall be listed and list of witness shall be submitted, which shall not exceed more than 5 for each party, irrespective of number of plaintiffs or of the defendants and thereafter, other types of evidence may be applied for.

§ 2: The arbitrament shall be admitted only when it is absolutely necessary for the decision of the litigation and shall be done by only one expert, appointed by the judge.

§ 3: No evidence by way of letter of request outside the jurisdiction of court shall be allowed.

Article 1046 – **Objection where the person summoned possesses in the name of another** -When the person summoned possesses in the name of other, the objection may be filed by him or by the possessor in his own name or by both.

§ 1: The possessor in the name of another shall issue notice, immediately through court or outside the court to the person in whose name he exercises the possession, failing which he will be liable

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for compensation for the losses and damages. If the notice has not reached to the knowledge of the party in time to contest, the person already summoned shall take up the defense of his rights, with the same responsibility.

§ 2: Any interested party may be admitted to defend his possession by way of contest independently of the service of summons, provided that it is done within the time granted to the person summoned to contest. In such case, however, each contesting party mayproduce upto five witnesses.

Article 1047 – **Judgment** - The court shall pass the judgment deciding summarily whether the possession should be given or the thing should be delivered and in what terms. When the contesting party pleads possession in his own name, it will be inquired whether his posession should prevail or that of the original plaintiff.

When the objector proves that he is in enjoyment of the property by virtue of lawful title which was not put an end to by proper remedy, the possession will be granted to the applicant without prejudice to the use and enjoyment.

§ Sole Paragraph: Even though the law requires the production of document to prove the lease, the contract may be proved by any other means of evidence, when the lessee proves that the lack of title is attributable to the negligence, coercion, fraud or bad faith of the landlord.

Article 1048 – **Liability in case of fraud** - If there is a case of service of summons on a dummy possessor to achieve with his connivance or passivity, the dispossession of real occupant, the applicant shall be liable to pay loss and damages and also shall be held to be litigant with bad faith. Same penalty shall be imposed on the party summoned if there is acquiescence on his part.

Article 1049 – **Appeals** - From the judgment appeal from order lies, if the value exceeds pecuniary jurisdiction of the court. The appeal from order previously passed shall be forwarded along with appeal from final judgment.

Article 1050 – **Saving of possessory suits and other lawful remedies** - The decision passed does not prevent that loosing party uses his normal possessory remedies or any other competent remedy.

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CHAPTER IX

SUITS FOR ARBITRAMENT

Article 1051 – **Procedure in suits for arbitrament in case of opposition to the prayer** - In the suits to prevent damage, in accordance with Articles 2323 and 2338 of the Civil Code, acquisition for

private purpose, stoppage or change of easement, demarcation, apportionment amongst co-holders of Emphyteutic fee ("foro") and "census", reduction of undefined installments, division of waters, division of common property, and in all suits in which intended to have the arbitrament, the parties will be summoned to show cause, within 10 days why the experts should not be appointed immediately.

In the event, the prayer is contested, the procedure of ordinary or summary suit, shall be followed, depending upon the value of the suit.

§ Sole Paragraph: What is provided in this article and following shall be applicable to the division of common property when the co-ownership is originated from the inventory proceedings, but the suit shall be appended to the inventory.

Article 1052 – **Appointment of experts** - If there is no written statement or if the plea raised in opposition is held untenable, date shall be fixed for the appointment of experts.

After the appointment, the experts shall proceed to do the demarcation within the time fixed. The third expert shall be bound to agree with any of the experts so that there should be a majority.

Article 1053 – **Confirmation or alteration of act of experts** - The parties shall be given notice of the report and they may within 10 days, raise objection, para wise as they deem fit.

If there is no objection, the report shall be confirmed by judgment; if there is objection, the opposite party may give reply para wise, within 10 days, and thereafter without further pleadings, the procedure of ordinary or summary suit shall be followed, depending upon the value of the suit.

Article 1054 – **Peculiarities of suit to prevent damage** - In the suit for prevention against the damage the defendant as soon as he is summoned, shall suspend the construction of the work; if he does not do so plaintiff may apply for restraining orders.

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If in the construction there is a deviation from what was ordered, the judge, on the application of the interested party shall direct demolition of the work or removal of the objects, after verifying first existence of the verified breach by way of new arbitrament, which shall take place with the same experts, wherever possible.

Article 1055 – **Attempt at conciliation in acquisition for private purpose**- In acquisition for private purpose, it is compulsory before the appointment of the experts, an attempt to settle the matter over quantum of damage is compulsory and even though no agreement has been arrived at, amount which is demanded or tendered will be recorded in the proceedings.

Article 1056 – **Requirement of judgment authorizing stoppage or deviation of easement** -The final judgment which permits the stoppage or deviation of the easement, shall have no effect unless there is a completion of the work from which depends the stoppage or deviation.

The doubts arisen on the aspect of completion or not of the works as per terms fixed shall be decided by the judge after taking necessary procedural steps which are necessitated.

Article 1057 – **Special terms in demarcation suits** - In the suit for demarcation, where there are no title deeds or where they are insufficient for the fixation of dividing line, the parties shall indicate in the plaint the boundaries of each property resulting from the possession or any other evidence, or the parties shall pray that the suit land be distributed in equal parts.

Where the Plaintiff seeks demarcation in accordance with the title deeds which he possesses, the owners of adjoining properties, when they do not contest, shall produce their title deeds at the time of appointment of experts. If they, after the examination, declare that the documents do not help them to demarcate the land, meeting of the interested parties shall be convened at the site, along with the experts and efforts will be made to work out an agreement as to the fixation of dividing line.

If there is no agreement, any party may indicate within 5 days, the points from where the dividing line should pass.
If the indication is done by only one party, other parties shall be given notice to raise objection within 10 days. If there is opposition, without any further pleadings, the procedure of ordinary or summary suit shall be followed depending upon the value. In the absence of any objection, the dividing line shall be fixed in the manner it is indicated.

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Where more than one interested party indicate the dividing line and the indication differs, the other shall be given notice and irrespective whether there is objection from other parties, the procedure of ordinary or summary suit shall be followed, depending upon the value.
§ Sole Paragraph: Where it is necessary to place boundary marks, the experts appointed shall perform that act.

Article 1058 – **Adjudication in partition of property** - In the suit for division of a common property after fixing the shares, there shall be one meeting of the parties in order to make an award. In the absence of agreement between the interested party present, the award shall made by way of sortition.

If there are persons under disability, the agreement must have sanction of the court after hearing the Public Ministry.

Article 1059 – **Steps when the thing is not divisible** - If the plaintiff is of the view that the property under indivision cannot be physically divided on account of its nature or without detriment or that the law does not permit such division, all these details shall be mentioned in the plaint or the law which oppose such division such statement shall be mentioned in the petition with the request to the co-owners to be summoned to contest, failing which, there will be allotment by award or by way of sale.

In the absence of the contest, all the interested parties shall be notified for a meeting to declare whether they agree that some of the parties be satisfied in kind and others in cash. If there are legally incapable parties, what is provided in the last part of the previous article shall be followed. In the event there is no possibility of making any allotment, the thing shall be sold and provisions relating to sale in execution proceeding shall be followed.

Article 1060 – **Steps when co-ownership or indivisibility is disputed** - In the event the co-ownership is disputed, the steps of ordinary proceeding or summary proceeding shall be followed depending upon the valuation of the suit.

If the indivisibility is contested, whatever is provided in articles 1052 and 1053 shall be followed, except where the question is purely of law and can be decided immediately.

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Article 1061 – **Indivisibility raised by summoned parties or by experts** - If the plaintiff applies for division and any of the co-owners asserts in the written statement that the thing cannot be divided, whatever is established in the previous articles where the indivisibility is contested shall be followed.
If the parties have not raised the question of the indivisibility, but the experts declare that the thing cannot be divided physically, the steps described in article 1053 shall be followed.
If the declaration made by the experts is confirmed, whatever is provided in the second clause of article 1059 shall be followed.

Article 1062 – **Steps to regulate and share repairs where there is an agreement** - The captain of the ship who proposes to regulate and allocate the gross averages shall present to the court the agreement signed by all the interested parties in respect of appointment of allotees in odd numbers not greater than 5.

The judge shall handover to the oldest of the dividers the report of the sea, the protest, and all the books on the board of the ship and more documents concerning the disaster, to the ship and to the cargo.

Within the time fixed in the agreement or fixed by the judge, the dividers shall give in writing in detail their report as to the distribution of the average signed by all in one document. The time may be extended if it is found that there is insufficiency of the time.

If the parties have not expressly withdrawn any opposition to the agreement, after the submission of the report of the dividers, the steps provided in article 1053 shall be followed. In the case of withdrawal, the report of the dividers shall be immediately homologated.

§ Sole Paragraph: The same steps shall be observed when, on account of lack of initiative of the captain, the regulation and repartition had been undertaken by the owner of the ship or by any of the owner of the cargo.

In the case of applicant does not present the documents mentioned in the second clause of the article, the captain of the ship shall be notified to within the time fixed to produce them, failing which they shall be seized. The proceeding shall be continued, even though without aforesaid documents, which shall be substituted by the particulars which are available.

- Commercial Code article 652.

Article 1063 – **Annulment of proceedings for non intervention of any interested party** - If it

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is found that in the agreement some of the party did not take part, on his application whatever has been processed shall be annulled. The application may be presented at any time, even after the judgment becomes res-judicata and shall be annexed to the proceedings of regulation and repartition.

Article 1064 – **Steps where there is no compromise** - In the absence of the agreement, the captain or any of the owners of the ship or of the cargo shall apply that date may be fixed for the appointment of dividers and that all interested parties be summoned for such appointment. If the parties do not arrive at agreement as to the appointment, the captain, or, in his absence, the representative of carrier of the ship shall appoint one, the interested party of the respective cargo shall appoint another and the judge shall appoint the third for the purpose of decision.

After the appointment is made, the steps prescribed in article 1062 shall be followed.

Article 1065 – **Limit of scope of intervention in compromise or appointment of dividers** -The intervention in the agreement or in the appointment of the dividers does not amount to acknowledgement of the nature of the average.

Article 1066 – **Steps when any foreign party is ex-parte** - If in the regulation and repartition any interested party is foreigner and who is ex-parte, as soon as the absence is established notice is published through consular agent of the respective country if there is in the port where the ship appear, in order that thereby may be proper representation of their nationals, if desired.

Article 1067 – **Limitation of suit for gross averages** - The suit for gross averages may be filed within one year from the date of discharge of the cargo or in the case of jettison of the cargo, of the arrival of the ship to the port of destination.

CHAPTER X
RECONSTRUCTION OF CREDIT INSTRUMENTS OF THE FILES AND BOOKS

SECTION I
RECONSTRUCTION OF CREDIT INSTRUMENTS

Article 1068 – **Petition and summons for reconstruction of destroyed credit instruments** - Whoever proposes reconstruction of the credit instruments which are destroyed, shall describe the

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said credit instruments and give in summary their content their destruction and for this purpose he may file documents to prove the same and upto five witnesses.

If on the basis of evidence adduced, the judge is the view that the petition requires consideration, he shall fix the date for the meeting of the parties and for the same meeting the parties who have issued the instruments or undertaken obligation and each of the parties shall be summoned with copy of the petition in duplicate.

If in the event there are uncertain interested parties and the documents has been issued or subscribed in foreign country, the time for service may be extended up to six months. Thereafter, notice shall be fixed at the Exchange where the document is quoted.. In the publication and notices all the particulars of the instrument shall be given in detail wherever possible and if they are not available, what is strictly necessary for their identification shall be observed.

- **Articles 1068-1081** – Reconstruction of credit instrument, files and books: o
  Not a matter of civil procedure in our midst.

Article 1069 – **Steps where there is agreement** - The meeting shall be presided by the judge and report shall be made of all the happenings.

If all the interested parties present agree in the reconstruction, the essential particulars of the credit instrument shall be reproduced in the record and reconstruction shall be directed by oral decision which shall be transcribed in the record.

Once the judgment becomes final for want of appeal, the plaintiff may apply that the issuing authority or the parties who has undertaken the obligation shall be notified for the purpose of, within the time which were fixed, issue fresh instrument, failing which the record made by the court and certified copy of the same be treated as reconstructed document.

Article 1070 - **Steps where there is no agreement** - In the absence of the agreement, the dissatisfied parties may file their written statement within the period of 10 days.

If there is no written statement the judge shall direct the reconstruction as per the particulars given in the plaint and after the judgment becomes res-judicata whatever is provided in last part of the previous article shall be considered substituted by the petition and the judgment.

If there is a contestation, the plaintiff may reply within 8 subsequent days and thereafter without any further pleadings, the steps of ordinary proceedings or summary proceedings shall be followed, depending upon the valuation of the proceedings.

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Article 1071 – **Applicability to reconstruction of stolen, lost or misplaced document** - The procedure established in the previous articles in application to the reconstruction of the instruments, stolen, spoiled or lost with following modifications:

a) Notices shall be issued by publication in two newspapers of the locality largely read, where presumably theft, spoilage or loss has taken place, or of nearest locality, identifying the instrument and inviting anybody who is in possession of the same to produce it before the court;

b) If the instrument surfaces at the time of the meeting and all the interested parties agree that the same may handed over to the plaintiff, report shall be made of the same and file will be closed. In the event the instrument has surfaced at later stage meeting will be convened to decide about the delivery;

c) If the document has not surfaced until the suit has come to the end, reconstruction shall be ordered and it shall be declared that the document which not found has no legal value.

Article 1072 – **Applicability to reconstruction of other documents** - In the case of reconstruction of the documents which are not comprised within the meaning of article 1068, whatever is prescribed in this section shall be applicable to the extent permissible.

SECTION II

RECONSTRUCTION OF FILES

Article 1073 – **Petition for reconstruction of files** - In the event there is a destruction or disappearance of any file, any party may apply for reconstruction declaring the status of the litigation and mentioning, as per his memory the particulars which he possesses and giving all other particulars which may assist the reconstruction of the file.

The application shall be supported by copies or pleadings of the file destroyed or lost which the plaintiff is able to provide and with the proof of the fact which permits the reconstruction made by declaration of the person in whose custody file was there at the time of the destruction or disappearance.

Article 1074 – **Meeting of parties** - After getting the say of the head of the office, if the fact of the reconstruction is justified, the judge shall fix the day for the meeting of the parties and all other persons who have intervened in the proceedings in the past shall be summoned to appear before the court and producing before the court duplicates counters, certified copies, documents and other papers connected with the file which is intended to be reconstructed.

The meeting shall be presided by the judge and then the head of the office shall produce whatever he has filed or registered with reference to the proceedings destroyed or disappeared.
Whatever has happened in the meeting shall be recorded in the file in precise terms the parties have agreed.
The report of the court shall be treated as part of the reconstruction to the extent there is an agreement.

Article 1075 – **Steps in absence of agreement** - If the entire file is not reconstructed by agreement of the parties, any party summoned may within 10 days give his say on the part reconstructed, where there is a difference and thereafter there will be pleadings in form of replication and triplication, as in the ordinary proceedings. With these pleadings thereafter production of evidence will start.

Article 1076 – **Judgment** - After the evidence is led and after the employees of the office are heard, if necessary and after taking necessary steps, judgment will be passed in which with all procedure it shall be recorded at what stage the file was there and thereafter what is reconstructed as per the agreement and the steps to be reconstructed.

Article 1077 – **Reconstruction of pleadings, orders and evidence** - If it is necessary to reconstruct the pleading, the reconstruction shall be deemed as done on the strength of duplicates produced. In the absence of duplicates, the parties are permitted to plead again.

If the decision is already passed and it is not possible to reconstruct the same, the judge shall decide the case afresh as he deems fit.
If the reconstruction includes production of the evidence, the same shall be reproduced, if possible and if it is not possible shall be substituted taking afresh.

Article 1078 – **Reappearance of original file** - In the event the original file resurfaces, the further steps shall be followed therein and the file of reconstruction shall be appended to it. From this file only the step following the last step recorded in the original file, will be made use of.

Article 1079 – **Liability of one who gave cause to the reconstruction** - The file shall be reconstructed at the cost of the one who has given cause for the destruction or disappearance, without prejudice to the criminal and disciplinary liability which the defaulter has incurred.

Article 1080 – **Reconstruction of file misplaced or lost in higher court** - In the event there is disappearance or destruction of any pending file in the High Court or the Supreme Court, the reconstruction shall be applied before the assignee judge and provisions of articles 1073 and 1074 shall apply.

If there is no agreement between the parties as to the total reconstruction, the following shall be observed:

a) If there is need to reconstruct the steps recorded in the trial court, the file shall be remitted to the court where the initial proceedings started, and by annexing the integral certified copy, if there is one and shall follow the steps prescribed in articles 1075 to 1078 counting 10 days fixed in the article 1075 from the date of notice of remission of the file to the lower court. The steps taken in the superior court which could not be reconstructed shall be reconstructed in the respective court with the intervention of same judges and functionaries who have intervened in the original file;

b) If the reconstruction is only the steps taken in the superior court, the file shall be sent before the respective court and the steps established in articles 1075 to 1078 shall be followed and the assigned judge shall exercise the functions of the judge.

The judges next to the assigned judge shall intervene whenever necessary to substitute any collective judgment is passed in the original file.

SECTION III

RECONSTRUCTION OF BOOKS

Article 1081 –**Proceedings to decide demands for over reconstruction of Registration Books**- Where there are demands for reconstruction of the books of the land registration offices, after

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receipt of the proceedings sent by the conservator, notice will be issued to the claimants and any other interested parties to, within 10 days give their say and produce any evidence. After the necessary steps are taken and after hearing Public Ministry, the objection shall be decided.

CHAPTER XI

APPEALS AGAINST ORDERS PASSED BY CONSERVATORS, NOTARIES AND OTHER PUBLIC SERVANTS

Article 1082 – **Petition for contested appeal against refusal of an act by a Conservator or other official** – When a conservator, a notary or other public employee refuses to perform any registration or any act which may be applied for, and appeal therefrom lies to the Court of the respective division if the party declares that he wishes to prefer an appeal, the public servant shall handover to the applicant within 48 hours an exposition specifying the grounds for refusal. Within subsequent 20 days the appellant shall present to the court his appeal petition, annexing thereto the exposition given by the public employee and any other documents. In the appeal petition, the interested party shall demonstrate that the ground for the refusal are not tenable.

- Code of Predial registration articles 252 and 253, Notarial Code article 222; Code of Civil Registration, articles 439 to 442.
- **Articles 1082 – 1088** - Appeals against Orders passed by conservators, notaries etc.

oIs peculiar to the Code.

Article 1083 – **Subsequent steps** - Independently of any order the proceeding shall be sent to the judges, for 3 days, to the Public Ministry to express his view. Thereafter, the judgment will be passed within 8 days.

The interested party who wants to support the refusal may by application say within the time fixed for the judgment to give his say on a matter.

If the refusal were found untenable, he shall be directed to pay costs.

Article 1084 – **Appeals** - From the final judgment the aggrieved parties, Public Ministry and the public employee who has refused the registration may file appeal from order.

From the collective judgment which decides the appeal from order, always appeal shall lie from the order to the Supreme Court.

The appeal from order will have the effect of staying the operation of the impugned order.

Article 1085 – **Handing over documents and information to disciplinary authority** - Once the appeal is finally decided, the documents shall be returned to the parties without keeping on record any notes or other particulars.

The copy of the decision shall be sent to the disciplinary authorities to whom the public employee who has caused the refusal is subject, whenever the appeal court finds it convenient.

Article 1086 – **Appeal from doubts raised by registrar** - If the Registrar of Property records has any doubt in effecting a final registration and makes it only provisional, the interested party may also appeal in respect of the doubt raised to the divisional court.

To such appeal whatever is provided in previous articles shall be applicable, and the office shall inform the Conservator, immediately after the distribution of the proceeding, that appeal has been filed and shall remit to him the definitive judgment which may be passed.

Article 1087 – **Hierarchical appeal** - Before availing of the appeal mentioned in the previous articles, the interested party may apply to the Law Minister that direction be issued to effect the registration. After hearing the office of the Attorney General of the Republic, and if any direction is issued to that effect, the public officer shall comply with the same. Whoever feels aggrieved by such act may appeal to the court of Judicial division, thereafter the appeal in the rest shall follow to the extent applicable, what is provided in previous articles.

Article 1088 – **Appeal to solve questions over rectification of errors in land registration** -When there are doubts raised over the rectification of the errors in the Property Register, if any of the interested parties or conservator opposes the rectification, the doubt shall be decided by the court of respective judicial division on the application of any interested party.

The conservator shall, within 5 days, at the request of the appellant, make a short exposition about the proposed error, indicating the reasons favorable and those opposing the rectification and shall give his opinion saying what appears to him just.
To such appeal the provision of second clause of article 1082 and in articles 1083 to 1085 shall be applicable.

CHAPTER XII
SUIT FOR LOSS AND DAMAGES AGAINST JUDGES AND PUBLIC MINISTRY

Article 1089 – **When Judges and Law Officers are liable for losses and damages** - The judges and Public Ministry are liable to pay compensation and damages:
1) When they have been convicted for the offence of bribery extortion, or official misconduct; 2) In the cases of deceitfulness;
3) When the law impose on them expressly such liability;
4) When there is denial of justice. If the denial of justice contains requisites necessary to constitute criminal offence, what is provided in article 1099 shall be follow.

- See also Article 156 of this Code.
- **Articles 1089 – 1099** – Suits for compensation against judges.
  - Is totally unknown in our legal system.

Article 1090 – **Competent court** - The suit shall be instituted within judicial division in which the court was functioning and the judge was exercising his functions at the time when there was occurrence of the event which is the ground for the prayer.

Article 1091 – **Hearing of the officer** - After the receipt of the plaint, the file shall be sent through registered post to the offender judge, in order that he may, within 20 days, give his say on the prayer made and the grounds producing the documents which he deems fit. If the defendant resides in the seat of the court, the file shall be handed over to him by the clerk of the court. After the lapse of the 20 days, from the date of the receipt of the file, the offender shall remit by the same route with or without reply, or hand it over to the office.

In the event he does not remit the file or delivers it, the plaintiff may file fresh plaint in the same manner and suit shall be decided against the judge.

Article 1092 – **Order on admission** - Once the file is received it, shall be decided whether the petition should be admitted.

If the case falls within the jurisdiction of Judicial division court the decision shall be passed within 15 days.

When it falls within the jurisdiction of High Court or Supreme Court, the file shall be remitted to the respective judges for their say being 7 days for each, concluding with the Assignee judge and then case shall be decided.

If the judge or the court does not admit the suit, the applicant shall be directed to pay fine and pay damages if it is found that he acted with deceit.

Article 1093 – **Appeal from Order** - Appeal from order lies from the decision which admits the suit or rejects the same.

Article 1094 – **Contest and further steps** - Once the suit is admitted, the defendant shall be summoned to contest and thereafter the steps of ordinary proceedings shall be followed.

The Assignee judge shall exercise up to the judgment all the functions which are within the jurisdiction of the trial court, however, what is provided in sole Paragraph of article 700 shall apply.

Article 1095 – **Arguments and Judgment** - In the High Court or in the Supreme Court, when the file is ready for final judgment, it shall be submitted to the judges of the respective section in accordance with article 1092, and thereafter the discussion and the judgment shall be delivered in open court.

In the discussion and judgment before the full court the provision of articles 651 to 656, shall apply, with exception of those which presuppose separation between decision on facts and decision on the point of law.

After the conclusion of discussion the court assemble at the conference hall to deliver the respective collective judgment. The president shall have casting vote.

Article 1096 – **Appeal from final judgment** - From the judgment of the High Court which takes cognizance in the first instance the object to the suit, appeal from final judgment shall lie to the Supreme Court.

Such appeal shall be filed, processed and decided as appeal. The Supreme Court may change the decision on facts only in exceptional cases foreseen in article 712.

Article 1097 – **Court competent for execution** - If the defendant is directed to pay certain amount, the execution shall take place in the same file before the court of judicial division of the domicile of the opponent of the execution or before the nearest division if he is the acting judge.

Article 1098 – **Exemption of decision on admission** - If once a judgment becomes final for want of appeal having reserved suit for the compensation for damages referred to in this chapter, there is no

need to have prior decision as referred to in article 1092, and the defendant shall be summoned to contest.

Article 1099 – **Compensation for criminal conduct** - When the compensation was necessary consequence, of the fact which gave rise to initiate criminal action, in the matter of civil wrong, the provisions of Criminal Procedure Code shall be followed.

CHAPTER XIII
REVIEW[8] AND CONFIRMATION OF FOREIGN JUDGMENTS

Article 1100 – **Foreign Judgments subject to review and confirmation** - Without prejudice to what is provided in treaties and special law, no judgment on private rights, passed by a Foreign Court or Foreign Arbitrators, shall have effect in Portugal, regardless the nationality of the parties, without the foreign judgment having being reviewed and confirmed.

Review will not be required when the decision is relied upon in any pending proceedings in Portuguese Courts, as matter of evidence and is subject to appreciation by the Court deciding the matter.

- **Articles 1100-1106** – Review and confirmation of foreign judgments - Corresponding provisions in C.P.C. 1908: -
  - When foreign judgement not conclusive - S. 13
  - Execution of decrees passed by Courts in reciprocating territory - S. 44A
  - Execution of Decrees and Orders – Notice to show cause against execution in certain cases – O.XXI, r.22(1)(b).

Article 1101 – **Jurisdiction** - Review and Confirmation shall lie before the High Court having jurisdiction at the place at which the person against whom the judgment is sought to be enforced is domiciled or resides.

[8] *In this chapter "Review" simply means scrutiny of the foreign judgments by the High Court for the purpose of confirmation. This expression in this chapter does not have the same meaning as in the Indian CPC.*

If such a person has no domicile or residence in Portugal, the High Court within who jurisdiction, the Petitioner is domiciled or residing shall have jurisdiction, except where the judgment is of patrimonial nature and it is to be enforced against the person who has assets in Portuguese territory, because in such case Revision can be asked in any of the High Courts where the assets are situated.

When none of the requirements foreseen in the previous paragraphs are satisfied, any of the High Courts will have jurisdiction to entertain the matter.

Article 1102 – **Requisites necessary for confirmation** – In order that the judgment be confirmed it is necessary: -

i) that there are no doubts about the authenticity of the document on which the judgment is recorded nor about the intelligibility of the decisions;

ii) that it has become res-judicata according to the law of the country in which it was pronounced; iii) that it arises from a court having jurisdiction according to the Portuguese Law rules relating to the conflict of jurisdiction;

iv) that the defence of litispendence or res-judicata based on a case subject to a Portuguese Court is not available, unless it was the foreign court which prevented the jurisdiction;

v) that the defendant has been duly summoned: except in a matter which under Portuguese Law would not require initial notice; and if the decree was passed against the defendant immediately, due to non-filing of Written Statement in the suit, in such event the summons should have been served on him personally;

vi) that it does not contain decisions contrary to the principles of Portuguese Public Order; vii)that having been pronounced against a Portuguese National it does not violate the provisions of Portuguese Private Law when it had to be decided by the latter, according to the Portuguese Law rules of Conflict of Laws.

§ Sole Paragraph – The provisions of this article are applicable to an arbitral award so far as may be.

Article 1103 – **Procedure for review** - Once the document is presented the opposite party shall be notified to file his Written Statement in 10 days.

The applicant may rejoin in the 8 days subsequent to the time fixed for Written Statement. In these pleadings any steps which the parties may require shall be applied for.

After the steps that the Judge in charge of the proceeding considers indispensable, the inspection of the file shall be made available to the parties and to the State for the purpose of hearing, for a period of 10 days for each and thereafter duly concluded it shall go to four judges following the judge in charge of the proceedings and finally to the latter, a time of seven days being allotted to each judge for his observations and opinion.

Article 1104 – **Grounds of defence** – The party summoned may only raise defence based on the absence of any of the requirements mentioned in Art.1102 or if it is found that any of the grounds of review specified in clauses 1, 3 & 7 of art.771 have arisen.

Article 1105 – **Suo-moto action by the Court** – The Court shall suo-moto verify whether the requirement of clauses 1, 6 & 7 of Art.1102 arise simultaneously; and shall also suo-moto refuse the confirmation when after going through the proceedings or through knowledge obtained in the exercise of its functions it finds that any of the requirement of clauses nos.2, 3, 4 & 5 of the said article are not compiled.

Article 1106 – **Appeal from the final decision** – From the decision of the High Court an appeal shall lie. The State may appeal on the ground of violation of clauses 3, 6 & 7 of Art.1102.

CHAPTER XIV
JUSTIFICATION OF THE ABSENCE AND OF THE STATUS OF HEIR

Article 1107 – **Petition for definitive guardianship** - Whoever proposes to have definitive guardianship of the assets of the absentee, shall justify the absence and his capacity of heir and shall apply that the possessor of the assets, provisional guardian, administrator or attorney, the Public Ministry and any other known interested parties be summoned and by way of publication the absentee and unknown interested parties.

§ 1: The absentee shall be summoned by publication of 6 months notices; the proceedings shall in the mean time follow the normal course, but the final judgment shall not be delivered without the time fixed for publication is over.

§ 2: If the presumed heir is the State, the Public Ministry, shall apply for definitive guardianship in its favour, as soon as the necessary requirements to grant it are satisfied.

§ 3: The petition for definitive guardianship shall be an attachment to the file for provisional guardianship, if the same has been granted.

- Civil Code article 64.
- **Articles 1107-1118** – Justification of the absence and of the status of heir.
  - This is a procedure unknown to our system.

Article 1108 – **Subsequent pleadings** - The parties summoned may, in the written statement, either dispute the absence or apply for the guardianship, by putting the claim either concurrently to the case of the plaintiff or in preference to the plaintiff.

In the replication and sur rejoinder the interested parties may put forth their case or contest the case of the competitors or of the adversaries.

Article 1109 – **Steps after pleadings** - After the pleadings are over, the steps of ordinary proceedings or summary proceedings shall be followed, depending upon the valuation of the cause.

If there is ground for granting guardianship, it shall be granted it to the one who has the better right, but the order shall not be implemented before the lapse of 4 months after the publication of the notice affixed at the door of the house of the local administrative authority of the parish of the last domicile of the absentee and notice published in a newspaper of the taluka in which the said parish is located and in one of the most widely read newspapers read in Lisbon. In case there is no newspaper in the taluka, the publication shall be done in a newspaper of the locality nearest to the seat of the Taluka.

Article 1110 – **Procedure where there is no contest** - After the time fixed for filing of written statement for the parties who are served in person and for uncertain parties has passed, and no opposition is filed, the plaintiff shall produce within 8 days, the list of witnesses and after their examination and collection of any other information found necessary and after the lapse of period referred to in Paragraph 1 of article 1107, the case shall be decided.

Article 1111 – **Delivery of the assets** - In execution of the judgment which has appointed the guardian, the assets shall be delivered to the qualified guardians and to any other interested parties, after making the listing of the items and furnishing security and partitioning of properties amongst the interested parties as per their rights.

If the assets have already been listed or inventoried in other proceedings, the same will be the basis to effect delivery and partition of the properties.

§ 1: The security shall be calculated keeping in mind the value of the movables which each interested parties received and to the income which is not appropriated.

§ 2: The State is not to furnish any security.

- Civil Code article 67.

Article 1112 – **Justification of absence for other purposes** - The procedure for justification of absence, regulated in articles 1107 to 1109, is also applicable:

a) When the heirs of the absentee do not apply for definitive guardianship and the legatees or any other parties propose to receive the assets to which they have right and the absentee was enjoying or which accrued to the absentee subsequent to his absence;

b) If there is a lapse of 20 years from the absence or the absentee has completed 95 years of age without granting definitive guardianship, and the heirs or other interested parties propose to claim succession or delivery of the properties.

§ Sole Paragraph: The delivery shall be done in accordance with article 1111; but, in the case of clause (b) without furnishing of security.

- Civil Code article 67 sole Paragraph and article 72.

Article 1113 – **Procedure for opening closed will** - As an act preparatory to the definitive guardianship or the prayer to claim the succession and delivery of the assets, it is permissible to direct the opening of the closed will left by the absentees.

The opening shall be asked by the private depositary of the will or by any person who qualified himself as successor and by Public Ministry. The applicant shall justify his locus standi and the existence of the absence, shall produce the will or shall indicate the place where it is found, and shall indicate the persons who are to be summoned and immediately give the name of the witnesses, not exceeding five.

Summons shall be issued to the private depositary of the will when he is not the applicant, to the administrator or provisional guardian of the properties and presumed lawful heirs; and by way of publication the absentee and any other uncertain interested parties.

The summoned persons may contest within a period of 10 days and they shall immediately offer the evidence.

After the evidence is led the judge shall obtain the information, which is found necessary, and then shall decide the matter. If he grants the prayer, he shall direct that the will shall be opened and registered by the competent public employee.

After the will is opened and registered, the will shall be considered as a public.

- Civil Code article 66.

Article 1114 – **End of guardianship if whereabouts are found** - As soon as there is reliable news of the whereabouts of the absentee and where he resides, provisional guardianship will be declared, a provisional guardian shall be appointed who otherwise was definitive or any other fit person shall be chosen when there are more than one and notice will be issued to the absentee that his assets are put under guardianship and they will continue as such until he takes adequate steps. Civil Code article 78, no. 2 and sole Paragraph.

Article 1115 – **End of guardianship when absentee returns** - If the absentee returns and desires to put an end to the guardianship or ask for return of the assets, he shall apply in the proceedings where delivery is recorded, that the guardians or posessors of the assets be notified to, within 10 days, return the assets or deny his identity.

If the identity is not denied the delivery of the assets shall be effected immediately and guardianship, if any, will come to an end.

If the identity of the applicant is disputed he shall justify within 20 days by way of pleading which those notified, may contest within 8 days. With the pleadings and contestation, evidence will be tendered.

After the evidence is led and procedural steps are taken and information is obtained which is found necessary, decision will be passed.

When there is a case foreseen in article 80 of the Civil Code, once the delivery of the assets is directed, in the same file liquidation shall be made in accordance with article 806 and following the liability which is referred to in the same article to the extent of the alienated assets.

- Civil Code article 78, no. 1.

Article 1116 – **End of guardianship in other cases** - In the case of clauses 3 and 5 of article 78 of the Civil Code, as soon as the guardianship is declared as ended and the certified copy of the same fact is produced and security furnished is declared extinct or only limited to possessors of the assets who are not definitive guardians.

If the cessation of guardianship and extinction of the security or extinction of security only, on the ground of lapse of 20 years of absence, the cessation shall be granted independent of any formality, as soon as from the records it is manifest the grounds is true.

Article 1117 – **Procedure to assert the status of heir** - If anyone proposes to establish his/her status as heir or representative of a deceased person and if there is no definite party who may claim adversely, he shall seek the declaration and shall pray that notice be given to Public Ministry & by affixation to all uncertain parties and death certificate of the estate leaver shall be annexed to the same.

Any person, who claims to have equal or better right than that of the Applicant, may pray to be declared as heir within 20 days subsequent to the notice affixed in the Court.

The Applicant and any other person who claims to be heir may contest the adverse pleading within period of 8 days. The interested parties may also file rejoinder to the same within subsequent 8 days.

The provision of Article 1109 and 1110 shall be attracted in this case, wherever they are applicable.
§ Sole Paragraph: If the application is dismissed on account of the evidence, the Applicant may adduce further evidence or make fresh application.

Article 1118 – **Partition of inheritance amongst a generality of persons** - Where the inheritance is to be partitioned amongst certain generality of persons, whoever is entrusted to partition the same shall indicate the persons who according to him are comprised within such generality and shall apply that any uncertain interested parties may be summoned by way of publication, to prove their capacity as heir within 20 days from the period specified in the public notices.

The persons indicated by the executor of the will shall be served with the notice and also the executor may contest the claims which have been put forth. Any claimant may contest the claims

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of the opponent, and thereafter the steps prescribed in the previous article shall be followed.

- Civil Code article 1740, sole Paragraph.

CHAPTER XV
SPECIAL EXECUTION FOR MAINTENANCE

Article 1119 – **Execution for maintenance** - The installments of the maintenance shall be paid in advance on the first day of each month.

If the debtor is already summoned in the execution proceedings and thereafter he fails to satisfy the payment any installments, further steps shall be taken, without need of any fresh service of summons and the execution creditor may apply for the award of the income and for that purpose giving the lease of the properties to the extent necessary.
But fresh summons will be necessary if the execution is filed after lapse of 1 year from the date of payment of last installments.

Article 1120 – **End of execution for provisional maintenance - Retroactive effect of fixation of permanent maintenance** - The execution for provisional maintenance shall come to the end at the instance of the defendant, when he satisfies that the plaintiff failed to institute within 15 days from the payment of first installments the suit of which the application for provisional maintenance was preparatory, or that the suit was subsequently was pending for more than 3 months.

§ Sole Paragraph: The fixation of permanent maintenance shall be deemed as done from the day when provisional maintenance has been fixed. The amount which the decree holder has to receive or to refund shall be distributed in so many months as corresponding to monthly installments of the provisional maintenance.

Article 1121 – **Procedure to cease or alter maintenance** - When there is ground to put an end or to change installments of the maintenance, the debtor or the creditor may formulate the prayer in the proceedings of the execution.

The interested parties shall be summoned for a meeting which shall take place within 10 days. If there is an agreement between the parties the same shall be homologated immediately by

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judgment. If there is no agreement the prayer is to be contested within the period of 5 days failing which it is deemed as admitted.

If there is contestation, the steps prescribed in article 785 and following shall be followed.

CHAPTER XVI
LIQUIDATION OF ASSETS

SECTION I
WINDING UP AT INSTAN CE OF THE SHAREHOLDERS

Article 1122 – **Winding up through Court** - The liquidation of assets of a society is to be done judicially if the majority of the shareholders who represent 3/4th (three fourths) of the capital do not agree to have liquidation outside the court.

However, if the memorandum of the society requires consent of all the shareholders for liquidation outside the court the same stands excluded from the above paragraph.

The steps for judicial liquidation are those which are laid down below.

- **Articles 1122-1157** – Liquidation of assets – winding up.
  - This is subject matter of Companies Act.

Article 1123 – **Appointment of liquidators** - When the liquidators are to be appointed by the judge any shareholder or creditor or the Public Ministry may apply for the same if he has sought declaration of inexistence of the society.

The judge shall appoint the liquidators or liquidator and shall fix time limit for the liquidation, after hearing the shareholders, if found necessary.
If he decides to hear the shareholders they shall be summoned by publication for the day fixed.§ Sole Paragraph: What is provided in this article applies also to the replacement of the liquidator or liquidators.

Article 1124 – **Fixing time for liquidation** - If the shareholders have appointed liquidators or liquidator without fixing the time to carry out the liquidation, the same period shall be fixed by the court at the instance of any shareholder or creditor, after the hearing the liquidators.

§ Sole Paragraph: Same procedure shall be followed when the time is required to be extended.

Article 1125 – **Liquidation process** - The liquidators proceed with the liquidation by selling the properties, recovering the credits and paying the debts, in accordance with clause no. 124 of article 1134 of the Commercial Code and respective Paragraphs 1 and 2.

The authorization by the society referred to in these Paragraphs is substituted by judicial authorization.

Article 1126 – **Accounts of liquidators and distribution of balance** - After having done total liquidation, the liquidator shall present their accounts following the article 1017.

If they do not produce the accounts, any interested party may compile them to give the accounts in accordance with articles 1012 and following.
Once the accounts are approved, the judgment shall be passed distributing the balance to the shareholders as per the proportion payable to each of them.
Before passing the judgment, the judge may, if finds convenient, prepare accounts in form of a map, one project of partition of the balance and give notice to the shareholders to give their objections as they deemed fit.

Article 1127 – **Acceptance of partial liquidation** - If the liquidators are of the view that the liquidation may not include all the assets, they shall present the accounts of the partial liquidation giving reasons for not proceeding with total liquidation.

A meeting of all the interested parties shall be convened to find out whether the liquidation is to be accepted in the state in which it is or it is to be finalized.

There being debts to be paid, meeting of the creditors shall be convened.
The acceptance of partial liquidation depends upon the agreement of the majority of the members and on the capital and assent of the creditors representing 3/4th (three fourth) part of the liabilities. The shareholders and creditors, who having been personally notified, neither remain present nor appoint representatives, are bound by the deliberations of the majority of parties present.

Article 1128 – **Partition in case of partial liquidation** - If it is decided that the liquidation shall be finalized, the liquidators will finalize the same following article 1126.

If partial liquidation is accepted, the accounts submitted by the liquidators shall be examined and checked and if approved, the partition is to be done as agreed. In the absence of agreement, the shareholders shall deliberate on the payment of the liabilities, if there are any.

After satisfying the debt or the payment being secured, any shareholder may seek licitation in the assets which have remained. Properties on which there was no bid shall be sold and lastly the partition chart will be prepared which shall be decided by the judge.

The provisions of inventory shall be applicable to the licitation, sale of properties, and partition. If the accounts are not approved, whatever is provided in article 1017 shall be observed and after their approval again there shall be meeting of the shareholders and of the creditors thereafter the steps prescribed for the approval shall be followed.

§ Sole Paragraph: In the case of partial liquidation, the properties shall be delivered, up to the partition, to an administrator appointed by the judge, who shall have functions identical to the head of the family.

Article 1129 – **Steps when total liquidation is not possible** - If the liquidators are not in position to carry out total liquidation, they shall produce the accounts and there after whatever has been provided in the preceding article as to acceptance of partial liquidation shall be followed.

Article 1130 – **Cases when liquidation through Court is acceptable** - The steps set out in the previous articles are applicable not only for winding up of the company, but also to the cases of rescission and annulment of articles of the association and the declaration of non existence of the company.

In the event there is a suit pending for the above purposes, the appointment of liquidators shall be processed by appendage to the main proceedings and fixation of the time for the liquidation.

Article 1131 – **Liquidation out of Court** - In the case of liquidation outside the court, if it is necessary to appoint liquidators or fix the period for the same purpose, and the shareholders do not approve the accounts, if the liquidators do not complete the liquidation or at any other time the intervention of the court becomes necessary, the provisions of the previous articles shall apply, and thereafter the liquidation outside the court shall take place.

SECTION II
LIQUIDATION FOR THE BENEFIT OF THE STATE

Article 1132 – **Summoning of unknown heirs in case of a vacant inheritance** - In the case of vacant inheritance by reason of the heirs not being known, the Public Ministry contests the capacity of those who appeared or because the known heirs had made record of renunciations, after taking necessary steps to secure the preservation of the assets, the heirs shall be summoned, by way of publication, directing them to qualify themselves as heirs within the period of 20 days after end of the period of the publication.

If anybody appears to qualify himself, file will be sent to the public ministry to express his views, who may within 8 days, contest the application, if there is a ground for the same.

If there are different persons to qualify themselves as heirs, any other contestants may contest the application of others within 8 days subsequent to the period fixed for filing the application for qualification. To the answer given by Public Ministry or any other parties, the interested party may rejoin within 8 days. To the replication there will be triplication within equal period and thereafter steps of the ordinary proceedings or summary proceedings, shall be followed depending upon the valuation.

Article 1133 – **Liquidation in case of vacant inheritance** - The inheritance shall be declared vacant in favour of the State if nobody appears applying for qualification or any application of those who have put appearance, has been rejected.

In any of the above cases steps shall be taken for the liquidation of inheritance, by recovery the credits by selling through court the properties and after satisfying the liabilities, the balance shall be allotted to the State.

§ Sole Paragraph: The public funds and the immoveable assets shall be sold, when the sale proceeds of other assets is not sufficient to satisfy all the liabilities.

- Civil Code articles 2006 and 2008

Article 1134 – **Procedure for claiming and verification of credits** - The creditors shall be notified to put up their claims within the period of 10 days from the date of personal service, if they are known, and at the end of the period of the publication, if they are uncertain.

The Public Ministry shall be afforded the examination of the file for the period of 20 days to offer its views and whatever is found necessary on the objections filed. Till the time of examination, any creditor may also claim his credits or object to the claim of others. Those claims which have not been contested are considered as approved.

If there is contestation, the respective creditors who have appointed judicial attorney or chosen domicile at the seat of the court shall be notified to reply within the period of 8 days and at the end again the file will be remitted to the Public Ministry for 8 days, to raise objection to the replies as deemed fit, and up to the time of the examination any creditor claimant to give his say on the reply filed by the others.

In the subsequent 20 days all the objection which may be decided on the basis of the material which is pleaded and proved shall be decided and thereafter in relation to others, the form of summary proceedings shall be followed, except where any credit is the amount exceeding to 10000$ (ten thousand escudos), it because in such case procedure of ordinary proceedings shall be followed.

§ 1: The debt cognizance of which is assigned to special tribunal shall be claimed by following proper remedy.

§ 2: No payment shall be made until the suits or claims of credits are pending.

§ 3: If the proceeds from the sale of the properties are not sufficient to clear all the debts or if there are creditors with privilege or preference, the distribution shall be done either pro rata or after marshaling the creditors.

§ 4: The intervention of the Public Ministry shall cease as soon as the debts are acknowledged or held tenable of the amount superior or equivalent to the proceeds of the inheritance.

§ 5: The provision of this article does not come in the way against the effect of any judgment secured against the inheritance of the deceased or against the guardian appointed to the same. The pending executions shall be appended to the proceedings of liquidation; and also the pending suits shall be appended in the same manner, except where the trial has started. The claims arising from preference resulting from attachment or judicial mortgage shall not be recognized.

§ 6: Even after end of the period of the claims to be made, any creditor who had not been personally served shall be permitted to put his claim of the credit if the liquidation proceedings are pending. If the liquidation is concluded, the creditor shall have case against the State to the extent of the amount of the balance which has been awarded to the State.

SECTION III
LIQUIDATION FOR THE BENEFIT OF CREDITORS

SUBSECTION I
DECLARATION OF INSOLVENCY AT THE INSTANCE OF THE CREDITORS

Article 1135 – **Definition of state of insolvency** - The businessman who is unable to pay his debts is liable to be declared as insolvent.

Article 1136 – **Reasons for declaring insolvency** - The declaration of the insolvency shall be made in following cases:

1) Non-payment of debts;

2) Escape of the businessman or absence from his establishment, without keeping legally the indication who represents him in the administration of the same;

3) Dissipation and diversion of assets or any other disorderly conduct on the part of the businessman which reveals a deliberate design of putting himself of a situation of not being able to satisfy his liabilities.

§ 1: In limited liability companies, the insolvency may be declared on the ground that assets are not sufficient to satisfy the liabilities.

§ 2: The insolvency / bankruptcy shall take place also in the cases foreseen in articles 1139, 1249, sole Paragraph of 1258, Paragraph 1 of 1260, 1268 and 1284.

Article 1137 – **When Insolvency can be claimed for non payment of dues** - If non payments take place when the businessman is doing his business, the insolvency may be applied for within 2 years from the date of non payment, irrespective of whether the opponent ceases to do his business or has expired. The insolvency may also be applied for within the same time if the non payments is towards the obligations contracted during his business has occurred within first 6 months from the time the businessman stopped his activities.

§ Sole Paragraph: When the insolvency is applied for on any other grounds, the limitation prescribed in this article is counted from the time the event occurred giving rise to the insolvency.

Article 1138 - **Who can declare Insolvency** - The court may declare insolvency:

1) On application of the businessman;

2) On the application of any creditor, either with preference or with privilege, which ever may be the nature of the credit;

3) On the application of the Public Ministry, in the case of no. 2 of article 1136;

§ Sole Paragraph: Following parties are not permitted to apply for the insolvency:

Clause 1: The spouse of insolvent;

Clause 2: His ascendants or descendents in any degree;

Clause 3: His collaterals in direct line and in the first degree.

Article 1139 – **Limitation for businessman to apply for declaration of insolvency** - The application by the very businessman for declaration of the insolvency is to be made within 10 days from the date of non payment, failing which he is presumed to be guilty.

Article 1140 – **Requisites for a businessman's application to be declared insolvent** - In order to have insolvency be declared on application of the businessman he shall make the application in writing with indication of all the particulars as to his identity, capacity of businessman with the necessary evidence along with inventory and balance sheet of active and passive, and the list of the creditors and the respective credits.

Article 1141 – **Creditor's application** - The creditor who desires to get declaration of insolvency shall formulate the prayer, giving the grounds of the existence of the credits, as well as of the necessity, if really exists, to make such declaration, without hearing the opposite side, and immediately listing the evidence he proposes to adduce.

Article 1142 – **Hearing of respondent** - The court may grant the declaration of the insolvency either without hearing the opposite side or after issuing the summons to the opposite side to give the reply within 48 hours.

In the later case the debtor may along with his reply produce the documents and witnesses, provided that he undertakes to produce them without service of notice, at the time of the hearing. The debtor may produce at that time also his own books of account.

If the debtor does not reply, the court shall decide the matter ex-parte.

§ Sole Paragraph: The service of summons shall be made in the main establishment even though he is not found at the same place.

- See also Article 82 of this Code.

Article 1143 – **Time for Inquiry** - The inquiry shall be held within the 8 days next to the receipt of the petition or time limit given to the adversary, in the case notice is issued to the adversary.§ Sole Paragraph: For the purposes of these articles, the application for declaration of insolvency shall always be considered of urgent nature and shall have preference over any other work.

Article 1144 – **Hearing of arguments and Judgment** - At the hearing, which shall take place even in the case of article 1140 after evidence is led, shall hear the appointed attorneys may formulate also questionnaire on the facts and give answer to all the points of questionnaire. In the event it is not possible to pronounce immediately the judgment it shall be done within 5 days and service of the notice to the applicants and adversary within 48 hours.

If the court declares the insolvency in final judgment shall fix time limit between 30 to 90 days, to the creditors to present their claims. Such final judgment shall be immediately enforced and notified to the Public Ministry and registered in the land registration office at the instance of the later and published by extract in the official gazette and in one of the newspapers of the locality, if there is, and by notices fixed at the door of the domicile of the adversary at the seat of the establishment or branch of the insolvent and at the door of the court and all the steps shall be complied within 3 days and information sent to the criminal register, as soon as administrator of the insolvency furnishes necessary particulars.

Article 1145 – **Withdrawal of application** - Before delivering the judgment, the applicant may withdraw the prayer except where facts have been pleaded which disclose existence of guilt or fraud.

- See also Article 298 of this Code.

Article 1146 – **Who can appeal** - From the judgment, appeal may be filed by the businessman declared as a insolvent, or the applicant, or any creditor who has locus standi for the purpose and it is for the judge to decide summarily the question of locus standi, without prejudice the subsequent steps for verification of the liabilities; and if it is found that the insolvency was declared on account escape or absence of the businessman, appeal may be filed also by any of the parties mentioned in sole Paragraphs of article 1138.

§ Sole Paragraph: The final judgment which refuses to declare insolvency shall be forwarded in the same file, without keeping on record any certified copy.

Article 1147 – **Who can file objections to the declaration** - Once the judgment of declaration of insolvency is delivered, the insolvent who has not expressly acknowledged such existence or who has not claimed to exist the case for the same to the court may, within 8 days immediately next to the publication of the final judgment in the official gazette, may file objection.

The same remedy is available to the spouse, ascendant and descendent in case the insolvency is declared on account of escape or absence from the establishment, to the spouse, heir, legate or

representative of the businessman declared to be in insolvent after the death, or who has expired before the time limit indicated in the first part of these articles. In such cases the limitation to file the objection is of 30 days, from the time of publication of the final judgment.

Article 1148 – **Grounds for objections** - The objections may be filed only on the grounds mentioned below:

1. Where the person declared as insolvent is not a businessman;
2. The applicant has no locus standi;
3. The right to apply for insolvency is already lost on account of prescription;
4. The name of the person declared insolvent is found in the agreement between the creditors duly homologated by the court;
5. The payment has not been stopped or may not be treated as such;
6. There was valid ground for not making payment in respect of the claim on account of which insolvency is sought;
7. The absence from establishment is duly justified;
8. The facts alleged as ground for declaration of insolvency are not true or are justified so as to indicate the purpose of the businessman to be placed in the situation or in the inability of satisfying the agreements;
9. The value of the assets is exceeds the liabilities.

§ 1: The grounds mentioned in clauses no. 1, 2, 3, and 4 may be pleaded, which ever may be ground for declarations of insolvency; however, the grounds shall not be entertained if it is found that the person declare as insolvent is registered as businessman.

§ 2: The ground mentioned in clause no. 9 may be invoked only in respect of limited liability companies and when insolvency was declared on grounds of insufficiency of the assets for the satisfaction of the liabilities.

§ 3: Other grounds may be urged only when they have direct relation with the fact on the basis of which declaration of insolvency is sought.

Article 1149 – **Raising, admission and opposition to objections** - The objections are to be filed by way of pleadings and paragraph wise and thereafter the office is to present it to the judge to pass the order either accepting or rejecting the objections.

In the event the objections are admitted, within 48 hours, notice shall be issued to the administrator and applicants of proceedings for insolvency to contest them, if so desire, within period of 5 days.

§ 1: From the order which admits the objections appeal from order lies and against the order which reject the objections appeal from final judgment lies.

§ 2: With the objections and corresponding written statements, opposing them, evidence shall be listed and which the parties propose to avail.

Article 1150 – **Hearing and judgment** - Subsequent to the written statement and production of the evidence which the party wants to avail before the trial, and trial will start and the provisions of article 1144 shall be observed to the extent applicable.

Article 1151 – **Steps in proceeding stayed by objections** - The objections suspend only the steps subsequent to the passing of final judgment namely the verification of the claims of the creditors, however in the case of urgency even sale of the assets may take place.

Article 1152 – **Mandatory finding on bad faith of applicant** - In case the claim of declaration of insolvency is declined or the final judgment which has declared it has been revoked, it will always be examined whether the applicant has acted in bad faith to secure the order and in the

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affirmative the applicant will be directed to pay the fine and compensation for damages in accordance with articles 465 onwards, without prejudice to criminal proceedings which may take place.

SUB SECTION II

CONSERVATORY MEASURES

Article 1153 – **Seizure of assets** - After the insolvency is declared, steps shall be taken immediately to seize all the assets of the insolvent, even though the assets have been seized or attached or by any manner detained, without prejudice to the right of the creditors for the legitimate withholding.

§ 1: The court of the insolvency may solicit to the court or competent authority the remission of the proceedings where seizure attachment, apprehension or detention has been made and directing handing over of the respective assets to the administrator, except were the assets have been attached in the fiscal execution or the Government lending agency..

§ 2: The assets which are exempted from the attachment as per articles 822 onwards, shall not be seized except where they have been voluntarily delivered by the insolvent.

Article 1154 – **Seizure of amount paid** - The amounts paid by the insolvent whenever the inefficacy of such payment has been declared by the final judgment, shall be seized in the hands of those who have received them, on the condition that the same person shall deliver the assets to the estate, failing which penalty will be imposed on a receiver in default.

Article 1155 – **Who attends the seizure** - The act seizure shall be presided over by the judge and in the presence of Public Ministry and of insolvency trustee who may preside under authority delegated by the former.

Article 1156 – **Delivery of assets to administrator or Receiver** - Whenever the seizure has been made the assets seized shall be delivered to the administrator, who, on his own responsibility, may entrust the custody to the any other person of his choice and take steps which he deems fit. The administrator may also be authorized by the insolvency trustee to receive the assets under a list prepared which shall be filed in the court.

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§ Sole Paragraph: The assets seized in a judicial division different from that of the insolvency shall be handed over to the custody of receiver appointed by court to which rogatory letters was addressed.

Article 1157 – **Advance sale of assets** - The provisions of article 851 and its paragraph shall be applicable to the administrator to the extent they deal with the receiver and the hearing of the parties shall be substituted by hearing of the insolvency trustee.

SUB-SECTION III

EFFECT OF INSOLVENCY

DIVISION I

EFFECTS OF INSOLVENCY IN RELATION TO THE INSOLVENT AND TO HIS CREDITORS

Article 1158 – **Interdiction of Insolvent** - The declaration of the Insolvent has the effect of disabling the debtor from administering and disposing of his assets which he owns or which he may acquire in the future, until the vacating of the interdiction, as foreseen in article 1317, and results in suspending, in relation to his assets, the further prosecution of the inventory on his death.

§ l: The interdiction of the debtor includes the carrying out the business, and holding the positions of manager, director or administrator of any commercial or civil society.

§ 2: The liquidator shall be representing the debtor, for all purposes, except in relation to his exclusive personal life or alien to the insolvency.

- **Articles 1158-1368** (210 Articles) - Insolvency is a large portion of the code broadly corresponding to the Insolvency and Bankruptcy Code 2016.

Article 1159 – **Ineffectiveness of the acts and contracts by the Insolvent after the declaration**– The acts and contracts done by the debtor, subsequent to the declaration of Insolvency by judgment shall be of no effect in relation to the assets of the debtor, independent of any declaration by the court.

§ 1: However, the contracts of rendering service, Will, acceptance of inheritance for the benefit of

the inventory and any other acts relating to public functions or alien to the Insolvency.§ 2: It is lawful to the debtor, in any case, to acquire by his work the means of subsistence.

Article 1160 – **Fixation of maintenance for the Insolvent** - In the event the debtor requires badly the means of subsistence, the judge may, after hearing the liquidator, award him temporarily reasonable subsidy as maintenance.

§ Sole Paragraph: There being a reasonable ground, even the maintenance may be stopped at any stage of the proceedings, by decision taken either ex-officio or on the application of the liquidator or of any creditor.

Article 1161 – **Fixation of residence of Insolvent** - After the judgment declaring the Insolvent is pronounced, the debtor shall sign a declaration fixing his residence, and is not permitted, during the pendency of the proceedings, to absent himself from his domicile without express permission from the court or the trustee to whom he shall inform where is he going and period of his absence.

§ 1: All the services of the notice to the debtor, when he has not appointed attorney with domicile in the Judicial division shall be made at the residence indicated in the undertaking.
§ 2. What is provided in this article is not applicable to the administrators, managers, directors of the society with limited liability, who shall be notified within the jurisdiction of respective court.

Article 1162 – **Duty of Insolvent to appear in person** - The debtor is bound to appear personally in the court whenever so ordered by the judge or by the liquidator, except where there is legitimate impediment permitted by the court by express order to that effect for representation through his attorney.

Article 1163 – **Penal sanctions** – On breach of the preceding two articles the debtor shall incur criminal liability for disobedience.

Article 1164 – **Effect of Insolvency on Creditors** - The declaration of the Insolvency has the effect of closing the current accounts of the debtor, and immediate maturing of all his debts and suspension of accrual of any interest against the estate of a debtor, except those arising from mortgage which are guaranteed by mortgage in accordance with the civil law.

§ 1: However, the accrual of the interest even in the respect of debts guaranteed by mortgage and duly executed and registered at the time when the debtor was not a businessman stand suspended, if the respective creditors, having not participated in the Insolvency proceedings, have not initiated, within the period fixed, the claims, the competent suits, or executions, or not prosecuted further the normal course of the proceedings.

§ 2: To the debts which are not matured, which only on account of the Insolvency become recoverable, the interest which is accumulated or capitalized, in respect of the period which falls short of the time for normal accrual of the debts shall be deducted.
§ 3: Penalties imposed on account of delay in the payment or forcible recovery and specially the increase of rate of interest and fees of the judicial attorney are not to be enforced against the debtor.

Article 1165 – **Effect of Insolvency on proceedings to which the Insolvent is a party** - Once the Insolvency is declared, all the matters in which questions relating to estate of the debtor is in issue

shall be appended to the Insolvency proceedings, except where there is any appeal pending from the final judgment, because in such cases the appendage shall be done only after the judgment becomes res judicata.

§ 1: From the cases mentioned in the body of the article stand excluded the matters in which the debtor is the plaintiff, the suits relating to property, the suit relating to the status of the persons and those in which there are other defendants besides the debtor.

§ 2: The declaration of the Insolvency prevents institution of any execution against a debtor; however, if there are other execution opponents the case shall proceed against them.

Article 1166 – **Subsistence of bilateral contract by the Insolvent** - The Insolvency declaration does not cause the rescission of bilateral contracts in which the debtor is a party, which may or may not be given effect, depending upon the view of the syndic and decision given by the judge which is found convenient to the estate of the bankrupt debtor.

In the second case, the administrator shall notify the other contracting party to whom right is safeguarded to demand from the estate the appropriate damages for losses in the proceeding for verification of the credits.

§ 1: If the tenancy contract of the house, establishment and godown of the debtor is continued,

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then rent shall be paid fully by the liquidator of the Insolvency.

§ 2: However, what is provided in this article shall not apply in the event there is express provision of law declaring that with institution of the Insolvency proceedings the contracts stand rescinded.

Article 1167 – **Set off of Credits** - If there is, before the declaration of the Insolvency, off-setting, provided in articles 765 and following of the Civil Code, the same shall be taken into consideration in the verification of the credits.

§ 1: When there are reciprocal credits which cannot be off-set as per the body of this article, the debtor shall pay to the estate fully his debt, and if there is no preferred credit or preference, he shall receive payment of his credit only proportionate to what he is to receive.

§ 2 : The debtor of the estate who off-sets shall prove that he was entitled to those credits on the date of declaration of the winding up.

DIVISION II
EFFECTS OF INSOLVENCY IN RELATION TO THE ACTS WHICH ARE PREJUDICIAL TO THE ESTATE

Article 1168 – **Acts which may be annulled to the benefit of the estate** - The following acts shall be annulled to the benefit of the bankrupt estate:-

1) The acts which involve decrease of the value of the estate of the debtor, executed by way of gratuitous title, within 2 years prior to the judgment declaring the Insolvency, including the renunciation of the estate, legacy or usufruct;

2) The guarantees for the debts;

3) Amicable partitions in which the debtor has received only amounts which may be easily concealed and to the other interested parties all the immovable property are allotted or nominal values, when executed one year prior to the declaration of the winding up.

§ Sole Paragraph: What is provided in clause no. 1 does not cover the gifts by usage and custom, nor those which arise from fulfillment of moral or legal duties.

Article 1169 – **Rescission of fraudulent act and those to the detriment of creditors** - The acts done by the bankrupt debtor before the lifting of the interdiction are liable to be rescinded before the vacating of the interdiction, in the case of articles 1030 and following of the Civil Code.

Article 1170 – **Acts presumed to be in bad faith** - Following acts are presumed to be executed with bad faith by the interested parties who intervene therein;

1) The acts done with consideration executed within 2 years prior to the date of declaration of the Insolvency in favour of the spouse, of the relation up to sixth degree, of the concubine, of the servants or subordinates by any legal relation;

2) The payments or compensations agreed upon for the debts not matured or for the debts matured during one year prior to the date of the judgment of the Insolvency, with the payments usually made with the money not meant for the same;

3) The guarantees created on the properties by documents subsequent to the obligations one year prior to the judgment of declaration of the Insolvency and those constituted simultaneously with the respective obligations within 90 days prior to the same judgment;

4) The alienations with consideration, in favour of any persons who are not mentioned in clause no. 1, when: executed within 90 days prior to the date of the judgment declaring the Insolvency.

Article 1171 – **Effect of rescission or annulment** - Once an act is rescinded or annulled, all the respective values revert back to the estate of the debtor. In the cases where other contracting party has right to restitution, the same shall be considered an unsecured credit.

Article 1172 – **Appending of suits for annulment or rescission** - The suit for annulment or rescission shall be dependent on the Insolvency proceedings and may be filed by the administrator authorized by the syndic, or by any other creditor.

§ Sole Paragraph: In the same proceeding it is lawful to seek annulment or rescission of different acts, even though the ingredients prescribed by articles 29 and 30 are not satisfied.

SUB SECTION IV

ADMINISTRATION OF THE BANKRUPTCY ESTATE

Article 1173 – **To whom does the administration of the bankruptcy estate befall** - The administration of the properties of the debtor falls on the administrator under the supervision of the syndic in accordance with following provisions.

Article 1174 – **Powers of administrator – Personal character of the post** - The administrator may do all the acts of general administration, and any special powers may be exercised with the express permission of the syndic and to that the provision of the agency would apply, which are not inconsistent with the provision of this sub-section, and besides in respect of assets of the estate subject to penalties of infidelity of the depository.

§ Sole Paragraph: The exercise of the role of administrator is strictly personal, except in cases where there may be necessity of judicial attorney.

Article 1175 – **Duties of administrator** - The administrator shall immediately assume the charge, doing whatever necessary for the preservation of the assets and rights of the debtor, in his interest and of his legal creditors and inquiring in detail the status of the estate of the debtor, and condition in which the business was done and the causes which have given rise to the insolvency.

Article 1176 – **Opening of correspondence addressed to the Insolvent** - All the correspondence addressed to the debtor till the date of the pro rata apportionment to the creditors shall be delivered to the administrator, in order to be opened in the presence of the debtor; or; he being an absentee, in the person chosen by him for such purpose, and, in his absence, in the presence of the judge and handing over to the same Insolvent or representative the papers not concerning the administration of the estate and keeping entirely confidential the private matters contained in the correspondence.

Article 1177 – **Permission of the Insolvent to do certain act** - The administrator upon the proposal of the manager may permit the debtor to help the administration and to do specific acts of the business, and fixing for the purpose period and remuneration.

§ Sole Paragraph: The syndic may, at any time, revoke such permission.

Article 1178 – **Balance sheet of the exercise of administration** - In first three days of each month the manager shall submit to the administrator, one balance sheet of the exercise of the administration of the previous month, in which specific mention shall be made of all the amounts received and spent during that period.

Article 1179 – **Questioning of the administrator** - The suspicion may be raised against administrators in the same manner as against the head of the office of the court.

§ Sole Paragraph: The suspicion having been raised, the administrator shall continue to hold the office until the same issue of suspicion is decided.

- See also Article 134 of this Code.

SUB SECTION V

VERIFICATION OF DEBTS

Article 1180 – **Claiming of credits** - Within the time fixed in the judgment declaring the Insolvency, the creditors of the debtor may by way of application claim their credit either common or preferential, indicating their nature, amount and the origin.

They may also express their view on the aspect of insolvency.

§ Sole Paragraph: The credits of the claimants of the insolvency shall be judged and marshalled independent of specific application.

Article 1181 – **Filing and attaching claims** - The verification of the debts shall be made on the basis of objection made and, duly processed and to which subsequent objections and respective documents shall be taken on record.

Article 1182 – **Certificate of encumbrance and notice to creditors** - Before crossing half of the period fixed for the objections the administration shall produce on record certified copy of all the encumbrances on the assets of the estate and stating the expiry of the period by way of the registered letter addressed to the all the creditors already registered and besides those who are found from the books and documents of the debtor even though they have not put their claims of their credits.

§ 1: The administrator shall prepare a list from where names of all the creditors are found in accordance with these articles, their addresses and number of registrations of the post of each of them, which shall be annexed to the file along with the opinion to which reference has been made in the article 1185.

§ 2: The lack of notice, in accordance with these articles, to the creditors not listed is not a ground to put up the claim beyond the limitation period. The lack of such notice to the creditors who have been listed is applicable what is provided in sole Paragraph of article 864.

Article 1183 – **List of unclaimed credits** - After the time for raising the objections is over, the administrator shall within 3 days, produce in the office, as appendage to the file, the indication of any credits which have not been claimed and which are found from the record and may appear to be genuine and true.

Article 1184 – **Disputing of credits** - Within next 5 days after the time limit fixed the creditors or the debtor may contest by way of application, the existence or nature of any credit claimed or indicated by the administrator.

§ Sole Paragraph: The answers shall be annexed to the proceedings as per the order of their production and during the time fixed for the presentation they will be open for inspection in the office of the court with the documents and books of the debtor in order to be examined by any interested party.

Article 1185 - **Say of the administrator on credit claimed** - Within the period of 5 days after the time limit fixed in the preceding article the administrator shall give, on the penalty of the suspension, short opinion but, with all the particulars in respect of each of the credits claimed or indicated by him, declaring specifically from the record what particulars are found and with supporting documents, indicating since when the default causing winding up was started and furnishing any other particulars which he finds fit. In the same opinion the administrator may object, in totality or in part, the existence and nature of any credit supporting his grounds for objections.

Article 1186 – **Grounds for contesting** - The answers of the creditors and of the debtor, as well as of the administrator, may be on the point of nullity, prescription, sham transaction and forgery or any other ground which may extinguish the obligations and contracts executed by the debtor or invalidity, postponement or suspension. In such case the grounds shall be Paragraph wise and the written statement filing the opposition and drawing the conclusions.

Article 1187 – **Rejoinder by creditor** - The creditor whose credit has been opposed in the manner indicated in the previous article may rejoin within 5 days next to the period indicated in

article 1184.

Article 1188 - **Evidence** - With the applications, answers and rejoinders all the documents shall be produced and the list of witnesses and it may be applied to have any other step in support of the proof.

§ Sole Paragraph: If the party is not in position to produce any document, the judge shall grant him reasonable time for the production without prejudice to the course of the proceedings.

Article 1189 – **Chart of the objections** - Upon the receipt of the opinion expressed by the administrator, the office shall prepare and produce in the main suit, within 48 hours, one chart of all the objections containing the particulars as to the name of the objector, date of the objection, folio of the appending proceedings where it is found, the quantum of the credits, their source, if they were objected and in the affirmative by whom, folio were the objection is found and, beside this, open place to be filled at the proper time with the indication of the decision, if appealed from or not, and result of the same.

Article 1190 – **Curative order and questionnaire** - Thereafter, the proceedings shall be presented before the court in order that, within eight days, all the preliminary or prejudicial questions are decided and questionnaire is prepared, in accordance with articles 514 and 515.

Article 1191 – **Production of evidence** - If there is evidence to be led before the trial, the judge shall take steps to see that they are carried out and which should be concluded within 60 days, from the day of the order directing to carry the same and such evidence led by any party may be relied upon by all the parties.

Article 1192 – **Say of Public Ministry and date for arguments and judgment** - After the evidence is led to which reference is made in the preceding article or after the time fixed for letter of request is over, the proceeding shall be put before the Public Ministry, for a period of 5 days to express his opinion in general interest of all the creditors and particularly to secure that rights of the Government are safe guarded and thereafter alter subsequent 15 days date for the trial shall be fixed.

§ Sole Paragraph: The creditors whose credits have not been objected shall not be notified for the trial.

Article 1193 – **Arguments and judgments** - At the trial the evidence shall be read as per the order of the presentation of the objection.

For the hearing of the arguments the advocate for the objectors shall be heard first and thereafter those who have offered the contestation, to the administrator of the estate if anybody has been appointed, and lastly, to the Public Ministry, without any replication.

The hearing shall be continued in subsequent days, if it is not possible to conclude it on the first day.

Article 1194 - **Judgment** - The judgment shall be delivered within 10 days, in which the judge shall fix date of bankruptcy, and thereafter either restitution or separation of the properties or rights claimed, to verify and rank the credits in accordance with law and decide the question referred to in article 1186.

§ 1: The ranking shall be general to the assets of the estate of the bankrupt and particular for the properties of preferred credits or preferences.

§ 2: In the ranking of credits the preference arising from hypothecation referred by article 676 shall not be considered, not even that arising from the attachment, but the cost paid by the plaintiff or creditor applicant shall be equated to the proceedings of winding up in order that getting the privilege of exclusion.

§ 3: The fixation of the date of bankruptcy establishes legal presumption of insolvency against third parties strangers to the proceedings and constitutes full proof of this fact against the creditor who has taken part.

Article 1195 – **Who can appeal** - From the judgment of verification and ranking appeal may be file by the claimants, contestants, bankrupt and administrator of the estate and the Public Ministry.

Article 1196 – **Suit for verification of credit or right to restitution and separation of assets** -After the period for objections is over, it is permissible to verify fresh credits and the right of the restitution or separation of the assets by way of suit instituted against the administrator and creditors, and for that purpose service of summons be effected against them by publication for the period of 10 days.

§ Sole Paragraph: If any suit is filed, the plaintiff shall make a protest in the main proceedings for insolvency. The effects of the protest, mentioned herein after shall lapse if the plaintiff fails to take the necessary steps for a period of 30 days.

Article 1197 – **Position of Creditor and Interested Party who files the suit but does not observe the provisions of the preceding article** - If the suit for verification of the credits has not been filed and has not followed the steps prescribed in the preceding articles and its paragraph, the creditor shall have a right to participate only with reference to his credit duly verified, in the apportionments subsequent to the respective judgment becoming res-judicata, even if the credit may be with a privilege.

If the suit instituted and followed beyond the time prescribed in the previous article and has purpose of verification of right of restitution or separation of the assets, the plaintiff shall have a right to make them effective only if such rights have been recognized in the respective judgment, becoming res-judicata, in relation to the assets which by this time have not been liquidated; if they have been liquidated fully or in part, up to the quantum of the proceeds of the sale, when the same may be quantified, and when it cannot be, up to the quantum of the value which was attributed to them in the valuation. The plaintiff shall be paid with preference in relation to any creditors, but only by the value which have not been given or has been lifted with priority from the estate which have not been taken into consideration in the previous lifting or previous distribution either conditionally or finally, not even have been safeguarded in relation to the third party in view of appeal or protest in accordance

with sole Paragraph of previous articles and which account of this are found free from the estate of the bankrupt.

Article 1198 – **Appending of actions and applicable procedure** - The suits referred to in the preceding articles shall be appendage to the proceedings of insolvency and shall follow whichever may be value of the suit, the steps of summary proceedings, and costs shall be on the plaintiff, unless there is written statement filed.

Article 1199 – **Application for provisional delivery of mobiliary assets** - The claimant of the specific movables shall apply for provisional delivery and the same shall be granted, upon the claimant filing a bond and furnishes a guarantee, if it is found necessary.

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In respect of such prayer and on the value of the objects claimed, necessity of furnishing guarantee, fixation of the value of the same, or suitability of the surety, the administrator shall be heard.

If the objection is finally rejected, the assets shall be returned to the estate of the debtor along with the objects provisionally delivered or the amount of the security.

Article 1200 – **Objections and verifications to which the procedures and time limit for verification of credit apply** - The procedure and the period of limitation for objection and verification of the credits shall be also applicable:

1) To the objections and verifications of the right of the restitution, to their legitimate owners of agricultural properties and other assets which exists within the estate of the debtor and of which the bankrupt was depository commission agent, creditor of the pledge, depository or by any other title, a mere holder of the properties;

2) To the objections and verifications of right which the spouse may have to separate from the estates of the exclusive assets or dotal properties or the moiety in the common assets;

3) To the persons who propose to separate from the estate of the debtor the assets of third parties which have been unduly seized and as well as others, to which the bankrupt had no right, or has no exclusive right, but enjoyed jointly, or as usufructuary, fideicomissary, or under any other title which does not convey full and exclusive ownership, or which are strangers to the insolvency proceedings or cannot be lawfully seized to the benefit of the estate of the debtor;

4) To the case foreseen in article 468 of the Commercial Code in accordance with the same, by chance there has been unauthorized seizure of the thing sold;

§ 1: The separation of the assets mentioned in this article may be ordered by the judge, upon the application of the administrator of the insolvency, duly justified.

§ 2: When the objection is over merchandise or other mobiliary assets, the objector should prove his ownership over the same, except where there are perishable, but the amounts of money may be demanded if they are attached to the promissory notes or in any other manner detached from the patrimony of the debtor.

§ 3: If the merchandise sent to the debtor as depository or by way of commission and sold on credits, the commission agent may demand the price payable to the purchaser, so that he may collect it from the purchaser.

§ 4: If the merchandise sent to the bankrupt in connection with sale on credits, the same may be demanded until they are on transit or even when they are found in the godown of the bankrupt if they can be identified and separated from the properties belonging to the estate of the debtor.

Article 1201 – **Claim by the insolvent or his wife for their exclusive rights alien to the insolvency** - The bankrupt or his wife without permission of the husband, may enforce her own exclusive rights, alien to the insolvency. -

Article 1202 – **Application for restitution or separation of assets seized late** - In case there is seizure of assets in favour of the estate of the debtor after the period fixed for objections is over, it is permissible to pray for satisfaction of the right of the restitution or separation of any such assets within the period of 5 days subsequent to seizure, by way of application, which shall be appendage to the main proceedings, and the creditors shall be summoned by way of publication for 10 days to contest within the same time thereafter the administrator may contest or give his opinion within 3 days.

§ Sole Paragraph: After the limitation periods prescribed in the body of the article are over, file shall be presented to the Public Ministry, for 48 hours and thereafter other formalities of the verifications shall take place.

Article 1203 – **Right of creditors in case of insolvency of debtors for joint liabilities** –Whenever, there are insolvents with joint liability, the creditors shall have claim in the bankruptcy estate, but not exceeding their share in the credits.

§ Sole Paragraph: The creditors who exercise such right shall not demand payment of any sum due to them without production of their titles deed, or certified copies thereof, if they are produced in some proceedings and in them the payment received shall be noted; and necessary communication shall be sent in all proceedings wherever there claim has been put, failing which they shall be liable to pay double of amount received by them without right, being liable in all the cases for payment of damages.

Article 1204 – **Preference to costs and other amounts** - The judicial costs, the expenses of the administration approved by the court, the remuneration to the administrator and the percentage

payable to the States are alien to the verification of the passive debt and shall be paid in preference over all the assets of the estate and in due proportion of the produce of each type of assets, mobiliary or immobile, even though they might have been subject of pledge or mortgage.

SUB SECTION VI

APPRECIATION AND LIQUIDATION OF THE ASSETS

DIVISION I

APPRECIATION OF THE ASSETS

Article 1205 – **Preparation of balance sheet** - The balance sheet of the insolvent, either presented by him, or by the administrator, shall be accompanied by minute description of different items of the assets.

Article 1206 – **Valuation of assets in case of disagreement by administrator** - When handing over of the assets has been done privately to the administrator and if he disagrees with the valuation done by the debtor to any item of the assets, he shall report the matter to the judge, who may direct judicial valuation, if found necessary; valuation may also be done on the application of any creditor.

Article 1207 – **Recovery of credits** - The credits of the debtor shall be recovered by the administrator diligently, privately or through court, depending upon the circumstances, starting from date of the maturity till the verification of the credits, and thereafter the judge, after hearing the administrator, shall decide what is found fit and secure and convenient liquidation of what remains, and he may also grant moratorium for the payment, direct the auction of debts or declare the debt non recoverable and cancel the entries in the revenue office about the record of the debts.§ Sole Paragraph: The administrator shall produce in the main file of insolvency a list of the credits receivable by the debtor, with the specification each of them, and of the result of the steps taken to recover the same in the suit

which are pending for that purpose, and give his view over the convenience of instituting fresh suits or not.

Article 1208 – **Recovery of sale of assets given on pledge or subject to lawful retention** - The assets of the debtor given in pledge, legally created, or subject to lawful retention may, upon the application of the administrator and after hearing the administrator and the debtor may, at any time be discharged or sold, and in such case the credits with pledge shall be notified to be produced at the time of auction, failing which there will be seizure and loss of privilege, in addition to criminal liabilities incurred by them.

DIVISION II

LIQUIDATIONS OF THE ASSETS

Article 1209 – **Sale of assets and rights** - After the verification of the liabilities, sale of all the assets and rights of the estate may take place until complete liquidation.

§ 1: Once the right of restitution or separation of assets under indivision or others over which the debtor had right or any other right undefined, only the right which the debtor had over the assets shall be taken for the purpose of the liquidation.

§ 2: If there is appeal pending from the judgment directing restitution or separation of the assets or protest by way of suit pending about the restitution or separation, no liquidation shall take place of those assets until there is a decision passed which has become res judicata, save when there is no decision which has become res judicata, except the cases of the consent of the appellant or protester and anticipated sale in accordance with article 1151.

Article 1210 – **Who effects the liquidation** - The liquidation of the assets shall be done by the administrator under supervision of syndic, in accordance with articles mentioned herein under and within the time fixed by the judge, and which may be extended once for not more than half of the time originally fixed.

Article 1211 – **Sale by auction** - The liquidation of the assets of the estate shall be done by way of auction, either in total, or lots or parcels, which ever may be more advantages, and the sale should be done in auction, announcing with due anticipation laid for judicial auctions and notice of which shall be given to the public by way of publication and by notices published in the local press.

Article 1212 – **Sale by proposals in sealed covers** - When it is found more convenient, the liquidation of all or part of the assets may be done by sealed tenders, and in such case notice shall be published in two successive issues of the newspapers of the locality, inviting competitors and fixing the period within which sealed proposals shall be received. The notices published shall specify which assets are to be liquidated and as well as the address of the person to whom the proposals are to be submitted, and the day, hour and local in which the opening will take place.§ 1: The proposals shall be opened by the trustee in the presence of competitors and creditors who are present and record shall be prepared of all the happenings.

§ 2: The trustee, assisted of administrator, shall appreciate advantages or disadvantages of the proposals and he may resolve the acceptance in the very act of the auction or shall fix the time, never exceeding 8 days, for the purpose of appreciation, but in such case day, time and place for acceptance or rejection may be made public,

§ 3: After the acceptance of any proposal, the proposer, if he is present, shall effect the deposit referred to in the subsequent articles and if he has not appeared, he shall be served notice to effect the payment within 3 days, failing which, he shall be liable or compensation for losses and damages.

Article 1213 – **Deposit of part of price** - No award shall be made without the auctioneer or proposer depositing at least 10% of the price.

Article 1214 – **Private Sale** - In case of manifest benefit to the estate, the sale of any assets may be effected privately, but in such case with prior necessary permission, duly supported, of the trustee shall be necessary, preceded by hearing of the debtor, if available in the Judicial division.§ Sole Paragraph: If it is a case of immovables, the permission will be always special and individual, except where several immovable assets were attached to operate one and the same industry.

Article 1215 – **External formalities of extra judicial sales** - In the extra judicial sales of assets of the estate, in respect of documentation, the formalities provided in the law for alienation amongst the private persons, shall be observed and the manager shall intervene as representative of the estate.

Article 1216 – **Exemption of deposit to creditors and guarantors of light of preference** - To the creditors who acquire the assets of the estate and to the persons who have right of preference, the provision of articles 906 and 892, respectively, shall be applicable.

Article 1217 – **Complaints against irregularities in liquidation** - Against irregular or prejudicial acts done in the course of liquidation, the creditors may address in writing complaints or objections to the judge of bankruptcy who after hearing the trustee shall decide.

Article 1218 – **Deposit of the proceeds of liquidation** - When the process of liquidation is in progress, its proceeds shall be deposited in the judicial Treasury in a special account payable at the order of the manager, who may withdraw the amounts indispensible to carry out expenditure of the liquidation and administration, and the respective cheques shall be counter signed by the administrator.

§ Sole Paragraph: From the deposits referred to in this articles no percentage is to be drawn in favour of the treasurer, as the same shall be determined in the final account but only in relation to costs and stamps which have been calculated.

Article 1219 – **Transfer of balance and convening meeting of creditors** - After the liquidation is over, the manager shall transfer immediately to the account of the court and at the order of the judge the balance existing in the special account preferred to in the preceding articles and shall give the accounts of all the acts to the assembly of the creditors.

§ Sole Paragraph: The assembly shall be convened by the manager by way of registered letters and notices published in one of the newspapers of the locality with minimum anticipation of 8 days designating therein the time, hour, place fixed by the administrator for the appearance of the creditors and also the place where the accounts have been kept for perusal with books and other papers to be examined by any interested party within the period of not less than 10 days.

Article 1220 – **Approval of debts by creditors' meeting** - The assembly shall be presided over by the syndic and in that the creditors shall deliberate, by majority of votes, about the approval of accounts and over the remuneration to be paid to the manager, which shall not exceed 5% of the amount recovered. To each lot of 1000 escudos shall correspond one vote. The creditors for lesser amount may join together and appoint one representative provided that total amount be equal or superior to 1000 escudos.

§ Sole Paragraph: If no creditor appears personally or through representative, the syndic will decide on the approval of the account and the remuneration of the manager.

Article 1221 – **Minutes of proceedings** - The deliberations of the assembly shall be recorded in the book and shall be sign by all the creditors present and who want to participate and shall be handed over by the manager to the office of the court to be annexed to the file.

Article 1222 – **Objection against deliberations** - Objection Any interested party may complain against the deliberations taken in the assembly and referred to in the preceding articles, and the objection shall be decided by the judge of the bankruptcy after hearing the syndic and leading evidence which may be necessary.

Article 1223 – **Disposal of books and liquidation records** - After the accounts are approved, the books and other papers concerning the liquidation shall be put in bundles and handed over to the chamber of managers of the bankruptcy, wherever they are available and to be kept in the archives of the respective office. Outside Lisbon and Porto the books and papers shall be compiled in bundles and kept in the Court office with reference of the number of proceedings.

SUB-SECTION VII

PAYMENT TO THE CREDITORS

Article 1224 – **Payment to secure creditors** - After realization of money from the disposal of the assets covered by mortgage or any other security, immediately payment shall be made to the respective creditors up to the limit where the proceeds of the assets is sufficient to pay the creditors and in case the creditors are not fully paid they are included along with unsecured creditors to be shared amongst all, independent of any formality.

Article 1225 – **Proposal and chart of apportionment** - Within 5 days subsequent to the disposal of the estate the manager shall present to be annexed to the file of the insolvency the proposal and chart of pro rata apportionment which he proposes to do.

Such chart shall be open for inspection to the Public Ministry, for 3 days, to give his say on its accuracy and conformity with conditions of verification and marshalling of the creditors and disposal of the assets and thereafter payment shall be ordered of which are found legal and respective cheque shall be issued.

Article 1226 – **Partial and successive apportionment** - Before the liquidation of the total estate, it is incumbent to make pro rata apportionment whenever there is a deposit of amount which secures apportionment of not less than 5%.

§ 1: The operation of the apportionment shall be repeated as soon as new liquidations come into plea either are to be attended in view of favourable disposals of the appeals or success in the pending suits.
§ 2: There having been excess in the liquidation, at the end, of such small amount which may not be sufficient to cover all the expenses of the fresh apportionment, the administrator may permit that they be credited to the funds of any charity establishment in the judicial division and if there is none, in the funds of the court.

Article 1227 – **Reserve for costs, stamp duty and expenses** - The payments referred to in the preceding articles and of article 1224 shall be directed in such a manner that there always is a deposit of 25% of net product of each of the properties, for the security of costs, stamps and other expenses which shall be calculated at the end.

Article 1228 – **Regime to be observed when the verification is not final** - When there is an appeal pending against judgment of verification and marshalling of credits or protest on account of pending suit, it is considered that the respective credits are asserted conditionally to be attended in the apportionment at later stage. After the final judgment is delivered and if it is favourable to the appellants or protesters, they shall withdraw the amounts to which they have rights; if not, again there shall be pro rata apportionment amongst the creditors.

§ Sole Paragraph: Whoever by his appeal or protest had stopped the withdrawal of any amount and thereafter is not successful, shall indemnify the estate paying the interest for the delayed payment.

Article 1229 – **Mode of payment in extra judicial liquidation** - All the payments arising from disposal of assets outside the court shall be made by way of cheques issued in favour of the account of the court.

SUB-SECTION VIII

ACCOUNTS OF THE ADMINISTRATION

Article 1230 – **When does the administrator have to furnish accounts** - The manager shall present his accounts within 10 days after his administration comes to an end and besides wherever he has been directed to do so and the time may be extended if there is a legitimate ground.

Article 1231 – **Procedure to compel rendering of accounts** - If the manager does not voluntarily render the accounts, he shall be served with the notice, suo-moto or upon the application of any creditor, of the debtor or of the Public Ministry, in order that he presents them within the period of 10 days and failing which, they shall be prepared by head of the office of the court, taking into consideration the proceeds of the liquidation and expenditure authorized and justified in the proceedings.

Once the accounts are liquidated in the manner indicated in this article, the administrator shall be directed to pay the short fall which arises that from and shall loose the right to the remuneration.

Article 1232 – **Cases in which accounts are rendered by heirs or representatives of administrator** – In the event of death or disappearance or the manager having become incapable, the accounts shall be rendered by his heirs or representatives.

Article 1233 – **Organization of account** – The accounts shall be submitted in the form of a current account showing at the end all the income and expenditure, wherefrom easily the position of the estate of the debtor are depicted and before they are presented they shall be submitted for the appreciation of the administrator, in order that he expresses his opinion thereon.

The accounts shall be accompanied by all the supporting documents, duly numbered and different items of the accounts indicating the number of the documents which support them.

Article 1234 – **Chart to be presented by Court office** – After the receipt of the accounts, they shall be processed by way of appendage, and thereafter the office shall produce one map indicating the dates of principal acts of the insolvency in which the manager has intervened, total amount of the pro rata payments and amount which is recovered from the different parts of the assets.

Article 1235 – **Summons to the creditors, the insolvent – say of the syndic and Public Ministry** - After satisfying what is provided in the preceding articles, summons shall be issued to the creditors and to the debtor by publication of 8 days, in order to give their say on the accounts, and for this purpose the syndic as well as the Public Ministry shall have right to give their say and thereafter file will be placed before the judge for trial.

SUB-SECTION IX

PREVENTIVE REMEDIES TO SUSPEND THE INSOLVENCY

DIVISION I

INSOLVENCY COMPOSITION

SUB-DIVISION I

GENERAL PROVISIONS

Article 1236 – **Who can initiate a composition** - A businessman debtor or his heirs and representatives may enter into with composition with lawful creditors of the debtor, without privilege or preference, not less than absolute majority, representing, at least 2/3rd or 3/4th" of totality of the credits also neither preferential nor privileged, as per the balance sheet and he may also propose to one group of the creditors by his exclusive initiative, in accordance with steps provided in this sub-section.

§ Sole Paragraph: The composition is preventive or suspensive, depending upon whether it is presented to the court before or after the declaration of the bankruptcy.

Article 1237 – **Number of creditors and credit representation required to admit composition**– In order that a proposal of composition be admitted it is necessary that the same may be accepted by absolute majority of the creditors and that the acceptors represent 2/3rd of totality of the credits reflected in the balance sheet, if the percentage offered is 50% or higher than that and 3 quarters if the percentage is lesser.

Article 1238 – **Need of fresh consent in case of death of proposer** - In the event of death of the proposer before the final approval of the composition, the same shall not be approved without fresh consent of the creditors as per legal number and representation.

Article 1239 – **Bar on composition by charged or convicted businessman** - To the businessman who is charged or convicted by the offense of fraudulent insolvency it is not open to propose composition until the charge is against him is pending or redeemed or pardoned.

Article 1240 – **Bar on new composition before lapse of one year** - No fresh composition shall be admitted unless one year passed after complete fulfillment of the previous composition.

Article 1241 – **Effect of approval of composition** - The approval of the composition is compulsory to all the creditors without privilege and without preference, including those who have not put forth their claims for the verification of their credits or have not been indicated in the balance sheet of the composition provided that they are previous to presentation of the same to the court, even though the actual fulfillment of the obligations becomes effective at subsequent date.

Article 1242 – **Form and registration of composition** - The proposal of composition shall be submitted by way of authentic document or authenticated document and shall be provisionally registered in the office of conservatory of the commercial registration, at the instance of the Public Ministry as soon as order is passed on the application showing the receipts.

Such registration shall be converted into definitive or cancelled depending upon whether respective composition is approved or rejected by judgment which has become res-judicata.

Article 1243 – **Bar on suits or executions** - After receipt and registration of the composition, and until the same is not rejected, no creditors by a previous credit figuring in the balance sheet

shall file suit or execution nor prosecute the party to the composition.

The creditors for the credit not figuring in the balance sheet are not entitled, even though they have obtained the judgment, to prosecute or continue with the pending execution.

§ Sole Paragraph: From those are excepted when there is no bankruptcy declared, the privileged creditors and preferential creditors, except if they have accepted the composition for any such credits. The seizure, attachment and judicial mortgage do not turn the respective credits into preferential.

Article 1244– Insolvency of the applicant - or party to composition - Upon the receipt of the approved composition, the creditors with credit previous to presentation of the composition may apply for declaration of bankruptcy of the applicant or party to the composition, in case of escape or absence from the establishment, in accordance with clause no. 2 of article 1136, or if he, on account of dissipation or loss of assets or by any abusive conduct, demonstrates manifest intent to defraud the creditors and to frustrate the fulfillment of the obligations of the composition.§ Sole Paragraph: To the declaration of bankruptcy in cases covered by this article objections may be raised, meant to challenge its grounds, within the period and by the procedure laid down in articles 1147 and following.

Article 1245 – **Rights of creditor by instrument of joint liability who accepts composition with any other joint debtor** - The credit by way of bills of exchange or by any other debt instrument with joint liability who accepts the composition with any other joint debtor retains his right against the

remaining in relation to parties to the composition, being liable for the difference between percentage of composition and the totality of the liability.

Article 1246 – **Consequences of the acceptance of composition by a privileged or preferred creditor** - The creditor who accepts the composition, looses right to any preference or privilege which was entitled, except where the acceptance is limited to other joint credit.

Article 1247 – **Sanction against private agreement contrary to the composition** - All the agreements or contracts made by the debtor with the creditor who had accepted the composition contrary to or beyond what is stipulated in the composition are null and void.

§ Sole Paragraph: The creditor who got from the proposer of the composition any special advantage over other creditors shall be directed to make payment in their favour, one some equal to 5 times the benefit obtained.

Article 1248 – **Issuing of bills of exchange or promisory notes pursuant to composition** -After the judgment approving the composition had become res judicata, the debtor, party to the composition visa vis that to any other creditor who are subject to the same and seek enforcement are bound to accept the bills of exchange or promissory notes for the amount and period agreed upon as per the composition shall have right, it being incumbent that in each of the such debt instruments may express mention what is the amount as per the composition and what is the percentage was obtained in relation to the original credit which shall be specifically mentioned.§ 1: If there is more than one installment to be paid, specific mention shall be made of the number of the instrument in respect of each of them.

§ 2: When the party to the composition has accepted bills of exchange or issue promissory notes in accordance with this article, the creditor is liable to deliver to him the receipt of such instrument.

Article 1249 – **Insolvency resulting from rejection of composition** - The judgment which rejects the composition shall declare at the same time the bankruptcy of the applicant or shall proceed with further steps if such declaration made.

§ Sole Paragraph: If the composition is rejected in appeal, the bankruptcy shall be declared by the Trial Court.

Article 1250 – **Need to justify regular investments of amounts in balance sheet** - The party to the composition who becomes bankrupt before payment to the creditors of the respective percentages shall justify the regular investment of the amounts as per the balance sheet read with the composition, failing which the bankruptcy will be classified as fraudulent.

§ Sole Paragraph: The creditors of the amount prior to presentation of the composition, who accepted it, are not entitled to compete with bankruptcy save and accept towards the amount which has not received the stipulated percentage, and those who have not accepted it may compete for whatever they have not received from the totality of their original credits.

SUB-DIVISION II

PREVENTIVE COMPOSITION

Article 1251 – **Requirements** - A proposal for a preventive composition is not admissible, wherein the debtor offers percentage below 40% of the totality of the amounts payable in the two subsequent years or at 50% if the period is longer, but not beyond 3 years.

§ 1: If the payment of the percentage offered is to be tendered within 2 years, at first stage shall be payment of minimum 1/3rd ; if the payment is to be done for period of 3 years, in the first year minimum 1/5th is payable and in the second year minimum 1/3rd.

§ 2: The concession on the composition may be granted by the creditors subject to the clause“reserving right for better fortune”, which shall have effect for a period of 20 years.

§ 3: The debtor who has subjected to the clause referred to in the preceding paragraph shall be liable to make the payments proportionately to the creditors parties to the composition, without prejudice to the new creditors who shall have preference.

Article 1252 – **Competent Court** - The proposal of the composition shall be presented to the court of the jurisdiction where the businessman has his principal place or in the absence of the same, of his domicile and which shall contain the indication of the percentage offered under period and manner as to how the payment shall he made.

§ Sole paragraph: The proposal shall be accompanied by balance sheet of the credits and debts and nominal list of the creditors, with the indication of their domicile and nature and quantum of the credits.

Article 1253 – **Production of books of accounts** - With the proposal of the composition the party to the composition shall present his books relating to the last 3 years of his business or period which he has exercised, if it is more recent.

§ Sole Paragraph: The books shall be immediately closed writing therein by the office the record, it shall be signed by the judge and the same shall be handed over back to the debtor, who shall be liable to produce them in the manner provided in this subsection.

Article 1254 – **Notice to debtor to accept the composition proposed by creditors** - When the proposal is on the part of a group of creditors, the debtor shall be notified to declare whether he accepts the same, and in the affirmative, he shall take steps in accordance with previous article and of sole paragraph of article 1252.

Article 1255 – **Admission or rejection by Court** - After the proposal is received, the papers shall be placed before the judge for admission or rejection.

The proposal shall be rejected if the same has not been submitted in accordance with previous articles or when on simple perusal of the documents it is found that it does not satisfy the requirements of the law.

Article 1256 – **Publication and content of admission order** - The order which admits the proposal of the composition shall be published by way of extract in one of the newspapers largely read in the locality and by affixation of the notice at the door of the domicile of the debtor and in the head office and branches of the establishment and in that following shall be observed: 1. An expert shall be appointed by the court, who shall be the administrator of the bankruptcy, if any;
2. Period shall be fixed, not less than 15 days not exceeding 30 days for the creditors to produce in the office of the court the application indicating the nature, amount source of their credits, supported by documents or declarations that there are no documents;
3. A date shall be fixed, subsequent to the period fixed in the preceding articles, for the discussion of the proposal in the meeting of the creditors, and also time and place where the meeting shall take place.

§ Sole paragraph: Appeal lies from the order which admits or rejects the composition.

Article 1257 – **Functions of Commissioner** - The commissioner appointed by the court shall have power to supervise the acts of the debtor in the administration of the business and management of the properties during the proceedings of the composition, and specially;

1. Issue under due registration, in the 8 days subsequent to his appointment, notices to all the creditors, informing them the period fixed in the clause no. 2 of the preceding article and of the date and time when the meeting shall take place;

2. To propose to the court the steps which are found fit to safeguard the interest of the creditors, when there may be apprehension of loss or dissipation of the properties;

3. To examine the commercial books of the debtor and express well reasoned opinion on the request for permission of the court to alienate the properties, in accordance with subsequent article;
4. To prepare and annex to the file, three days before the meeting of the creditors the report, with reasons, about the economic position of the debtor, the manner in which he administers his business, the causes which gave rise to the request for composition, the veracity of the credits indicated by the debtor or claimed by the creditors, possibility of fulfillment of the composition and as well as all other facts which may be useful to the creditors and may have influence in the decision to be taken in the respective meeting. In the report the commissioner shall express his opinion over the commercial bookkeeping of the debtor and its reflection in the balance sheet presented.

Article 1258 – **Position of the debtor during pendency of proceedings** - During the proceedings of the composition, the debtor retains the administration of his assets and of the running of his business, under the supervision of the commissioner appointed by the court; he however is not entitled to alienate or create burden on the immovables without permission from the court, preceded by opinion of the commissioner, nor dispose gratuitously any properties or rights, except for fulfilling a prior or subsequent obligation to provide alimony.

§ Sole paragraph: A breach of what has been provided in this article gives rise to the declaration of the bankruptcy and to the acts, the provision of article 1159 is applicable.

Article 1259 – **Production of Books** - During the period which runs from the time of the proposal till the meeting of the creditors, the debtor shall make available his books to any creditor who desires to examine the same.

§ Sole Paragraph: The creditors also are liable to produce their books in the court or outside the court for the clarification by the commissioner in relation to all transaction with the debtor.

Article 1260 – **Functioning of creditor's meeting** - The meeting of the creditors referred to in no. 3 of article 1256 shall take place in the court hall under the chairmanship of the judge and its work shall begin with the reading of the report of the commissioner, followed by discussion and voting on the proposal of the composition.

§ 1: The debtor is bound, save legal impediment, which shall be justify within 3 days, to appear in person at the meeting, and he may be assisted by an advocate, and he shall furnish all the informations and clarifications which may be sought, failing which it will be deemed that he has withdrawn his proposal and after the lapse of the period for the justification, he will be declared immediately to be in the status of bankruptcy.
§ 2: The votes of the creditors shall be mentioned in the records giving their names and which will be signed by all who have accepted the proposal.

Article 1261 – **Approval of composition or adjournment of meeting** - When all the creditors are present by themselves or through their attorney, and there being unanimity, the composition shall be approved by the court, if at the discussion the necessary majority in number or capital vise, is not present, the meeting may be postponed for further 15 days, upon application of the debtor and recording however in the minutes the names of the creditors who have accepted the proposal, and they are not entitled subsequently to modify-their votes.

Article 1262 – **New meeting** - In the fresh assembly final voting may be done and the debtor may produce till that date or on the date, the acceptances proved by authentic or authenticated documents, of the creditors who do not want or are not in position to attend.

If the composition does not secure the legal majority, the file will be presented to the court to declare bankruptcy which shall be continued in the proceeding of composition.

Article 1263 – **Objections to composition** - If the composition is accepted by the legal majority, the creditors who have not accepted it, may within next 8 days file objections individually or collectively expressing their views against the composition. Within same period objections may be presented by the Public Ministry, who shall be notified for such purpose.

§ Sole paragraph: In the objections, the existence, nature or quantum of any credit may be raised and which has bearing in the acceptance of the proposal and they may raise the ground to reject the proposal because the assets of the debtor are disproportionately low with the consent arrived at in such a manner that which is not give effect to the composition.

Article 1264 – **Contesting the objections** - Within 5 days subsequent to the period fixed in the previous articles, the applicants may or the creditors may contest the objections filed, following the steps what is provided for the decision on the verification of the credits.

Article 1265 – **Time limit for approval or rejection** - The approval or rejection of the composition shall take place within 10 days subsequent to the presentation of the files for delivering the judgment.

Article 1266 – **Appointment of supervisory council and its attributes** - In the judgment which approves the composition, a fiscal council shall be appointed, made up of three major creditors residents in the judicial division and of the recognized moral fitness.

It is the function of fiscal council to see that the composition is given effect to, and he may apply for rescission where ever is admitted by law or declaration of bankruptcy when any of the circumstances foreseen in article 1244 takes place, without prejudice to the exercise of the equal right by any creditor individually.

§ Sole paragraph: In order to perform its duties it is lawful for the fiscal council to examine the books of the debtor wherever it is found necessary.

Article 1267 – **Consequences of approval** - Once the composition is approved, the powers of the judicial commissioner comes to an end and the debtor shall regain his right of the disposition of his assets and free management of his business, without prejudice to the supervision as provided in previous article.

§ Sole paragraph: The judicial commissioner shall have remuneration which is fixed by the judge after hearing the debtor and it shall not exceed 2% of the assets.

Article 1268 – **Consequences of rejection** - The Judgment which rejects the composition shall declare also the bankruptcy of the applicant.

The composition shall always be rejected when it is found that it was accepted by some presumed creditor, that the credit of any creditor who had accepted it, was purposefully raised or that respective balance sheet was intentionally omitted or reduced the credit of any true creditor.

Any of such cases the debtor shall be charged for fraudulent bankruptcy and as accomplice, the assumed creditors or with purposefully increased credits.

§ Sole paragraph: What is provided in sole paragraph of article 1249 shall be applicable in this case.

Article 1269 – **Liability for objections in bad faith** - The objector applicant who fails and it is satisfied that he has acted in bad faith or he has employed means to secure from the debtor any advantage over the other creditors, shall be punished with fine and damages as per general law.

Article 1270 – **Appeal** - Appeal lies from the final judgment which approves or rejects the composition.

SUB DIVISION III

SUSPENSIVE COMPOSITION

Article 1271 – **At what stage suspensive composition may be proposed** - Once the bankruptcy is declared, it is lawful to present composition after the judgment of trial court is passed with verification of the credits.

Article 1272 – **Requirements** - Suspensive composition is not admissible with a percentage lower than 30% of the credits, unless accepted by totality of the creditors.

§ Sole paragraph: The payment shall be done within a period of not more than 3 years and what is provided in paragraph 1 of article 1251 shall be applicable.

Article 1273 – **Form of acceptance** - The acceptance of the composition by the creditors, jointly or severally shall be prepared in a document authentic or authenticated.

Article 1274 – **Duty to apply for approval** - Whoever has secured from the creditors suspensive composition shall apply for its approval, and article 1252 shall be followed.

Article 1275 – **Order of acceptance or rejection** - When the composition is produced in the proceeding of bankruptcy, order shall be passed accepting the same, except whereby plain inspection of documents it is found not to satisfy legal requirements.

§ Sole paragraph: Appeal shall lie from the order which accepts or rejects the composition.

Article 1276 – **Effect of acceptance** - The acceptance of the composition suspends the proceedings of the bankruptcy till they are approved or rejected, except as far as prosecution of the bankrupt and its effects.

Article 1277 – **Notice to creditors to object** - After accepting the composition, notice shall be issued to uncertain creditors and also to creditor who are certain but have not accepted it, by publication of 30 days published in the official gazette and newspaper of the locality, to file by means of objections whatever they consider as of their right in respect of the composition, and for that purpose the creditors who are certain shall be given notice by registered letters. The Public Ministry may also file objections within same time which shall be notified to it.

§ 1: The registered letters shall be sent by the applicant, who shall produce the list of the creditors who have been served the notice, with indication of the numbers of the respective postal registration to each of them and such document shall be preserved until rejection or approval of the composition if so directed. The absence of such notice is not ground for objection.

§ 2: If, within 30 days from the date of notices the proponent does not produce in the file documents of official gazette and newspaper with the publication of the notices, the office shall present the file to the judge and thereupon judgment will be passed rejecting the composition and directing that the file follows the ordinary steps of the bankruptcy proceedings. The same procedure shall be followed when on account of the fault of the debtor, the proceedings are not prosecuted for more than 30 days.

Article 1278 – **Say of the administrator** - Within the period of publication the administrator of the assets shall give his opinion duly supported with reasons over the legal condition of the composition and possibility of its fulfillment.

Article 1279 – **Contesting of the objections** - After the period for objections is over the applicant may within next 5 days, contest the same, and for remaining the steps prescribed for verification of credits is to be followed.

Article 1280 – **Composition proposed by creditors or administrator** - The composition with suspensive effects may also be proposed by the creditors or by initiative of the administrator of the bankruptcy.

The debtor shall be notified to declare whether he accepts and, in the case of acceptance, immediately date shall be fixed for the assembly of the creditors, by observing, for further steps, what is provided in articles 1260 and onwards.

SUB-DIVISION IV

ANNULMENT AND RESCISSION OF THE COMPOSITION

Article 1281 – **Annulment of composition** - The composition may be annulled by the court which has approved it, on the application of the creditor who by subsequent judgment which has become res-judicata, proves the existence of credit previous to presentation of the composition, when such credit has bearing in the legal representation as required in the article 1236.

§ Sole paragraph: The annulment releases the sureties and extinguishes any security furnished for the composition.

Article 1282 – **Rescission** - The composition may be rescinded by the court which approved it, on the application of any creditor, when the debtor has failed to comply with any of the obligations stipulated therein.

Before passing the judgment of rescission, the debtor or his surety may, or any other creditor party to the composition, who put an end to the case, satisfying to the applicant whatever was falling short in that and paying the costs.

§ Sole Paragraph: The rescission does not exonerate the sureties nor extinguishes any security furnished for the composition.

Article 1283 – **Notice to contest** - Once the annulment or rescission of the composition has been applied for, the debtor party to the composition shall be summoned and in case of the rescission, also the surety if there is one, within 5 days to contest, if willing, on pain of being ex-parte. After the expiry such period, with or without defence, the rescission will be ordered.

Article 1284 – **Consequence of annulment of rescission** - Once the composition is annulled or rescinded, the steps of proceeding for bankruptcy shall be followed and whenever the debtor has not been declared bankrupt, simultaneously the declaration of bankruptcy will be passed by the judgment.

Article 1285 – **Appeal from Judgment** - From the judgment of annulment or rescission of the composition appeal lies.

DIVISION II

AGREEMENT AMONGST CREDITORS

Article 1286 – **Terms and requisites of agreement** - The creditors of any businessman, whose bankruptcy has been or is in the condition to be declared, may, with the exemption to pay transfer tax and application of paragraph 1 and 2 of article 4 of law no. 11/04/1901, constitute a society by way of shares on the following terms;

a) In the constitution of the society the creditors who have taken part or intervened in the agreement shall take part and other parties may also participate;

b) The shares of the creditors shall be represented totally or partially by what is corresponding to their credits, with the deduction of subsisting liabilities with whom they have made composition and also may enter other persons with whom they have not entered into agreement;

c) The society shall retain the assets of the businessman to the extent it exceeds the payment of creditors with privilege and with preference; but the creditors who had taken part in the composition propose to retain the properties of the debtor over which there is preference or privilege they shall effect the respective payment or furnish the security for integral payment of the debt at the time of maturity,

d) The society shall be liable to satisfy the unsecured creditors who have not accepted the percentage fixed in the composition and for them the period of the payment shall be in accordance with article 1251 and 1272.

§ 1: The agreement is acceptable only of it has been accepted by absolute majority of creditors without privilege or without preference who represent 2/3rd of the unsecured creditors.

§ 2: The document of the agreement shall contain the clauses of future agreement with the society.

Article 1287 – **Time after compliance** - Where there is a composition already approved by the court, no agreement with the creditors shall be accepted until passage of more than 1 year after full compliance with the former agreement.

Article 1288 – **Applicability of provisions relating to compensation** - The agreement shall, for all the purpose deemed as preventive composition or suspensive composition, as the case may be, and shall be governed to the extent applicable by the provisions of the previous division with the exception of non application of the provisions relating to judicial commissioner and fiscal council and assembly of the creditors and all others which are contrary to what is provided in this division.

Article 1289 – **Duty to seek approval of court** - The creditors who have taken part in the agreement may apply for approval from the court and for that purpose one or more creditors who are parties to the agreement may be represented by any one of them while moving the application.

Article 1290 – **Notice to contest** - After the agreement is received, notice shall be issued to the debtor whose consent has not been taken to file objections by way of authentic document or authenticated and for same purpose the creditors who have not taken part in the agreement, shall be called even though they are privileged or with preference, and the provisions of article 1277 shall be applicable.

Also objections may be filed by the creditors of the share holder of limited liability of debtor society.

§ Sole paragraph: Further adhesions of the new creditors are admissible until the time fixed for filing objections.

Article 1291 – **Grounds of objection** - If the insolvency of the businessman has not been declared, it may be open to file objections on any of the grounds mentioned in the articles 1148. The ground of objections may, in particular be that the creditors who have not taken part have inferior advantages therein to liquidation in the proceedings of bankruptcy.

Article 1292 – **Proposal to increase percentage** - Until the deliberation of the tribunal, the creditors who accept the agreement, may propose increased in the percentage offered to the creditors who have not accepted it and in such case the approval shall embrace new percentage.

Article 1293 – **Means to avoid annulment** - If there is an application for annulment of the agreement based on article 1281 read with paragraph 1 of article 1286, the accepting creditors or the society constituted by them may, in terms of sole paragraph of article 1272, offer the payment which probably will be the same as the amount he would get in case of liquidation in bankruptcy proceedings.

The applicant shall be notified in the proceeding of approval of the agreement to, within 5 days, dispute the amount offered by way of objections failing which the claim for annulment shall be of no effect.

If the creditor files objections, the same may be contested within 5 days subsequent and thereafter without any further pleadings the procedure of article 1144 shall be applicable.

Article 1294 – **Effect of judgment which dismisses petition for Insolvency or revokes Insolvency declaration** - The final judgment, which holds non maintainable the prayer for declaration of bankruptcy of the businessman debtor or for revoking the judgment, which has granted such declaration, extinguishes such approval or annuls the same if there has been already approval.

§ Sole paragraph: The receipt of the agreement does not suspend the appeal from judgment which has been filed, of the objections opposing the judgment of declaration nor the appeal from decision passed on the appeal from judgment or in the objections.

Article 1295 – **Rescission of agreement** - The agreement may be rescinded only on the application of the creditors who have not accepted such agreement, where there is non compliance with the obligations stipulated therein.

Article 1296 – **Consequences of failure of society constituted by agreement amongst creditors** - The bankruptcy of the society created in accordance with previous articles amounts to bankruptcy of the businessman debtor, save where the facts which cause it are of exclusive responsibility of the society.

DIVISION III

MORATORIUM

Article 1297 – **Who can propose moratorium** - Before declaration of bankruptcy, or thereafter once the judgment with verification of the credits is passed the debtor may propose moratorium to his creditors non preferential nor privileged and may propose also to a group of creditors, on his own initiative in accordance with provisions prescribed in the following articles.

Article 1298 – **Requirements of moratorium** - The moratorium must be accepted by majority of creditors who represent, at least 2/3rd of totality of the unsecured creditors, if it is for 1 year and 3/4th if it is for larger period, never exceeding 3 years.

Article 1299 – **Regulation of moratorium** - The provisions of substantive law as well as procedure law which govern composition shall applicable to the moratorium to the extent no contrary provisions is found in this division.

SUB SECTION X

CLASSIFICATION OF BANKRUPTCY

Article 1300 – **Kinds of Bankruptcy** - The bankruptcy shall be classified, depending upon the circumstances, as casual, negligent or fraudulent.

Article 1301 – **Casual bankruptcy** - The bankruptcy is casual when the bankrupt having acted with honest diligence in the management of the business.

Article 1302 – **Bankruptcy due to negligence** - Bankruptcy is negligent when it arises from carelessness, recklessness or prodigality on the part of the bankrupt, when has disposed substantial part his business in gambling, and the bankrupt has failed to fulfill the provisions of the law which mandates regularity in book keeping and commercial transaction except if the

restriction in the business and rudimentary qualifications of the bankrupt excuse him from non fulfillment of the provisions.

§ 1: A banker who stops payments is presumed to be guilty of negligent bankruptcy.

§ 2: The presumption of the fault arising from non appearance before the court within 10 days mentioned in article 1139 may be disproved if it is found that there was just impediment.

Article 1303 – **Fraudulent bankruptcy** - The bankruptcy is fraudulent not only in the case foreseen in the article 1250, but also when the bankrupt after knowing the impossibility of satisfying his liabilities he pays to some of the creditors his dues or give them means to obtain advantage over others; when there is listing of fictitious or malicious omission of the assets in his balance sheet; when with the purpose of avoiding or delaying the bankruptcy proceedings, has purchased goods on credit with the intention of resale before payment of the debts for a price lower than the current in the market and in the event such resale have taken place; and in general when he shows sham acts or contracts with false dates or by any other manner done in bad faith causing prejudice to the creditors.

§ Sole paragraph: The bankruptcy of the brokers is always deemed as fraudulent.

Article 1304 – **Penalty for fraudulent or culpable bankruptcy** - The offence of fraudulent bankruptcy shall be punished with the penalty of two to eight years of the cellular prison or in alternative, temporary deportation and fine up to one year in both the cases; and in case of culpable bankruptcy with the prison of 2 years.

Article 1305 – **Proceedings for prosecution of the bankrupt and classification of bankruptcy**- The judge, as soon as goes through the facts which constitute presumption of negligence or fraud, shall direct initiation of prosecution of the bankrupt by way of appendage proceedings and classification of bankruptcy and shall direct that certified copy be annexed and thereafter carrying out necessary steps for inquiring about the truth of the same fact.

Article 1306 – **Provisional charge** - If the allegation of the facts indicating negligence or fraud are made in the initial petition, the court will appreciate the proof at the trial for the declaration of the bankruptcy, and note will be taken of the evidence led by the witnesses on the aspect of proof of negligence or fraud, and the presiding judge after being satisfied that the facts are proved shall pass the order framing provisional charge against the bankrupt and any other offenders and shall order the imprisonment. In the same order, the judge shall direct that certified copies of the evidence of the witness be taken and the answers given by the court as to the facts which constitutes the prosecution and as well as order of the charge and direct that the same be the basis for the prosecution of the bankrupt and classification of the bankruptcy.

§ Sole paragraph: After initiation of the criminal proceedings, the papers will be placed for the opinion of the Public Ministry and he will further prosecute the matter in accordance with the Criminal Procedure Code.

Article 1307 – **Framing the grounds of classification of bankruptcy** - After the investigation is concluded the file will be placed before the Public Ministry, for 48 hours in order to, within the period of 8 days, if satisfied that no other evidence is required to be led, frame the articles as to the classification of bankruptcy, indicating in detail the facts which demonstrate the liability of the accused persons, indicating immediately the witnesses and other proof on which charges based.

Any creditor proving his capacity, if his credit has not been verified may also indicate the articles of classification within the same period.

§ Sole paragraph: The certificate of criminal record shall be annexed to the file with articles of classification of bankruptcy or within next 10 days for interrogation of the accused in the court.

Article 1308 – **Acceptance or rejection of articles** - After the articles of classification of the bankruptcy are filed the file shall be placed before the judge in order that, within 5 days the articles of charge may be accepted or rejected passing the order of the indictment or maintaining what has been submitted, in accordance with Criminal Procedure Code.

If there is no circumstances evidence of the negligence or fraud, the file shall await further definitive classification of the bankruptcy.

Article 1309 – **Intimation of order of indictment** - The order of indictment shall be notified to the Public Ministry, to the creditors who have filed articles of the charge and to the indicted persons after they are detained or set to free on bail, and they may seek counter inquiry and also prefer appeal against the order of indictment in accordance with the law of Criminal procedure and in such case the appendage file prosecuting the bankrupt will sent to the superior court.

Article 1310 – **Attachment of proceedings** - If from the certificate of the criminal register record it is found that the bankrupt or any other criminal has been prosecuted in different court for the offence to which equal or lesser punishment is awardable, request will be made to the other court to send the criminal proceedings to the court of the bankruptcy.

If the offence as per the certificate of the criminal register is punishable with higher offence, the papers shall be sent to the court where higher punishment is awardable along with all the relevant papers in order that trail may proceed in the later court.

§ Sole paragraph: As soon as any criminal proceedings are received they shall be appended and presented for opinion of the Public Ministry, for a period of 48 hours the later shall frame the charge and also classification against the accused for all the offences. Within the same time whoever wants to prosecute the accused for the same offence may frame the charge also except if he has already submitted the charge.

Article 1311 – **Notice to contest** - As soon as the order of indictment framing the charge has become res judicata, all the accused shall be summoned in order that they may submit their defence and produce their list of witnesses.

§ Sole paragraph: The number of witnesses of the defence shall not exceed the number which the prosecution is entitled to produce. If there are many accused, each accused may produce witnesses up to the same limit.

Article 1312 – **Summoning by public notices** - Any accused who is prosecuted has not been detained nor he has appeared within 60 days from the date of indictment, shall be summoned by way of publication of 30 days in order that within 15 days he may produce his defence and witnesses as per previous article and he is entitled to appoint his advocate failing which the court shall appoint assigned counsel who shall take up his defence until the accused puts in appearance or appoints his advocate.

Article 1313 – **Adding to or changing list of witnesses** - The list of witnesses of the prosecution or of the defence may be increased or changed, provided that the addition or change is notified to the adversary till 3 days before the date fixed for the trial, however, no witnesses will be produced when he is outside the Judicial division except where he undertakes to produce the witnesses independent of summons.

Article 1314 – **Judgment** - After the steps referred to in the preceding articles are over the trial of the accused shall take place and procedure of Criminal case shall be followed.

Article 1315 – **Duty of accused to appear** - The accused should appear personally for the trial for which purpose they shall be summoned, and when they are absentees notice will be issued by publication.

§ Sole paragraph: If any of the accused does not put appearance, fresh date for his appearance shall be fixed, issuing warrant against him. If even in the later date the accused does not put appearance, the trial shall proceed ex parte.

Article 1316 – **Time limit for Public Ministry and Creditor to apply for criminal proceedings** - Within 15 days from the time of publication of the judgment approving the composition or the agreement or the publication of the order which directed pro rata payment or declare the insufficiency of the assets, the Public Ministry, failing which disciplinary proceedings may start and any other creditor may, whenever he is of the view that the bankruptcy was not casual, may apply for initiation of criminal proceedings for prosecution of the bankrupt and classification of the bankruptcy or further prosecution of the pending proceedings, by observing in one or other case what is provided in articles 1307 and following.

§ Sole paragraph : When there is no prima facie evidence that there is guilt or fraud, the Public Ministry, shall within the limitation and on the penalty prescribed in this article apply that the bankruptcy may be held as casual.

SUB-SECTION XI

END OF THE INTERDICTION AND REHABILITATION OF THE BANKRUPT

Article 1317 - **Circumstances for lifting the interdiction on an insolvent** -Interdiction of an insolvent shall be lifted in any of the following cases:-

1. When he has secured a settlement or agreement of the creditors and the judgment confirming the same has become final for want of appeal;
2. If he stands acquitted by full payment or waiver, in respect of all creditors who had claimed payment;
3. After a lapse of 5 years, if the insolvent estate stands extinguished, with complete absence of assets and after effecting payment of 50% to each of the creditors;
4. If more than 10 years have passed, showing payment of 25% to each of the creditors and after verifying the other circumstances of the proceeding sub-clause;
5. After lapse of more than 20 years and the insolvent estate being in the same way found to be totally inexistent and complete absence of assets.

Article 1318 - **Rehabilitation of the insolvent** -After lifting of the interdictions the rehabilitation of the insolvent shall also be decreed, when the insolvency has been classified as casual or when he has complied or the penalty which has been incurred by him by reason of the insolvency been due to his default or fraud has been lifted.

Article 1319 - **Procedure for lifting interdictions in cases under article 1317(1)** - The lifting of the interdiction in the case of art.1317 and the rehabilitation of the insolvent shall be decreed on the application of the interested party who must annex the document.

Article 1320 – **Lifting of Interdiction in other cases** - Whenever the vacating of interdiction is applied for in any of the other grounds of article 1317, after leading the evidence and hearing the administrator, if any, papers will be presented for the period of 48 hours to the Public Ministry, thereafter the proceedings will be placed before the court for orders.

§ Sole paragraph: From the judgment which has passed on the request on the bankrupt or his rehabilitation appeal lies.

Article 1321 – **Proceedings in which one should apply** - The vacating of the interdiction and rehabilitation of the bankrupt may be applied for only in the proceedings where such bankruptcy has been declared.

SUB-SECTION XII

SPECIAL PROVISIONS IN RELATION TO THE SOCIETIES

Article 1322 – **Separation between Insolvency of Society and its member** - The declaration of the bankruptcy of one or more members of a society does not imply the bankruptcy of the society.

Article 1323 – **Powers and duties of administrators** - The directors, administrators or managers of the societies of limited liability are subject to the obligation which in the proceedings of bankruptcy apply to the singular bankrupt; they shall be heard in case the law demands that the bankrupt should be heard; and they have locus standi to oppose the objections against bankruptcy and to refer the same appeals which the individual bankrupt is entitled to file.

Article 1324 – **Effect of Insolvency of society on members with unlimited liability** - The judgment which declares the bankruptcy of a society shall also declare the bankruptcy of all the members with unlimited liability.

§ 1: For the purpose of present article, the application for declaration of bankruptcy of the society shall declare the name, domicile, parish and Judicial division of origin of each of the members with unlimited liability who constitute the society.

§ 2: Where ever in a case of dissolution of a society it is provided that one or some of the members are exempted of the liability toward the debts, such an understanding though binding in between contracting members, will not come in the way of declaration of bankruptcy of the former, within the period fixed in article 1137 for debts prior to the said dissolution.

§ 3: The declaration of bankruptcy of one member may be objected on the special ground that the bankrupt does not satisfy such a capacity.

§ 4: If after the declaration of bankruptcy it is found that there are other members beside those who have declared to be bankrupt, by judgment such declaration shall be made applicable to them also.

Article 1325 – **Effect of bankruptcy of society for negligence or fraud on its administrators** -In the event the bankruptcy of a society with limited liability is classified as fraudulent or negligent, its directors, administrators or managers, as well as their accomplices, shall be indicted and tried in accordance with articles 1309 onwards.

Article 1326 – **Petition for voluntary declaration of Insolvency** - For the purposes of voluntary declaration of the bankruptcy the application shall be in writing by any member with unlimited liability or by respective administration; but, beside the documents prescribed in article 1140, there shall be also meeting of general assembly in which deliberation is taken for voluntary winding up.

Article 1327 – **Unity of administration and operation of assets** - The administration of the assets of the society shall be only one, but the assets shall be listed, preserved and quantified separately from those belonging to each of the members.

§ Sole paragraph: The creditor of the society shall be heard in respect of the assets of the society and they and personal creditors of the members in respect of the assets of the latter.

Article 1328 – **Objections to voluntary liquidation** - The declaration of the bankruptcy of a society in collective name, in mixed, per quotas, the application having been made for voluntarily winding up to the court, may be objected by any member who had voted against the voluntarily winding up.

Article 1329 – **Rights of instrument holders** - The bearer of the instruments of a society in the status of bankruptcy shall contribute to the respective bankruptcy assets by the face value of the instrument when known or when not known by nominal value of the obligations and there from deduction has been made to the extent there is amortization.

Article 1330 – **Distribution of proceeds amongst creditors of the society and of the members**- There being creditors of the society and creditors of the members with joint and unlimited liabilities,

the former shall be paid in preference to latter by the proceeds of the assets of the society, after satisfaction of the claims of any privileged creditors or credits backed by mortgage. If after payment to the creditors of the society, there is any balance in the assets of the society, such excess shall be distributed pro rata between different members in proportion of their participation in the society and their ratio of share-holding.

Article 1331 – **Concurrence between corporate and private creditors** - When however the assets of the society are not sufficient for the full payment to the creditors of the society they shall concur with private assets and in each of them for restitution of their advance in order that they are apportioned pro rata between creditors of the society and private members.

§ 1: If the sum total of the percentages of the creditors of the society in different assets, exceed the totality of the credits which are due, the later shall withdraw only original amount of such credits and the excess of over it shall be distributed by assets of the private members in proportion of their entry to the total mass.

§ 2: If the share to be liquidated belongs to each mass the proceeds shall be added to the private creditors and then it will be pro rata apportionment amongst the latter.

Article 1332 – **Payment to society creditors from members' assets** - If the total percentage towards the credits of the society in different assets is not sufficient to pay the creditors and there being some members who do not have private creditors, these members and their assets shall be liable for whatever relates to credits of the society.

Article 1333 – **Duty to compel members to contribute** - If the members have not applied for, at the time of declaration of the bankruptcy and agreed to share whatever is their liability, the administration of the bankruptcy shall compel them to do so.

Article 1334 – **Right to grant composition to the society or to members with unlimited liability** - In the society with a collective name and mixed society, the creditors may grant composition to the society or to one or more members of unlimited liability.

In the last case, assets which are not of the society but are of the members who have agreed to pay shall pass through the assets of the society and he shall not be liable to fulfill the obligations as per the composition and he shall be freed from joint liability vis-a-vis creditors of the mass.

Article 1335 – **Composition to societies with limited liability** - To the creditors of a society with limited responsibility, it is lawful to grant composition to the social entities.

The credits represented by the bearer instruments shall participate as general credits for calculation of percentage in the capital as required by article 1237; but for the purpose of calculation of numeric representation required by the same article, claim shall be considered only along with other creditors, bearers of the obligations which are supported by respective instruments figure in the composition.

Article 1336 – **Special laws saved** - The provision of the special laws governing specific societies are saved from the former provisions.

SUB-SECTION XIII
SPECIALTIES OF THE BANKRUPTCIES OF SMALL BUSINESSMAN

Article 1337 – **Limit to value for bankruptcies subject to summary terms** - In the bankruptcy value of which does not exceed 50,000 escudos the procedure laid down in this section shall be followed with the modifications embodied in the following articles.

§ 1: The valuation of the bankruptcy, for the purpose of this articles, shall be the assets of the businessman which is found from the balance sheet produced by him, or which is indicated in the petition, in the event bankruptcy has been applied for by any other creditor or by the Public Ministry.

§ 2: In the event any stage of the proceeding it is found that the valuation of the assets is superior to that fixed in this articles, for purpose of subsequent steps what is provided in the preceding subsections shall be followed.

Article 1338 – **Speciality of Judgment** - The trial of the bankruptcy shall be conducted by single judge, even in case it has to be preceded the hearing of the indicted and shall be concluded in the period of maximum 5 days from the date of the receipt of the petition.

Article 1339 – **Exemption from publication in Government Gazette** - The publication of the judgment declaring the bankruptcy is exempted; however the formalities prescribed in article 1144 shall be followed.

Article 1340 – **Seizure and sealing** - The seizure and the imposition of the seals, whenever takes place, shall be done, upon the order by the office, with the intervention of the administrator and of arbitrator appointed by the judge, and formalities prescribed for attachment shall be observed.

See also Article 838 and followings of this Code.

Article 1341 – **List of creditors and certificate of encumbrances** - The administrator in the next 3 days following the exhibition or seizure of the writing, shall present in the office the list of the creditors reflected in the writing or of which he has knowledge, indicating the respective residencies and the amount of the each credit, and then shall produce, as soon as possible the certified copies of the encumbrances referred to in article 1182 and issuing notice immediately by registered post to the creditors whose names are found.

Article 1342 – **Time of filing claims** - The time for filing the claims of the creditors shall not exceed 15 days, counted from the date of the first publications of the notices in the newspaper of the locality.

Article 1343 – **Bar of suits for verification, restitution and separation** - All the credits against debtor's estate shall be verified by the proceeding of filing the claims, and may only be presented by way of the suits referred to in article 1196 if the creditor within the time for putting the claims is found absent from the continent or island where the proceedings are pending.

Article 1344 – **Bar of letters and summons to witnesses** - In the claims for credits and their contestations by registered service is not to be undertaken or for leading evidence and the witnesses shall not be notified for appearance but shall be produced by the party who has indicated them.

Article 1345 – **Fixing of trial and judgment** - After the time to present the claim of the creditors, the file shall be put up before the court in order that within 24 hours order will be pass fixing the date within next 8 days for the trial.

§ Sole paragraph: The office, within 48 hours immediate to the receipt of the file, shall, by registered letter with acknowledgement due issue notice to the creditors who have put the claim and any other creditors whose names are found in the file communicating to them date time and place for the conducting the trial and till that time the file will be in the office for purpose of examination by any person who may have interest therein.

Article 1346 – **Report of administrator** - At the trial the administrator shall present a concise report in which he shall indicate the status of the estate and express his view on which date the status of bankruptcy started and its causes. In such report, it shall be read by the officer at the beginning of the trial, the administrator shall express his views over claimed puts by the creditors,

indicating to any others existence to which has come to his notice and it appears to be true which will be supported by his opinion.

Article 1347 – **Till when credits can be contested** - The contestations of the credits shall be filed one day before of the date fixed for the trial.

Article 1348 – **Oral judgment** - The judgment of verification and marshalling the creditors shall passed orally at the trial without narration and transcribe in the record of proceedings.

Article 1349 – **Time for liquidation** - The liquidation of the mass shall be done within maximum period of 45 days which may be extended, only once for a period not exceeding 15 days.

Article 1350 – **Ascertainment of percentage to creditors and issuing of cheques** - When the file is sent for drawing up the account, the office shall make the assessment, not only of the cost and stamp duty, but also of the percentage which is payable to each of the creditors and thereafter issuing cheque in their favour of the respective amounts independent of any application

§ Sole paragraph : The issuance of the cheque shall be communicated to the creditors by way of registered letter, with acknowledgement due and sent to the office; and if the referred cheques are not solicited from the office within period of 1 year from the date of issuance of the letter the respective amount shall be prescribed in favour of the funds of the court.

SUB SECTION XIV

FINAL PROVISIONS

Article 1351 – **Intervention of Public Ministry** – Public Ministry shall be heard or in cases specially provided for and all the time the judge finds it fit, to say in writing what comments it has to offer in the general interest of the creditors, and for that purpose the file is presented to him for a period of not exceeding 3 days, if specific time has not been fixed; but, when is not the applicant of the bankruptcy, it is not permitted to appeal from the decisions passed in the file, except if it is a case of classification of bankruptcy or of rehabilitation of the bankrupt.

Article 1352 – **Death of insolvent or creditor** - The death of the bankrupt or any of creditors does not stop the prosecution of the proceeding of the bankruptcy.

Article 1353 – **Parts of the proceedings** - The proceedings of the bankruptcy are constituted of one main proceeding and attached proceeding.

§ 1: The main proceeding shall start with an application or notice for declaration of the bankruptcy and, besides what is specially prescribed, contain a list with valuation of the properties and the description of the assets and how the payment to the creditors will be done.

§ 2: Such proceedings shall have following attached proceedings:

1. Objections to the bankruptcy;
2. Verification of the credits and the right to the restitution or separation of the assets and rural properties existing in the mass;
3. Rescission of the acts prejudicial to the creditors;
4. Indication of the bankrupt and classification of the bankruptcy;
5. Compositions or agreements;
6. Accounts of the administration;
7. Any other incidental proceedings which by its exceptional characters, the judge is of the view that it should be processed in separate.

Article 1354 – **Secrecy of Insolvency proceedings** - The proceedings of bankruptcy shall not make public until the bankrupt is notified or heard, nor even what is secret as per penal law.

SUB SECTION XV

INSOLVENCY OF NON BUSINESSMAN

Article 1355 – **Definition** - A non businessman debtor may be declared as insolvent when value of his assets is less than his debt.

§ Sole paragraph: If the debtor is married, the insolvency may be declared of both the spouses if the debt were also of the liability of the wife.

Article 1356 – **Presumed insolvency** - The insolvency is presumed:
1. When against the debtor there are two executions not objected to;
2. When there are proceedings of seizure on the ground that there is apprehension of insolvency, and he has not raised by way of objections, sufficiency of his assets or if he has raised it, the objections were rejected.

Article 1357 – **Applicability of provisions relating to Insolvency** - To the insolvency, there shall apply the provisions of the previous sub sections not related to the exercise of profession of businessman and save what is prescribed in the following articles.

Article 1358 – **Petition for voluntary insolvency** - For the purpose of declaration of voluntary insolvency of the debtor he shall present his application along with inventory and balance sheet, separating the active and the list of the creditors and respective credits.

Article 1359 – **Insolvency on application by creditors – Notice to debtor** - The creditor who proposes to have declaration of insolvency shall formulate his prayer in detail with his grounds justifying the existence of the credit and offering immediately the respective proves.

The debtor shall be summoned to within 5 days give his say over the prayer and its grounds.

Article 1360 – **Appointment of administrator** - The judgment which declares the insolvency shall appoint the administrator, who alongwith his inherent responsibilities shall also be the judicial receiver of the seized properties.

§ Sole paragraph: The administrator of the insolvency shall be one of the administrator of the bankruptcy, wherever is there.

Article 1361 – **Effect of declaration** - The declaration of insolvency has the effect of declaring the incapacity of the insolvent to administer and dispose his assets until total liquidation of his estate, but his previous capacity shall continue for all other acts which do not relate to the administration alienation or burdening of same assets and it has effect of consequent separation of the half share where the insolvent was married under regime of communion.

§ Sole paragraph: The incapacity of the insolvent shall be filed up by administrator and shall continue until undergoing the penalty in case of criminal punishment.

Article 1362 – **Grounds of objections** - Objections against the insolvency shall be admissible with any of the following grounds;
1. The insolvent has just and legal ground not to make the payment referred to in the judgment of declaration of insolvency;
2. The active is superior to the passive;
3. The insolvent has entered into composition already approved and the ground of insolvency was prior thereto.

Article 1363 – **Attachment of pending execution** – When in any execution instituted against the insolvent the date for auction is already fixed, the same shall take place and the proceeds shall be allotted to the mass. In such case as well as when there is a auction of the assets, the file shall be attached to that of the insolvency and the creditors may claim their credits, within legal period, in the same proceeding of the execution, until the same is not attached thereto or to the insolvency proceeding, within the period fixed for the claim of the credit.

§ Sole paragraph: The attachment of any proceedings to the insolvency proceedings shall be made independent of any account and payment of cost.

Article 1364 – **Summoning of wife of Insolvent** - After the seizure, the wife will be summoned to seek separation of the assets in accordance with article 1361.

§ 1: The separation shall be processed by way of attached proceedings, incorporating therein the record of the seizure, to become the description of the assets.
§ 2: The absence of summons directed in this article involves annulment of all the facts which have been done subsequent to the seizure. The nullity may be raised at any time and also cognizance may be taken suo moto.

- See also Articles 194 and 195 of this Code.

Article 1365 – **Liability of Insolvent for unpaid dues** - After the mass is liquidated without total payment to all the creditors, the insolvent shall continue to be liable for balance in debt. For the payment of this balance sheet, all the properties of insolvent shall be liable even those are supervening which may be attached in the same proceedings on the application of any creditor whose credit has been verified in the proceeding of insolvency, and thereafter the liquidation and distribution the respective proceeds to the creditors in proportion of their balance.

Article 1366 – **Composition with creditors** - The insolvent debtor or their legal representatives may enter into composition with his creditor, but only when there is declaration of insolvency after the verification of credits is over.

Article 1367 – **Penalty for fraudulent insolvency** - Fraudulent insolvency shall be punished with the imprisonment of one to two years.

Article 1368 – **Applicability to societies** - The provisions of this sub section are applicable to the societies of civil nature, which ever may be their form; and in case of fraudulent insolvency, they shall be indicted and trial their respective administrators.

CHAPTER XVII
INVENTORY

SECTION I
DECLARATIONS OF THE ADMINISTRATOR SUMMONS TO THE INTERESTED PARTIES, OBJECTIONS

Article 1369 - Petition for inventory. Declarations of administrator - The proceedings of inventory shall be admitted only on the basis of the respective death certificate and upon the application of any party, or of the Public Prosecutor where there is a party subject to orphan's jurisdiction.

The administrator shall be notified to take the oath of office that he shall discharge his duties diligently and faithfully and that he shall make the declarations as required by Article 2072 of the Civil Code, he shall also declare who are the persons who according to the law constitute the family council in case the inventory is subject to orphan's jurisdiction, whether there are values to be brought under collation and the name of persons who are to bring them, whether there are donees who are not to bring the values under collation, legatees and creditors and as to who they are.
§ 1: Where the death is not registered, the respective certificate shall be substituted in terms and by means of evidence admissible under the Code of Civil Registration.
§ 2: The word party includes heir, moiety partner of the deceased and the persons benefited with usufruct of part of the inheritance, without specification of value or of object.
§ 3: At the time of declarations, the administrator shall annex the documents referred to in Clauses 3 and 4 of Article 2072 of the Civil Code and others which may be relevant to the case.

§ 4: In order to appoint the administrator, the judge may make enquiry that he deems fit, and where, from the declarations of the person appointed, he is satisfied that the office devolves on any other person, the competent person shall be appointed.

- Corresponds to Sections 375 and 376 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.
- **Articles 1369-1447 -** Inventory Proceedings
  - Now covered by the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1370 - **Credit worthiness of the declarations of the administrator** - The declarations of the administrator, the initial and the subsequent as well are, deemed to be true until the contrary is proved, save when they are made in his own interest, or they relate to facts for which the law requires certain manner of proof or the agreement of all or of majority of the parties.

- Corresponds to Section 378 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1371 - **Summons to the parties** - The proceedings shall be dropped when from the declarations of the administrator it is found that there is no basis for the inventory.

Otherwise, time shall be fixed for the submission of the list of properties and of the documents which the administrator could not produce immediately and summons for the purpose of inventory shall be issued to the Public Prosecutor, to the heirs, to their spouses, except when the marriage was under the regime of absolute separation of properties, and to the legatees and creditors, there being, however, no need to issue summons to the administrator even though he is an heir or representative of the heir.

Notice shall be issued to the donees, irrespective of whether they are bound by collation or not, to appear on the day fixed to take the oath of office that they will discharge their duties as administrator in relation to the properties which have been gifted to them.

All such directions shall be recorded in the act of the declarations of the administrator, wherever possible.

§ 1: The lack of service of summons to the heirs, to their spouses and to the Public Prosecutor, is subject to the regime of the lack of service of summons to a defendant.

§ 2: In case the heirs are to be summoned by publication or by letter to be remitted to the colonies or to foreign countries, the proceedings of inventory are not stayed pending the expiry of the period of notice fixed in the summons.

§ 3: Where the inventory has been applied on the ground of absence, the proceedings shall be

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dropped if from the declarations of administrator and after hearing the applicant, or from the official information the judge is satisfied that the absence is at specific place, even if it is in a foreign country or in the colonies.

§ 4: The unknown legatees and creditors and those residing outside the jurisdiction of the court shall be summoned by substituted service.

- Corresponds to Section 387(1) & (2) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1372 - **Exparte hearing. Which notices are to be served on those who are exparte and those who are not exparte** - After the summonses have been served, the heirs or the moiety partner of the deceased, who are residing outside the seat of the court and do not appoint agent or do not choose domicile within the same seat and the legatees and creditors who are residing outside the jurisdiction of the court and do not appoint agent or do not choose domicile within the seat of the said court, shall be treated as exparte.

The heirs and the moiety partner, who are not treated exparte shall be notified of the final judgment and of the parties, meetings of the family council, licitations, sortitions, of the order directing the examination of the chart of partitions and of the order directing payment of tax on conveyance. To those who are treated exparte no notice will be served in case they are residing outside the jurisdiction of the court; in case they reside within the jurisdiction they shall be notified of the final judgment, of the order directing payment of tax on conveyance and of the order fixing date for licitations and for the conference or meeting of the family council meant for approval of the debts and mode of their payment.

The legatees who are not treated exparte, shall be notified of the final judgment and of the order fixing the day for the conference or for the family council meant for approval of the debts and mode

of their payment, when the entire inheritance is divided into legacies or when as result of the approval of the debts there is reduction of legacies, the creditors who are not treated exparte shall be notified of the order which considers their credits and of the order which fixes the date for the conference for the family council meant for the approval of the debts.

To the legatees and creditors who are treated exparte no notice of any kind will be issued.

Corresponds to Section 388 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1373 -Representation of the person under disability or of the absentee - The party under disability shall be represented in the inventory by its legal representative, and only when the latter competes with it for the partition, a curator shall be appointed who will represent the party in all the acts.

When the absentee at unknown place does not put in an appearance nor a curator has been appointed to take care of his estate shall also be represented by a curator.

§ 1: Where the person under disability can be represented by his parents, the family council shall not take part and the functions of the council shall be performed by the parents.

§ 2: After the proceedings are over, where the properties adjudicated to the absentee require administration, the same shall be entrusted to the curator already appointed, upon taking security, when deemed fit. The curator shall have, in relation to the said properties, powers and duties of provisional curator, and his administration shall come to an end, as soon as definitive curator is appointed.

Corresponds to Section 389 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1374 – Objections - The Public Prosecutor and any of the parties may, within ten days from the service of the summons, object to the inventory, contest his own competency or of other persons summoned, except when they have been summoned as creditors, and the competency of the administrator.

After the objection or the contest has been raised notice will be immediately issued to the party complained against and to the other parties. Alongwith the application or reply, it will be stated what evidence will be led, and after strictly necessary evidence is led, the question shall be immediately decided.

§ 1: It is lawful to raise partial objection to the inventory so as to confine the description and partition to certain properties, because the remaining have been legally partitioned.

§ 2: The objection to the inventory or the contest to the competency may be raised by the administrator within ten days from the order directing the service by summons.

§ 3: Where the objection or the contest is raised before the service of summons on all the heirs residing in the continent or in the island where the inventory is proceeding, no decision will be passed thereon without completion of the said service of summons and without giving notice to such heirs. On behalf of the heirs residing in the foreign countries or colonies, the Public Prosecutor shall be heard.

§ 4: The provision of this Article is equally applicable to the contest about competency of the administrator appointed during the pendency of the proceedings, and in such case the period of ten days shall be reckoned from the time of service of notice about the appointment or from the time it is presumed to have reached the knowledge of the contesting party.

Article 1375 - Application to qualify as party, legatee or creditor - Where anybody desires to be admitted in the inventory as party, legatee, or creditor, he may file his application at any time, indicating at once the evidence which shall be led.

After the notice is given to the administrator and to the parties to give their say, in the rest what is laid down in the preceding Article shall be observed.

- Corresponds to Section 395 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1376 - Exercise of the right of pre-emption - Where any of the heirs has made transfer of his share to a stranger, without giving preference to the co-heirs, the latter may exercise the right of pre-emption in the inventory proceedings, when the transferee makes an application to be brought on record in that capacity.

In the event there is more than one heir to exercise the right of pre-emption, the provision of the sole paragraph of Article 1514 shall be observed.

- Corresponds to Sections 284 and 397 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION II
LIST OF ASSETS, APPOINTMENT OF APPRAISERS APPRAISAL DESCRIPTION

Article 1377 - List of assets - The administrator shall submit the list of the properties within the time which may be fixed. The properties shall be listed itemwise with reference to numbers starting with active debts, securities, actionable claims, and then the money, foreign coins, and objects of gold, silver and precious metals and similar, thereafter all the remaining movables, and self moving movables, the immovables and finally the passive debts. In between each item a space of five lines shall be kept open.

Separate list shall be made of the properties which are to be appraised by different persons and means.

The lists shall be initialled and signed by the administrator, or by another person at his request, when he does not know and cannot write.

§ 1: The indication of the properties shall be done with reference to all the particulars necessary for their identification.

As to the immovables registered in the Land Registration Office, the serial number of description shall be mentioned.

§ 2: All the shares and the securities of the same type with their respective numbers, shall be included in one item, except those which have been issued by different entities. Also there shall be one item of movables of the same nature to which on account of their material, utility and their condition ought to be given the same value.

§ 3: The improvements belonging to the inheritance shall be described in kind when they can be separated from the property where they were introduced, and, if not, as active debts.

The improvements made by third party in the property of the inheritance shall be described as passive debt when they cannot be removed by one who made them.

- Corresponds to Section 399 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1378 - Properties value of which should be indicated by the administrator - Besides describing the properties, the administrator shall indicate their value in following cases:

1. When it is a case of properties registered in the land revenue records;
2. When it is a case of securities, foreign coins, and objects of gold, silver, precious metals and similar;
3. When it is a case of active debts and any actionable claim;
4. When it is a case of commercial or industrial establishment;
5. When it is a case of shares and parts and quotas in company.

§ 1: In case of clause 1 the value shall be that which arises from assessable income.

§ 2: In case of clause 3 the administrator shall declare the value when the debts or the right is ascertained; if not, he will mention them as unascertained.

§ 3: In case of clause 5, if the death of the estate- leaver caused dissolution of the company the value shall be that which results from the liquidation and till the same is not concluded, the parts and quotas in the company shall be described as unascertained; however the values which they had as per quotation or last balance sheet shall be mentioned.

§ 4: What is provided in this Article and the preceding shall equally be applicable to the donee.

Article 1379 - Examination and inspection of the file - Once the lists of the properties have been submitted or the time limit Within which they should have been submitted has expired, the file shall be made available, for examination, for forty-eight hours, to each of the heirs who have appointed advocate, as per order of their appointment, thereafter to the advocate of the donee and of the administrator, and finally inspection shall be given, for the same period to the Public Prosecutor, when the inventory is of orphan's jurisdiction.

During the period of examination or inspection the advocates and the Public Prosecutor may complain about lack of description of the properties, or give their say in case the administrator or the donee deny the existence of the properties in their possession or the duty to bring them under collation, or raise question as to which properties he received and has obligation to collate. The same thing may be done, by application, till the time of the end of examination, by the heirs and moiety partner who have not appointed advocates.

§ Sole paragraph: The lack of description of the properties may be raised subsequently at any time; but one who raises it shall satisfy that he got the knowledge of the existence of the properties only on the date he presented the application. There upon the procedure prescribed in the next Article shall be followed.

- Corresponds to Section 400 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1380 - Steps to be taken when lack of description of properties is complained of -Where there is complaint about the lack of description of the properties, notice shall be given to the administrator or to the donee to describe the properties or give their say.

If one who has been served with the notice, admits the existence of the properties and acknowledges that they belong to the inheritance, but is unable to describe them at once, he may apply that time be granted for the purpose of description.

In the event he denies the existence of the properties or declares that they do not belong to the inheritance, the judge shall invite the parties to lead the evidence they desire, hold the enquiry he deems necessary and finally decide whether the properties should be described.

Where the dispute cannot be summarily decided in terms above, because there is necessity of a larger investigation, the parties shall be directed to pursue ordinary remedy, and the inventory shall proceed in respect of other properties.

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§ Sole paragraph: The failure to file the reply within time, the notice having been served in person, amounts, for all purposes, to an admission of the existence of the properties and of the duty to describe them.

- Corresponds to Section 400(2), (3), (4), (5), (6) & (8) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1381 - Questions in respect of existence of properties or obligation to collate them -Where the administrator or the donee denies the existence of the properties in his possession or the duty to describe them or- collate them, or raises question as to which properties he received and had to collate, the dispute shall be decided on the strength of the documents produced and of any other evidence led by the parties which may be admissible or the enquiry ex-officio held. For such cases the provision of last sub-paragraph of the body of the preceding Article shall apply.

§ Sole paragraph: In the event the dispute cannot be decided in the respective inventory, the administrator or the donee shall not receive the properties allotted to them in the partition without furnishing security corresponding to the value of the properties in respect of which there is doubt.

Corresponds to Section 400(7) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1382 - Impossibility of description by administrator - Where the administrator declares that he is unable to describe some properties belonging to the inheritance, because they are found in the possession of a certain co-heir, the latter shall be given notice to describe them within the time which may be fixed.

After the notice is served, what is provided in Article 1380 shall be observed.

Article 1383 - Question in respect of exclusion of properties - Where any co-heir or any other person, claims the ownership of the properties described and prays that the same be excluded from the description, the dispute shall be decided, after hearing the administrator or the person who described the properties, if different, and after evidence is led and necessary information is obtained.

Corresponds to Section 402 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1384 - Concept of withholding. In which case the question may be decided in the inventory - It will be understood that there is withholding of the properties when there is fraud in the omission of description of the properties or in the denial of the existence of properties, omission of which is complained of.

§ Sole paragraph: It will be decided in the inventory whether there was withholding and respective penalty shall be inflicted, when the dispute can be decided on the strength of the replies of the parties and of the documents and particulars on the record of the file.

Otherwise, the parties shall be directed to pursue ordinary remedies.

Corresponds to Section 403 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1385 - Claim regarding credits - The creditor may claim in the inventory by simple application, the approval and payment of the debts, which have not been described by the administrator.

Such claim is admissible till the order is passed as to how the partition should be done, except where the respective creditor was personally summoned to take part in the inventory, because in such case he may put his claim only till the conference of the parties for approval of debts.§ Sole paragraph: The creditor served personally and who failed to put his claim till the conference of the parties is not prevented from claiming the payment by way of ordinary remedies; but in case he pursues these remedies and the defendants do not raise objection, he will be liable for the costs, whatever be the result of the proceeding.

Corresponds to Sections 395 and 407 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1386 - Denial in respect of active debt - Where any active debt, listed by the administrator is denied by the alleged debtor the description shall be maintained or eliminated after hearing the administrator and after obtaining all the necessary clarifications.

If the description is maintained, the debt shall be treated as litigious; in case of elimination, it is understood that right of the parties to demand the payment by competent means is safeguarded.

Corresponds to Sections 408 and 409(3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1387 - Appraisal of the properties by appraiser - Where there are no questions raised against the description or those which were raised have been decided, the appraisal of the properties shall be ordered within the time specified. The appraisal shall be done by only one

appraiser appointed by the judge; but he may appoint different appraisers for the appraisal of various types of properties if their special nature so demands.

The properties to which Article 1378 makes reference do not require appraisal.

Corresponds to Section 409 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1388 - Notes of result of appraisal - The appraiser shall be given the respective lists, alongwith the writ of appraisal.

Next to each item, in the space left open in the lists, he shall write the respective value, the alterations or additions to the list which in his opinion are necessary, and the particulars as to the basis of the appraisal.

Article 1389 - Appraisal by head of the office - Where there are properties the value of which is to be worked out by the head clerk, the file shall be remitted to him for such purpose immediately after the lists have been delivered to the appraiser. The value shall be worked out within five days.

Article 1390 - Final description - After the appraisal is finalised within eight days the office should make the final description of the properties and of the debts with indication of their value. For the description of movables of small value, even though they may be of different nature, lots shall be made, so that as far as possible in each item properties of the value not less than 50$00 (escudos) are included.

Corresponds to Section 411 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION III
CONFERENCE OF THE PARTIES

Article 1391 - Second examination and inspection of the file - After the description is made, what is provided in the first part of Article 1390 shall be observed.

During the time of examination or of the inspection it is lawful to complain against excessive valuation, make application to convene the conference of the parties and make declaration of licitation on certain and specified properties indicating the value offered over and above the valuation.

The same thing may be done, till the time of the examination, by the parties who have not appointed an advocate.

§ Sole paragraph: The licitations may be applied only till the end of the time for examinations. What is provided in the Article 1404 is accepted and the case, in which, as consequences of inofficiousness, properties gifted and bequeathed are to be returned to the mass of inheritance. In this case the licitations may be applied till the examination of the file for the purposes of form of partition.

Corresponds to Section 413 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1392 - Convening of family council - Where there is no room for the conference of the parties, immediately after the end of the examination period the family council shall be convened, when there is room for its intervention, in order to deliberate about licitation on the part of the persons under disability.

Corresponds to Section 414 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1393 - Subjects to be put forth for the conference of the parties - The conference of the parties shall be convened, ex-officio or upon an application, to deliberate about:

(a) Approval of the debts and manner of their payment;

(b) Entrustment of emphyteusis as a head;

(c) Complaint about excess valuation;

(d) Any doubts or difficulties which may have bearing in the determination of the partition The members of the family council shall be notified for the conference where the inventory is of orphan's

jurisdiction and there is room for its intervention, wherever deliberation is to take place over the matters mentioned in clause (a) and (b).

§ Sole paragraph: The deliberation by the parties present binds those who did not attend, save where they were not notified, when they ought to have been.

Corresponds to Section 415 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1394 - Approval of debts by all the parties - The passive debts, described or claimed, which are approved by the parties who are major and by the family council and by the parents on behalf of minors, are deemed as judicially recognized and their payment is to be ordered in the judgment confirming the partition, if till that time the respective amount is not paid.

§ Sole paragraph: When the law requires certain type of documentary proof to substantiate the existence of the debt, the family council or the representative of the person under disability shall not approve it unless such document is annexed or any other equivalent or superior evidence is produced.

Corresponds to Section 416 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1395 - Verification of the debts by the judge - Where the parties who are majors and the family council or the parents of the minor are opposed to the approval of the debt claimed, the judge shall, notwithstanding this, recognize its existence, provided the creditor produces sufficient documentary evidence for the purpose, except where the document is challenged as forged or stands nullified by other proof equivalent or superior or where there are questions raised which cannot be decided in the inventory.

Corresponds to Section 417 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1396 - Difference amongst the parties in respect of approval of debts - Where there is disagreement on the point of approval of the debts, described or claimed, amongst the parties who are major, or between them and family council or parents of the minors, the debt is considered as recognized to the extent of the share of those who approve them; as to the balance the creditor shall have to take recourse to ordinary remedies, except where, in terms of the preceding Article, it is possible to be satisfied about the existence of the debt in the proceedings of inventory itself.

Corresponds to Section 418 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1397 - Payment of debts approved by all - The debts which have become due and approved by all the parties have to be paid immediately, in case the creditor demands payment. Where there is no sufficient cash in the estate, the sale of the properties shall be ordered for the same purpose, and the judge shall indicate which of the properties are to be sold, as per the rule established in the civil law, when there is agreement in that respect amongst the parties who are majors, or between them and the family council and parents of the minors.

In the event the creditor wishes to receive in payment the properties separated for the sale, the same shall be adjudicated to him for the price which is fixed.

§ 1: The sale shall be extra judicial where all parties are in agreement, or, the inventory being of orphan's jurisdiction, the judge so decides, after hearing the family council, the representatives of minors and the Public Prosecutor. For such sale the provisions of Articles 887 and 888 shall be applicable.

§ 2: What is provided above is applicable equally to the debts which were considered by the judge in accordance with the provisions of Articles 1394 and 1396, in case the respective order has become final for want of appeal before the chart of partition is drawn up.

Corresponds to Section 419 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1398 - Payment of debts approved by some parties - Where the debt has become due but is approved only by some of the parties the creditor may demand from them the part of their

responsibility. The payment shall be effected immediately, there being cash, by the share of those who approved the debt; if there is no cash the payment shall be done after, the partition by way of properties allotted to the same parties.

- Corresponds to Section 420 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1399 - How the payment can be effected - Though the creditors do not demand the payment of the debts which have become due and approved, the parties may deliberate as to the manner in which they will be paid, either separating money or properties for the same purpose, or entrusting the payment to one or some of them, or deciding that the debt shall be shared by all in proportion of the assets each of them gets.

The parties may equally deliberate as to the manner of payment of the debts approved, but not yet become due.

§ 1: The deliberation which entrusts the payment of one or some of the parties bind the creditors; but in case they cannot get paid fully by the properties handed over to the party or parties entrusted with the payment, they can attach the properties adjudicated to other parties.

§ 2: In the event the debts have been approved only by some of the parties, acting for self, by the family council or by the parents of the minors, only they can deliberate as to the manner of payment.

- Corresponds to Section 421 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1400 - In which cases the legatees have right to decide about the debt - The legatees are competent to deliberate about the liabilities and their payment when all the inheritance is distributed by way of legacies or when the approval of the debts will give rise to diminution of the legacies.

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Article 1401 - Insolvency on account of excess of debts over the credits - Where the debts approved or recognized exceed the mass of inheritance, the procedure of insolvency which is deemed fit, shall be observed by making use of whatever has been already processed.

Article 1402 - Deliberation on the point of entrustment of emphyteusis as a head - Where some possessory title forms part of the inheritance, it shall be incumbent to deliberate to whom it shall be entrusted as ahead. If none of the parties wish to have the emphyteusis, the same shall be sold and the proceeds shall be divided; in case there is dispute about the emphyteusis and there is no agreement in respect of such allotment, the same shall be done by way of licitation which shall be done at once.

- Corresponds to Section 423 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1403 - Deliberation on the point of excessive valuation - Where any of the parties finds that the value given to any of the properties is excessive, he shall declare the value which he deems to be fair, and the conference shall deliberate as to whether the value should be maintained or the valuation should be decreased, and in the latter case the value to be given to the properties shall be fixed.

But the value shall not be decreased where any party declares that he accepts the thing as per the valuation, Such declaration will amount to licitation. Where more than one party accepts the valuation, there shall be licitation amongst them and the thing shall be adjudicated to one who offers the highest bid. In case the conference is unable to fix the value, the value already given shall subsist.

§ Sole Paragraph: The complaint against excessive valuation may be made orally in the conference.

- Corresponds to Section 424 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1404 - Deliberation of family council on behalf of person under disability - Where there is place for conference for any of the purposes mentioned in Article 1393, any party may till it lasts, declare orally that he intends to have licitation in specified properties.

The family council, if present, shall deliberate whether the persons under disability should take part in the licitation or take initiative about the same.

In case the family council is not to take part in the conference, its meeting shall be convened in order to deliberate, on the day of its conclusion and before the same, about the licitation on behalf of the persons under disability.

§ Sole paragraph: The deliberation of the family council shall be inserted in the minutes of the conference.

 Corresponds to Section 425 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION IV

SECOND APPRAISAL, LICITATIONS

Article 1405 - Second valuation of the thing in which some co-heir has major share - Where any party declares that he wishes to offer a bid in respect of a thing, which by its nature, and without detriment, cannot be divided, and in which any co-heir has major part by title other than by marriage, succession, gift or bequest of the estate- leaver, the licitation shall not take place, if such co-heir raised objection; but in such a case it is lawful to apply for second appraisal. Similarly second appraisal will take place when the respective co-heir applies for it, on the ground that the thing in which he has major part has been attributed an excessive value.

§ 1: The administrator may, at the time of the listing of the properties, raise the question of indivisibility. If he does so, the appraiser shall pronounce on the same at the time of the appraisal. When the question is raised subsequently and there is no agreement between the parties, the question shall be decided after hearing the appraiser.

In case the thing is not subject to appraisal by the appraiser, the question of indivisibility shall be decided, in the absence of agreement, by the judge, after inspection of the property by an expert appointed by him.

§ 2: What is provided in this Article and paragraph 1 is equally applicable to the case in which there are no forced heirs and the estate-leaver has gifted to one of the co-heirs, legal or testamentary, a major part of the thing, which by nature or without detriment cannot be divided, as well as to the case where, by force of law or of contract, the things cannot be subject of licitation.

Article 1406 - Second valuation of gifted properties - Where any party declares that he wishes to offer a bid in respect of things gifted by the deceased, the objection of the donee, irrespective of whether he is to collate or not, shall have the consequence of enabling the party to make application for second appraisal of the properties to which the declaration pertains.

After the second appraisal is done and the licitations in the other properties are over, the declaration will be of no effect if it is found that the donee is not bound to return any property.

When it is found that the gift is inofficious the following shall be observed:

a) Where the declaration falls on property susceptible of division, the licitation is admissible in respect of the part which the donee has to return, but the donee shall not be admitted to take part therein;

b) Where the declaration falls on property, which by its nature and without detriment, cannot be divided, the licitation is admissible in respect of it and the donee shall be admitted to take part therein;

c) If none of the conditions of both the preceding clauses are satisfied, the donee is permitted to choose, amongst the gifted properties, those necessary to fill up his share in the inheritance and charges on the gift, he shall return the properties in excess of his share, and in respect of properties returned, there shall be licitation, if applied for or has already been applied for but the donee shall not be admitted to take part therein.

§ 1: The objection of the donee should be made within the time of examination referred to in Article 1391, if at that time licitation on the gifted properties has already been applied for or during the conference itself, where the licitation is applied therein and the donee is present. If none of the above

conditions are satisfied, the donee shall be notified, before the licitation, to raise his objection, within three days.
The second appraisal may be applied for till the end of the licitations, if they take place, and if not till the time for examination of the file to give the say as to how the partition should be effected.§ 2: Irrespective of any declaration referred to in this Article, the donee may apply for second appraisal of some or all of the gifted properties when from the first appraisal it is found that the gift is inofficious.

- Corresponds to Section 426(1), (2) & (3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1407 - Second valuation of legacies - Where any party declares that he desires to offer a bid for the bequeathed properties, the legatee shall be notified to give his say within three days. If he objects, the licitation shall not take place, but it is lawful to the heirs to apply for second

appraisal of the properties, when their low valuation may affect them adversely.

In the absence of objection by the legatee, the licitation shall take place and the legatee shall have a right to the respective value.
§ Sole paragraph: What is provided in paragraph 1 of the preceding Article is applicable to the limitation to apply for second appraisal.

- Corresponds to Section 427 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1408 - Second valuation at the instance of legatee - Where from the first appraisal it is found that the legacy is inofficious, the legatee may, irrespective of the declaration referred to in the preceding article, apply for second appraisal either of the bequeathed properties or any other properties which have not been appraised for the second time.

The legatee may also apply for second valuation of other properties of the inheritance when it is found, on the strength of second valuation of bequeathed properties and of licitations, that the legacy has to be reduced on account of inofficiousness.
§ Sole paragraph: The second appraisal referred to in this Article may be applied for till the examination of the file to give the say as to how the partition should be effected.

- Corresponds to Sections 428 and 432 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1409 - Consequence of inofficiousness of legacy - Where the legacy is inofficious, the legatee shall return in specie the part in excess, and there can be licitation in respect of this part, to which the legatee shall not be admitted.

Where the bequeathed thing cannot be divided, by its nature or without detriment, the following shall be observed:
§ 1: The return shall be made in cash, when the inofficious part is lesser than the other part, and in such case any party may apply for the second valuation of the bequeathed thing;
§ 2: The return shall be done in specie if the inofficious part is equal or greater than the other part, and in such case the legatee may apply for the licitation over the bequeathed thing.

What is provided in clause (c) of Article 1406 is equally applicable to the legatee.

Article 1410 - Other cases of second valuation. Who is to do it - The second appraisal may take place only in the cases which are quoted above and in those referred to in Articles 1428 and 1447.

The said appraisal shall be done by three appraisers appointed by agreement between the parties. In the absence of agreement, the general rules shall be observed, it being understood that the co-heir, donee or legatee, referred to in Articles 1405, 1406 and 1407 form one side and the other parties with capacity or without, form the other side. The minors and similar persons shall be represented at the time of the appraisal by the parents, or by guardians and curators.

§ Sole paragraph. There being more than one co-heir, donee or legatee in the conditions of Articles 1405 to 1407, all of them who have common interest shall form one side against other parties.

- Corresponds to Section 433 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1411 - At what stage licitation is done - The licitation shall take place, if possible, on the same day of the conference of the parties and immediately thereafter.

It is lawful to withdraw the declaration of desire to offer a bid till the respective item is put to bid; but in such an event any other party shall be allowed to apply for the licitation on the same item.

- Corresponds to Section 434 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1412 - How the licitation is done - The licitation is an auction to which only heirs and the moiety partner spouse are admitted, except the cases where, in terms of preceding Articles, the donee or the legatee should also be admitted. It may fall over the properties of the inheritance which are not necessarily to be allotted to any particular party.

Each item shall be put to bid separately, except where all agree to form lots for that purpose, or where there are some which cannot be separated without inconvenience. Different parties, may, by agreement, offer a bid over the same item or lot so that it may be allotted to them in common in the partition.

- Corresponds to Section 429(3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1413 - Annulment of licitation - Where the Public Prosecutor is of the opinion that the representative of any party under disability does not defend or did not defend properly the interests of the person represented by him during the licitation, he shall apply immediately, or within five days from the date of the licitation that the act may be annulled in the respective part, setting out clearly the grounds of his challenge.

The party complained of, being heard, cognisance of the complaint will be taken and if decided in favour, the act shall be declared null and void, and the same shall be repeated and the representation of the person under disability shall be entrusted to the Public Prosecutor.

§ Sole paragraph: At the end of licitation of each day the Public Prosecutor may declare that he shall not apply for annulment of what has been done on that day.

- Corresponds to Section 430 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION V
PARTITION

Article 1414 - Third examination and inspection of the file. Order as to manner how the partition is to be effected - After the provisions of the preceding Articles have been complied with, the file shall be made available for the examination, for a period of five days, to the advocates of heirs and of the administrator, and then for the inspection, for the same period to the Public Prosecutor, in case the inventory is of orphan's jurisdiction, to give their say as to how the partition should be effected.

In the next ten days an order shall be passed directing as to how the partition should be effected. In the said order all the questions shall be decided and which have not been decided so far and which are necessary to be decided, for drawing the chart of partition, it being permissible to direct the parties to lead evidence which may be found necessary.

But where there are questions which require a large investigation, the parties shall be directed in this part to pursue normal remedies.

§ 1: The questions which are required to be decided in normal course of the inventory, shall not be left to be decided at the time of passing the order as to how the partition should be effected.§ 2: No special

appeal -shall lie from the order referred to in this Article; however, the order may be challenged in the final appeal against judgment confirming the partition.

- Corresponds to Section 431 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1415 - Rules in respect of filling up of the shares - In the allotment of the shares the following rules shall be observed:

a) The gifted properties or those on which highest bid is accepted in the licitation, shall be adjudicated to the respective donee or bidder;

b) To those who do not collate or to those whose bid is not accepted, properties of same kind and nature of the gifted and licited shall be allotted; and when this is not possible, what is provided in the Article 2110 of the Civil Code shall be complied with.

The same thing shall be observed in benefit of the co-heirs non legatees, when some of the heirs have been benefited with legacies;

c) The remaining properties shall be divided by sortition amongst the parties, in equal lots. d) The active debts which are litigious, those which are not sufficiently proved and the properties which have no value shall be distributed proportionately amongst the parties; the passive debts approved by all the parties shall be distributed in the same manner, except where another manner of payment is agreed upon.

- Corresponds to Section 435 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1416 - Chart of partition - After the file is received with the order referred to in Article 1414, the office shall draw the chart of partition, within eight days, in accordance with the same order and in accordance with the provision of the preceding Article.

For the purposes of the drawing of the chart, first of all, it will be found what is the total amount of the assets, by adding the values of each kind of properties as per appraisals and licitations and by deducting the passive debts, legacies and charges which ought to be discounted; thereupon the amount of the share of each party shall be worked out and the part which is allotted to the party in each type of properties; finally the allotment of each share will be done with reference to the numbers of the items of the description.

The lots which are to be drawn by sortition shall be designated by letters.

§ 1: The values shall be indicated by figures only. The numbers of the items of the description shall be shown in figures and by words and when they are continuous only the terminal numbers between which the numbering is comprised shall be noted. In case some fraction of the items fall to the co-heirs, such fraction shall be mentioned.

§ 2: In each lot the kind of properties of which it is comprised shall be shown.

§ 3: The judge shall initial each and every page of the chart and shall confirm the errata note of corrections, erasures or interlineations.

- Corresponds to Section 436(b) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1417 - Steps to be taken when the gifted properties or properties subject of licitation exceed the share of the party - Where the office finds, at the time of drawing the chart, that the properties gifted or taken by licitation exceed the share of the respective party or the disposable portion of the deceased, a note shall be recorded in the file, in the shape of a chart, indicating exactly what is the amount of the excess, and thereupon the following shall be observed: a)Where in between the properties gifted to a co-heir there exists any property not divisible, which does not fit wholly in the share to the donee, such property shall form part of the mass of partible properties as any other property of the inheritance; in other cases, the donee shall be notified to exercise, within three days, his right of choice which is conferred upon him by paragraph 4 of Article 2107 of the Civil Code,

failing which his share will be allotted with the properties indicated by the judge;
b)Where the gift made to a stranger is inofficious, the same shall be reduced in terms of Article 1493 onwards of the Civil Code;
c)Those who have not taken the properties in licitation and who are to be allotted the owelty money due by those who were successful in the licitation, shall be notified to demand within three days the payment, if they so desire. If the demand is made the successful bidder shall be notified to deposit the amount failing which the licitation will be of no effect.

Where the payment is not demanded, the owelty money shall earn the legal interest from the date of final judgement of partition and the creditors thereof may register the legal hypothecation over the properties adjudicated to the debtor.

- Corresponds to Section 437 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1418 - Objection against the chart - After the chart is drawn, the parties may apply for any rectification or raise any objection against any irregularity, namely against inequality of the lots or against non-compliance of the order directing the partition.

The objections shall be decided within subsequent eight days and the conference of the parties may be convened in case any objection is founded on inequality of the lots.
Necessary modification directed by the order deciding objections shall be carried out. If necessary, new chart shall be drawn up.

- Corresponds to Section 438 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1419 - Sortition of lots - Thereafter the sortition of lots shall take place if there is room for the same.

In a box so many papers shall be put as there are lots to be drawn by sortition and in each paper the letter corresponding to the lot which it represents shall be written.

While picking up the papers first preference is given to the moiety partner of the deceased; as to the co-heirs, alphabetical order of their names shall be followed. The judge shall pick up the papers for the parties who do not appear; and to the extent the sortition is going on, the annotation of the name of the party to whom the lot is fallen is done by way of note in the file.
After the sortition is over, the parties may exchange between them the lots which have fallen to them. For the exchange of the lots fallen to the persons under disability the authorization of the judge is necessary after hearing the Public Prosecutor. In case of interdiction by prodigality, the exchange shall not be permitted unless the prodigal consents thereto.

- Corresponds to Section 439 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1420 - Second and third chart - Where there is moiety partner spouse, the chart shall consist of two bulks; and after the bulk of the deceased is ascertained, the second chart will be drawn for its division amongst the heirs.

Where their shares are unequal because some of them succeed by representation, after ascertaining the share of the one who is represented, a third chart is drawn for its division amongst the representatives. Where any heir is to be benefited with major portion of properties, the lots shall be formed, if possible, in such a way that the sortition is done out of equal lots.
§ Sole Paragraph: Where it is not possible to draw the second chart and have the sortition at the act of sortition of lots of the first and where it is not possible to do it in respect of the third chart at the time of sortition of the lots of the second, in the matter of the drawing of the chart and examination as well as sortition of the second and third chart, the rules established in relation to the first shall be observed.

- Corresponds to Section 440 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1421 - Inspection by the Public Prosecutor for the purpose of payment of tax -Where there are immovable properties, the file shall be made available for inspection to the Public Prosecutor, for a period of five days, to indicate whether there are parties who should pay the tax for the excess which they have received in these properties and to indicate the amounts on which the tax is to be calculated.

The respective parties shall be notified to produce on record, within the period of ten days, the

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document evidencing the payment of tax.

In the subsequent forty eight hours the judgement will be passed homologating the partition according to the chart and the operations of the sortition. From this judgement appeal shall lie, filing of which will not stay the operation of the judgement.

- Corresponds to Section 441(1) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1422 - Liability for costs - The costs of the inventory shall be paid by the heirs and by the moiety partner, in proportion of what they received.

In the case foreseen in Article 1794 of the Civil Code the responsibility for the costs shall lie on the legatees in the same proportion.

§ Sole paragraph: The costs of the incidental proceedings and of the appeals shall be governed by Articles 456 onwards.

- Corresponds to Section 442 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1423 - Safeguards to be observed for the delivery of the properties before the judgement has become final for want of appeal - 'Where any of the parties desires to receive the properties fallen to him in the partition, before the judgement becomes final for want of appeal the following shall be observed:

1. In the title deed which is issued for the purposes of registration and possession of the immovable properties it will be declared that the judgement has not become final for want of appeal, and the conservator shall not register the transmission without mentioning the above circumstance;
2. The securities subject to annotation will be annotated by the competent entities with the declaration that the party shall not dispose of them while the judgement has not become final for want of appeal;
3. Any other properties shall be delivered only if the party gives security, which shall not include the rents, interest and dividends.

§ 1: The safeguards prescribed in this Article shall be equally observed in case of pendency of suit for filiation, annulment of Will or any other which may cause the modification of the partition, to the extent the decision in the suit is likely to alter whatever has already been carried out.

§ 2: The declarations made in the registration and in the annotation shall have the same effect as that of registration of suits. Such effect shall subsist until it is not declared extinct by judicial pronouncement.

Article 1424 - New partition - Where there is need to have the partition afresh as a consequence of the decision of the appeal or of the suit, the administrator shall immediately enter into the possession of the properties which no longer belong to the party who received them.

The inventory shall be corrected only to the extent strictly necessary to implement the decision, and the appraisal and description shall subsist, even though there is complete substitution of the heirs.

§ 1: When there is no room to have new partition as a consequence of the judgement or order which decides the partition afresh cancellation shall be ordered of the registration or annotation which ought to lapse.

§ 2: Where the party fails to restore back the movable properties received by it, execution shall be started against it in the same file and also execution will be started for the recovery of the yield which ought to have restored, and the party shall render accounts as though he were an administrator.

The execution shall be processed as an appendant.

SECTION VI

AMENDMENT AND RESCISSION OF THE PARTITION

Article 1425 - Amendment to the partition by agreement - The partition may be amended, even after it has become final for want of appeal, in the same inventory, by agreement of all the parties or their representatives, in case there exists error of fact in the description or qualification of the properties or any other error susceptible of vitiating the will of the parties.

§ Sole Paragraph: What is provided in this Article does not prevent the application of Article 667.

Corresponds to Section 445 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1426 - Amendment to the partition in the absence of agreement - When it is found that the conditions foreseen in the preceding Article are satisfied and the parties are not agreeable to have the amendment, the same can be obtained in an ordinary or summary suit, as per the

value, it being necessary, for the success of the suit, that the knowledge of the error be subsequent to the judgement.

Article 1427 - Rescission of partition - The rescission of judicial partition confirmed by judgement, become final for want of appeal, may be applied for:

1. When any of the conditions mentioned in the Article 771 are satisfied;
2. When there had been preterition or omission in joining any of the co-heirs and it is found that other parties acted with fraud and bad faith, whether such malicious conduct is in respect of the preterition, or as to how the partition was prepared.

The rescission on the grounds mentioned in clause 1, may be obtained by filing appeal or revision; that founded on clause 2 by way of suit, ordinary or summary, as per the value.§ Sole Paragraph: A suit for rescission or suit for amendment referred to in this Article and in the preceding, shall be the appendant of the inventory.

Corresponds to Sections 446 and 447 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1428 - Composition of the share of the preterited heir - Where the heir desires that his share be made up in the currency in force, in terms of Article 2165 of the Civil Code, he shall apply in the inventory that conference of the parties be convened to work out the amount of his share.

Where the parties do not arrive at an agreement, the properties, in respect of which there is difference of value, shall be appraised again, it being possible to apply for second appraisal and thereafter the amount to which the heir is entitled shall be fixed. The chart of partition shall be made afresh to know the changes which the first chart undergoes in consequence of the payments necessary to make up the share of the preterited heir.

§ Sole Paragraph: As soon as the compounding of shares is made up, the heir may apply that the debtors be notified to effect the payment, failing which they will be bound to make good his respective part in properties, without prejudice, however, to the alienations already made. If the payment is not demanded, what is provided in the last portion of clause (c) of the Article 1417 shall be applicable.

Corresponds to Sections 448(A) and 450(3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION VII

GENERAL PROVISIONS

Article 1429 - Bringing on record the heirs of the deceased parties - Where the moiety partner or any heir dies before the conclusion of the inventory, the administrator shall indicate the heirs of the deceased and notice of such indication shall be given to the other parties and summons shall be issued for the purpose of inventory to the persons indicated above.

The competency of the heirs may be contested by the summoned parties or notified parties, in terms of Article 1374.

In case of failure to file the objections the persons indicated shall be considered as qualified, without prejudice to the provisions of Article 1375.

In case of death of any creditor or legatee summoned to the inventory, their heirs may make an application to get themselves admitted by following the procedure prescribed in Article 1375.

Corresponds to Section 449 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1430 - New inventory - Where after the partition is effected there is death of any party who has not left properties other than those which were adjudicated to it, the inventory which is to take place shall be held in the same file, and the oath of office of the administrator will be given to one on whom it devolves, and by following the prescribed procedure.

Article 1431 - Inventory of the surviving spouse - Where the inventory of the surviving spouse is to take place in the court where inventory on the death of the predeceased spouse had taken place, the steps necessary for the second partition shall be recorded in the file of the first partition. Where there are properties to be partitioned other than those allotted to the deceased in the previous inventory, such properties shall be described with the serial numbers which are in continuation of the last item of the first inventory.

Corresponds to Section 369 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1432 - Availing of appraisal and of the description made in other inventory - The properties which have been appraised in the other inventory shall not be subjected to fresh appraisal except where there are serious reasons to believe that their value has changed.

In case of the change of the value of currency, such change shall be taken into consideration.

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Besides the appraisal, the description made in the previous inventory shall be availed of and it shall be reproduced if the file is different, and not if the file is the same.

Corresponds to Section 370(2) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1433 - Consolidation of inventories - It is lawful to have consolidation of inventories for the purpose of partition of different inheritances:

1. When the persons amongst whom the properties are to be partitioned are the same;
2. When the case is of inheritances left by two spouses;
3. When one of the partitions is dependant on the other. If the dependance is total, because in one of the partitions there are no properties other than those which are to be allotted to the deceased in the other partition, the consolidation shall not be refused. If the dependance is partial, because there are other properties, the consolidation shall be granted or not, as it is found convenient or not, always keeping in mind the interest of the parties and the smooth course of the proceedings.§ Sole paragraph: The want of pecuniary or territorial jurisdiction in respect of one of the inventories is not a bar to grant the consolidation even if in one of them there are heirs under disability.

Corresponds to Section 370(4) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1434 - Additional partition - Where after the judicial partition is effected, it is found that there was omission of some of the properties, additional partition shall be carried out in the same file, and to the extent applicable, the provisions of this division and all the previous ones shall be observed.

§ Sole paragraph: In the inventory which takes place on the death of the surviving spouse, the properties omitted in the inventory of the predeceased spouse shall be described and partitioned, when the omission is disclosed only at the time of the former inventory.

- Corresponds to Section 374 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1435 - Regime of appeals - In the inventories of the value up to 10,000$00 the regime of appeals from summary suits shall be applied.

In the inventories of superior value, the following shall be observed:

a) The appeal preferred against the order putting an end to the proceedings, shall be forwarded immediately and in the same proceedings; and alongwith it other appeals preferred against previous orders, if any, shall be forwarded.

b) The appeal preferred against the order excluding from the proceedings any heir, or excluding or removing anybody from the office of the administrator, guardian, curator, or member of the family council, shall be forwarded immediately, but in separate, alongwith all the appeals preferred against previous orders.

c) The appeals preferred against other orders till the end of the description of properties shall be forwarded to the superior court alongwith and in separate from the principal file, when the description is finalised.

d) The appeals preferred from subsequent orders up to the presentation of the file to pass order directing as to how the partition should be effected, shall be forwarded to the superior court jointly and in separate from the principal file, when the file is at the stage of drawing the form of partition.

e) The appeals preferred from the order directing how the partition should be effected and of subsequent orders shall be forwarded in the same file, to the superior court, alongwith the appeal filed against the judgement which homologates the partition.

§ Sole paragraph: What is provided in Article 735 is saved.

- Corresponds to Section 371 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1436 - Question finally decided - The questions which have been decided in the inventory are considered as finally decided, both in relation to the administrator and to the persons summoned in the capacity of heirs, and in relation to those who took part in the decision, except where the right to pursue competent remedies has been expressly reserved.

Such reservation is not justified when the questions are of law or the questions are of fact which can be decided on the strength of documents produced or requisitioned. As to the questions of fact which required production of other proofs, the parties may be permitted to pursue ordinary remedies, or may be decided provisionally reserving the rights of the parties to file competent suits, only when the definitive resolution does not agree with the summary nature of the inventory proceedings.

§ Sole Paragraph: It is understood that in the resolution of any one question the parties who have taken part are not only those who raised it, or gave the say on it, but even those who were heard, though they did not give their say.

- Corresponds to Section 451 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1437 - Regime of inventory for description and appraisal - The inventory in which the purpose is solely to have the description and valuation of the properties the provisions of this chapter shall be applicable to the extent they can and should be applied.

Article 1438 - As to how the sale and leases to be used where the public auction is mandatory - Where the civil law directs the sale or the lease of the properties in public auction, the former or latter shall be carried out as per procedure laid down in the execution proceedings. After the parties and the family council are heard, the judge shall decide the procedure which should be adopted, following

thereafter the procedure prescribed in Articles 884 and 886 or in the Articles 889 onwards, as it has been directed.

SECTION VIII

PROCEEDINGS INCIDENTAL TO THE INVENTORY

Article 1439 - Removal of administrator - The administrator may be removed:

1. When he delays the description, fails to indicate to the appraisers the properties, does not appear, does not produce documents, does not give declarations which are demanded from him, or by any other manner fails to fulfill, in the proceedings, the duties of his office;
2. When he administers badly the properties of the inheritance.

The removal may be applied for by any party, or by the Public Prosecutor in case the inventory is of orphan's jurisdiction. The administrator shall be notified to give his say within the period of three days; and in the subsequent five days, after the examination of the witnesses which have been indicated in the application or the reply, not in excess of three for each party, the decision shall be passed.

After the administrator is removed, another shall be appointed, in terms of the civil law.

Where the cause for the removal is the omission to do some act for which the administrator was duly notified, the administrator shall be liable to be punished for the offence of qualified disobedience, and certified copy of the fact shall be handed over to the Public Prosecutor, to initiate the competent criminal proceedings.

§ 1: Where the removal takes place after the licitations, the successful bidders may apply that the properties in which their bid was accepted be delivered to them. As to the properties which the

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successful bidder receives, he shall hold the position of the administrator.

§ 2: What is provided in this Article shall equally be applicable to the person who has to collate, who fails to fulfill the duties of the administrator which are incumbent upon him in respect of the properties which he is to collate.

Article 1440 -Exoneration from guardianship - When anyone desires to excuse himself from exercising the guardianship, curatorship, pro-guardianship, or the office of member of the family council, he shall present an application giving the grounds of exemption as also the evidence which he wants to lead.

The decision shall be passed after hearing, if necessary, the parties and after collecting necessary information.

Article 1441 - Exoneration from the post of administrator - The administrator may apply for exemption from his office:

1. When he is having seventy years of age;
2. When he is unable to perform conveniently his functions, on account of illness;
3. When he resides outside the continent or island where the inventory takes place.

The proceedings for exemption shall be governed by what is provided in the previous Article.

Article 1442 - Exclusion or removal of guardian or of the pro-guardian - The exemption or removal of the guardian or of the pro- guardian may be applied for by the Public Prosecutor, by any member of family council, or parent of the guardian, up to the sixth degree, and by the guardian in relation to pro-guardian, as well by the latter in relation to the former, and the grounds should be specified with all precision.

The party complained of shall be notified to give his say on the charges.

Thereafter the family council shall be convened to deliberate, and notice will be served on the applicant and opponent to remain present. The witnesses shall be examined by the Judge before the council and the notes of evidence shall be recorded in the act. The applicant and the opponent may orally advance arguments in support of the application or defence and finally the council shall decide, after hearing the Public Prosecutor, when he is not the applicant.

From the decision of the family council appeal shall lie to the council of guardianship.

Article 1443 - Exclusion or removal of the guardian and members of family council - What is provided in the preceding Article is applicable to the removal of curator of the prodigal, of the provisional curator of the absentee and of the members of the family council with the following modifications:

1. The prodigal shall always be heard and he may apply for the removal;
2. The family council will not take part, the decision shall be given by the judge, and appeal shall lie therefrom.

SECTION IX

PARTITION OF ASSETS IN SPECIAL CASES

Article 1444 - As to how partition is effected in consequence of divorce, separation or annulment of marriage - After the divorce or separation of persons or annulment of the marriage have been decreed by the court, the spouses may partition the assets by public deed or by act drawn in the file wherein the judgement is pronounced.

Article 1445 - Specialties of inventory consequent upon the divorce, separation or annulment of marriage - In case there is inventory, the office of the administrator shall be held by the husband in case of marriage under communion and both will be administrators in case of marriage under separation. But the yield from the assets of any of them accrued till the judgement shall always be listed by the husband.

The inventory shall proceed appended to the file of divorce, separation or annulment and it shall follow the procedure prescribed in the previous articles.

Article 1446 - Liability for costs - The costs of the inventory shall always be paid by the defaulter spouse; otherwise it shall be paid by both the spouses.

Article 1447 - Proceedings for separation of assets in special cases - When the wife applies for separation of assets in case of Article 10 of the Commercial Code or it is expedient to have the separation in consequence of insolvency or bankruptcy of the husband, the provision of Article 1445 shall be applicable, with the following modifications:

The applicant of the execution proceedings in case of Article 10 of the Commercial Code or any creditor in case of insolvency or bankruptcy shall have a right to prosecute the inventory;

The debts which are not proved by documents shall not be approved;

The wife has the right to choose the properties with which her moiety may be made up. If such right is exercised the creditors shall be notified about the choice and they may complain against the choice, giving grounds for such complaint;

In case the judge finds the objection maintainable, he shall order under his supervision, the second appraisal of the properties which appears to him not to have been valued properly. The appraisal shall be done by three appraisers, one appointed by the wife, the other by the creditors and the third by the judge.

When the second appraisal modifies the value of the properties chosen by the wife, she may, within three days from the conclusion of the appraisal, declare that she withdraws the choice. Thereafter the moieties shall be adjudicated by sortition.

CHAPTER XVIII
VOLUNTARY JURISDICTION PROCEEDINGS

SECTION I
GENERAL PROVISIONS

Article 1448 –**Powers of the Judge in matters of fact in voluntary Jurisdiction proceedings** –In the exercise of voluntary jurisdiction the Court may freely investigate facts, collect evidence and recover information which it deems convenient for a proper decision. Only such evidence will be admitted as the Judge may find necessary.

- **Articles 1448-1501** - Voluntary jurisdiction, Provisions regarding children and spouses are matter of Family Law and would be by and large in force.
- In Portuguese Procedural Law there is a traditional distinction between voluntary jurisdiction and adversarial jurisdiction. In fact the Old Portuguese Civil Procedure Code of 1876 made a reference to this distinction in its very first article.
- But as the distinction is not sharply laid down no such definition is found in the Portuguese Civil Procedure Code of 1939 instead the proceedings under voluntary jurisdiction are straight away listed exhaustively from arts.1452 to 1560.
- Never the less in a nutshell voluntary jurisdiction is an exercise jurisdiction which is essentially administrative in nature whereas adversarial jurisdiction involves the exercise of truly adjudicative powers.

Article 1449 – **Requirements of convenience to prevail over strict legality** – In the measures to be taken, the Court is not subject to strict rules of legality; it should adopt in each case a solution which it finds most convenient and adequate.

Article 1450 – **Form of petition and defense** – The application may be framed without paragraphs and any objection or reply may be filed in the same manner.

- There are certain proceedings in which defense is permissible only on certain grounds like delivery of minor (art. 1460), delivery of wife (art.1470) and taking of the wife back by husband (art. 1471). In these cases the defense may be raised in the very proceedings of delivery or taking back mentioned above.
- There are others in which there is a time limit for filing the defense (arts 1477 – 1528 & 1540).
- There are other cases in which Interested Parties have to be notified to give their say; but care has to be taken that the say or defense has to be filed within 5 days (arts.1507, 1543, 1550 & 1553) or within 10 days (art.1464).
- In remaining cases it is provided that the interested parties shall be heard or notified to reply without fixing the time for the reply (arts.1481, 1488, 1503, 1523, 1524, 1525, 1531, 1532, 1537 and 1538).
- These provisions have their significance when there is a reference to contest or time limit is fixed; where the law fixes no time limit the term contest is not used. In such cases the expression used is that they shall be heard or they shall be notified to give their say. From this, one can see that the legislature has avoided the operation of Art.490 regarding time limit and bring in to play the general rule contained in art.154.
- Therefore in cases in which no time limit is fixed the time limit is 5 days within which the persons directed to be heard or cited should file their reply.

Article 1451 - Bar on appeals and reversibility of decision - There shall be no appeal to the Supreme Court from the decisions pronounced in decision of voluntary jurisdiction. The decisions may however be freely modified without prejudice to the effects they have already produced.

SECTION II
PROVISIONS REGARDING CHILDREN AND SPOUSES

SUB-SECTION I
PROVISIONS RELATING TO CHILDREN

Article 1452 - **Conference for regulating the exercise of parental power** - Upon a divorce or a separation of persons and assets or annulment of marriage being granted if there are minor children the Judge seized of the matter, shall await for 8 days, for the parents to apply for the judicial confirmation of the agreement arrived at between them as to the exercise of the parental

power.

If there is no application for confirmation of any agreement, the Court dealing with guardianship of the minors shall notify the parents for a conference which shall take place within 15 days.

The parents shall be bound to appear in person. They may be represented by an attorney only if it is absolutely impossible for them to appear or if they reside outside the jurisdiction of the Court or the island where the conference takes place.

When both are present or represented, the Judge shall lay down in accord with the parents, the exercise of parental power, drawing up the record of the deliberation. If one or both neither appear nor are represented the Judge shall decide after hearing the one who is present or represented and after ordering the steps which he deems necessary.

§ 1: If the Court dealing with guardianship is different from the one of the proceedings of the suit, the latter shall transfer to the former within a period of 8 days the certified copy of the Order and pleadings; unless the proceedings are concluded in which case he will transfer the file itself.§ 2: Before the Conference the Judge of guardianship jurisdiction, shall take such measures which are indispensable after hearing the parents if possible and making the necessary enquiries.§ 3: If the exercise of parental powers is fixed by agreement, the guardianship jurisdiction shall always supervise its compliance. It may delegate the supervision to a suitable person who may exercise the same under the supervision of the curator of minors.

§ 4: If any of the parents reside at unknown place, the conference shall take place within 30 days and the absentee shall be summoned for the same by means of public notices which shall be affixed one on the door of the court and another on the door of the last residence of the absentee.

Article 1453- **Procedure in the absence of agreement or in case the same is not performed by both** - In the absence of agreement or when the agreement is not carried out by both the parents they shall be notified within 10 days to allege what they deem convenient as regards the exercise of parental power.

Along with the pleadings each of the parents shall attach documents and the list of witnesses not exceeding 5 and apply for any measures.

Steps to be taken outside the jurisdiction shall take place if the court finds them indispensable.§ Sole paragraph: The failure to comply with the agreement may be brought to the notice of the guardianship Court by any of the persons or authorities referred to in the second part of article 1458.

Article 1454 - **Hearing of the arguments and judgment** - After the necessary steps are taken, hearing of arguments and judgment shall take place, in which the procedure laid down from summary proceedings shall be followed with the following modifications:-

a) If the parents are present the judge shall question them separately;

b) After the oral arguments of the appointed lawyers the curator of minors shall be heard; c) The decision shall be recorded in the proceedings of the hearing;§ Sole Paragraph: The hearing may be adjourned only once if any of the parents or a witness which cannot be dispersed remains absent for justifiable reason.

Article 1455 - **Judgement** - Within a period of 10 days the judgment shall be drawn from which appeal shall lie to the High Court. The Court shall regulate the exercise of parental power in accordance with the interest of minors who may be entrusted to the care of any of the parents or of third person or any establishment of charity or education.

In the Judgment the Court shall also fix the maintenance due to minors and the mode of its payment in accordance with the law.

§ Sole Paragraph: All interlocutory appeals filed during the course of the proceedings shall be transferred to the superior Court along with the appeal from the final judgment.

Article 1456 - **Consequences of failure to comply by one of the parents** - If one of the parent does not comply with whatever has been agreed or decided, the other may apply to the guardianship Court either that necessary measures be taken from coercive compliance if possible or the defaulter may be convicted with fine or that the terms settled may be modified, in the last case the provision of the last clause of the body of article 1452 being observed.

Article 1457 - **Alteration of the provisions** - When due to subsequent circumstances it is necessary to modify whatever had been settled as regards the destination and the maintenance of the children, the step laid down in arts. 1452 onwards shall be observed before the guardianship Court having the matter.

Article 1458 - **Provision regarding children of spouses separated "defacto" and to illegitimate children** - The provisions of art.1452 onwards are equally applicable in deciding the fate and maintenance of the children effected "defacto", due to differences or abandonment of conjugal domicile, and of illegitimate children which have been acknowledged, so long as the parents do not arrive at agreement, as to exercise of parental powers or the agreement is not carried out. The provisions shall be taken suo moto, on the application of any of the parent or of the curator of minors through the participation of the immediate relatives of minors, supervising officials, directors of establishments or associations for the protection of childhood and even any authority or member of the public.

Article 1459 - **Provisional steps in the case of legal protection to a woman** - If a woman applies for legal protection in anticipation or as in incident for a suit for divorce or for separation of persons and assets, the judge at the time of granting the protection or after the same is granted, shall take provisional measures in respect of minor children, and may hand them over to any of the parents or to another person as may be convenient.

Article 1460 - **Proceedings for judicial handing over of minor** - If a minor abandons his father, tutor or person legally entrusted with his care and education these may apply that the minor be returned to them.

The return shall be applied from the guardianship Court in the Judicial division in which the minor is found, and the legal entitlement on which the application is founded shall be proved before the same. The return shall not admit of any opposition unless based on a decision of a Civil Court or a Court of guardianship which prevents the measure or an application for delivery of minor in anticipation of a suit for interdiction of parental power or of guardianship functions.
In case there is no objection or the same is not admissible, delivery shall be ordered at which the Judge shall be present. If the curator of minors cannot remain present:
§ 1: The step of delivery may be preceded by a summary enquiry on the moral and economic situation of the applicant and of the relatives of the minor bound to provide maintenance. If this enquiry demonstrates lack of suitability of one or both the parents when they live together the minors shall be kept in the house of a suitable family, preference shall be given to the closest relative bound to maintain the child; if this is not possible the minor shall be kept in a charitable or educational institution.

When the parents live separately and one of them is suitable, the minor shall be handed over to the said parent.

§ 2: When the minor is delivered, the curator of minors shall file within 15 days if it has been not filed a proceeding for restraining the parental power or guardianship function.

§ 3: The provisions of this article and its paragraphs are equally applicable in case the minor is kidnapped or any other manner is found out of the power of the person to whom he has been lawfully entrusted.

Article 1461 - **Power of the guardianship authorities for the emancipation of minors** - The guardianship authority may if they deem convenient decree the emancipation of minors of 18 years of age, if any of the following circumstances obtain;

a) If the minors are illegitimate children;

b) The children are legitimate but are born of an annulled marriage or their parents are judicially separated.

Article 1462 - **Application for maintenance of minors** - Legitimated or recognized minors who are in need of maintenance may apply to the office of the guardianship of children of the area in which they reside by themselves, through the curators of minors, through the Directors of establishment or association of protection of childhood or even through the intervention of any authority or officials of the Court or any person whom the minor is entrusted that maintenance be given to him by the ascendants, brothers or sisters or relatives till the sixth degree.

Article 1463 - **Requirements of the application** - To the application or intimation itself, there shall be attached documents proving the degree of relations between the minor and the persons in respect against whom the application is moved and any others as also the list of witnesses. The documents may be questioned officially by the guardianship office to the competent authorities who will issue the same free of cost when the applicant due to lack of means cannot file the same.

Article 1464 - **Subsequent stages** - The person against whom the application is made shall be notified to within 10 days to oppose the application on penalty of the same being granted against him, and to finish all the evidence that he has and apply for such steps as he deems convenient.

In the case of objections, such steps shall be taken as the Court finds indispensable and thereafter the hearing of arguments and order shall take place to which the provisions relating to summary proceedings shall apply.

§ Sole Paragraph: In these proceedings holding of enquiry is not necessary.

Article 1465 - **Steps to be taken in order to render the payment of maintenance effective** -When the person against whom the order for payment of maintenance or pension or boarding charges is passed and does not pay the amounts due within 10 days after the same are due, the following shall be observed:

a) If he is a public servant the said amount shall be deducted from his salary upon the application of the relevant guardianship office to the competent authority;

b)

If he is a private employee or an daily wages, the same shall be deducted from the wages or salaries for which the respective employee shall be notified who shall be deemed to be in the position of a judiciary receiver;

c) When it is not possible to obtain payment in the manner indicated an application may be made that the debtor through criminal proceedings may be sentenced to imprisonment of upto 6 months not convertible into fine.

Article 1466 - **Court with jurisdiction for steps relating to minors** - For the measures relating to minors the Court of the place of the residence shall have jurisdiction except where the residence is in the Colony or abroad in which cases the guardianship court of Lisbon shall be jurisdiction.

SUB-SECTION II

LEGAL MEASURES CONCERNING SPOUSES

Article 1467 - **Legal protection to woman** – A married woman may apply for legal protection as preparatory to a suit for divorce or separation of persons or assets; and may also apply for the same as incidental to any of these suits whether she is a plaintiff or defendant.

Legal custody shall always be granted and shall be affected in the house of an honest family which the judge shall choose preferably from amongst the relatives of the woman. She may carry with her clothes and objects of her use.

An official shall affect the formality of custody and shall draw up another record. The judge shall preside over the process if this is requested.

Article 1468 - **Expiry of custody** - A preparatory custody shall expire if the suit is not filed within 15 days; and both this as well as the incidental deposit shall also lapse if the suit is delayed due to negligence of the woman plaintiff for more than 30 days.

Upon the lapse of the deposits, only on the basis of subsequent events may another one be applied for.

Article 1469 - **Enlistment of movable assets** - Independently of the deposit a woman may request the enlistment of the movable assets of the couple as a step preparatory or as an incident of the suit referred in art.1467.

§ Sole Paragraph: The judicial custody and the enlistment shall be appended to the respective suit.

- This matter was earlier dealt under art.20 of the Decree of 3/11/1910 there is related provision in art.393 & 391 of this Code.

Article 1470 - **Procedure for restoration of conjugal rights** - When a woman abandons her husband or refuses to accompany him being bound to do so, he may apply that the woman be judicially handed over to him. The delivery shall be applied in the Court of judicial division where the woman is to be found.

Once marriage is proved the process shall take place at the day and time designated place, except for:-
§ 1: If the woman proves by document that suit for separation of persons or assets or divorce is pending, or has been decreed; all that her judicial custody has been authorized as a preparatory step and the said custody has not yet lapsed.
§ 2: If she makes an application for judicial custody as an act preparatory to a suit for divorce or separation;
In the circumstances mentioned under no.1, the application shall be dismissed; in those mentioned at no.2 the juridical custody shall be ordered.

- This is the procedure to enforce the substantive rights of the husband under article 1184 and 1186 of the Civil Code of 1867. Later Decree No.1 of 25/12/1910 altered the provisions of art.1186 and art.41 totally prohibited the husband from applying for restitution of conjugal rights. It was restored in 1939 under the present article only in the circumstances mentioned herein.

Article 1471 - **Procedure for a wife to compel her husband to receive her** - If the husband expels or abandons his wife, she may apply that he shall receive her at home, observing the provisions of the previous articles.

The proceeding admits of defense only on the basis of a document proving that divorce or separation of person and assets has been decreed or is pending having been filed by the husband on the ground of adultery.

SECTION III
DIVISION AND SEPARATION BY MUTUAL CONSENT

Article 1472 - **Division or separation of persons and assets by mutual consent** - May only be applied by spouses married for more than 5 years and who have completed at least 25 years of age.

- This alters art.35 of the Decree of 3-11-1910 raising the period of marriage from 2 to 5 years to give time to the spouses to experience life in common and seek to adapt to one another.

Article 1473 - **Requirements of the application** - The application signed by both the spouses or their attorneys shall be accompanied by the following documents:-

a) Certificate of Registration of Marriage;
b) Certificate of age;
c) List of assets duly specified;
d) Agreement arrived at between them on the custody and destiny of minor children, if any; e) Fixation of the share which each one of them contributes for the upbringing and education of minor children;
f) Certificate of ante nuptial deed and its registration if any;

- This is based on art.36 of Decree of 3-11-1910.

Article 1474 - **Judgment of dismissal or summoning of conference** - If any of the documents mentioned in the preceding article is missing or on the examination of these it is found that the divorce or separation cannot be granted the application shall be immediately be dismissed. In the contrary case there shall be called a conference of the spouses and their parents also their children who are more than 18 years old.

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Personal appearance of the spouses is essential.

- The Decree of 3-11-1910 was altered to the extent that the parents of the spouses and their children above 18 are called as they are the people who would exercise influence on spouses to change their intention.

Article 1475 - **Conference**. **Provisional divorce or provisional separation** - At the conference the Judge shall exhort the spouses to give up their intention, calling their attention especially to the undesirable effects of divorce or separation on the future of their children.

If the spouses maintain their decision the proceedings of divorce by mutual consent shall be drawn which will be signed by the persons present.

The agreement between the spouses shall be granted, authorizing the divorce or separation provisionally for a period of 1 year. This permission suspends the conjugal cohabitation, entitles the wife to apply for listing of movable assets and provisional maintenance and produces immediately in relation to the children the effects mentioned in clauses (d) & (e) of art.1473.§ Sole Paragraph: The maintenance shall immediately be sought and after hearing the spouses immediately along with the persons present they shall be fixed in the confirmatory judgment.

Article 1476 - **New conference, final divorce or separation** - After the expiry of 1 year, if the spouses do not apply for a new conference the Court Secretary shall within 30 days shall close the proceedings with the endorsement that the period or separation of provisional divorce is concluded.

The spouses, the parents and the children shall be summoned again.

If the spouses appear the Judge shall once again try to reconcile them. If he is able to do so, or the spouses have already reconciled, the divorce or provisional separation shall be declared without effect; if it is not possible to reconcile them divorce on final separation shall be decreed.

In case both the spouses or one of them do not appear, the provisional divorce or separation shall be of no effect.

The judgment, decree and in final divorce or separation shall produce the same effects as if pronounced in a contested proceeding, these effects shall date back in respect of the assets to the date on which the provisional divorce or separation has been authorized.

§ Sole Paragraph: The spouse who is away from the continent or the island in which the conference regulated by this article takes place may have himself represented with an attorney with specific powers.

- This settles the doubt under article 40 of decree dated 3-11-1910 as to when would be the course to be adopted when one of the spouses wanted the restoration of the conjugal union and the other insisted on divorce or separation.

SECTION IV

CONSENT THROUGH COURT

Article 1477 - **Consent through Court in cases of refusal** - In case judicial consent is sought in cases permitted by law on the basis of refusal, the person refusing shall be summoned to give his say within 10 days.

After the summoned person files his objection a date shall be fixed within the next 30 days for deciding, taking such steps as may be found necessary. On the appointed date after hearing the Interested Parties and after producing the evidence admissible the matter shall be decided, the decision being transcribed in the record of the hearing.

The witnesses and the documents shall be furnished until 3 days before the date fixed for decision. If there is no objection the Judge shall decide after obtaining the necessary information and clarifications.

- Obtaining of consent through Court in case another party represents it without sufficient case is a matter which arises under many provisions of the substantive law namely arts.326(1), 327(1), 1119(1), 1128(1), 1191(1), 1193(1), 1216, 1887, 2024, 2237(2), 2237(3) and 2261 of the Civil Code of 1867.

Article 1478 - **Judicial consent in cases of incapacity or absence** - If the ground for application is incapacity or absence at unknown place of the person whose consent is required to be made up, the representative of the interdicted or absent person shall be heard; As also his closest relation and also the interdicted person himself if the interdiction is due to prodigality and the representative of the State.

On the face of the pleadings and evidence produced and the clarification which may be obtained the consent shall be judicially made up or refused as may be deemed fit.

Article 1479 - **Making up of consent by the Family Council** - In cases where the family council is entitled to make up the consent the provision of article 1490 onwards shall be observed.

SECTION V

ALIENATION OR LONG LEASE OF DOWRY ASSETS

Article 1480 - **Petition for alienation of dowry assets and for making up of the consent** -Judicial permission for alienation or granting of perpetual lease of dowry assets may be sought by

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the wife in all cases in which the law permits alienation and may also be sought by husband in the cases mentioned in sub-clauses of 2 & 4 of art.1149 of the Civil Code.

In the petition the purpose of the alienation and the reasons justifying it shall be specified attaching the documents which prove the consent of the other spouse. If the latter refuses his consent or in interdicted or absent at unknown place there shall be attached to the application for judicial permission, an application for judicially making up the consent.

Article 1481 - **Subsequent steps** - The decision shall be taken after hearing the person who gave the dowry, the children of the applicant and his presumptive heirs in the absence of children and after effecting the procedures and enquiries which are necessary.

In case there are minor children or interdicted persons the family council and the State representatives shall also be heard.

If the spouse has refused consent the provision of art.1477 shall be followed after hearing the persons and entities mentioned there.

Article 1482 - **Alienation for maintenance of family** - Alienation based on art. 1149(2) of the Civil Code may only be authorized for the maintenance of the spouses or their descendants or ascendants who reside with them and who on account of their age or illness cannot earn the means of subsistence. The need for maintenance shall not be taken to be justified without proving:

1) Total absence of other assets;
2)
Total impossibility of providing for the indispensable maintenance with the income of the dowry;
3) Impossible for the husband to acquire the assets as a result of advanced age or illness which does not permit him to work.

§ 1: Impossibility to work may be proved only by way of examination
§ 2: Only the absolutely indispensable amount shall be allotted for maintenance.

Article 1483 - **Need for inspection and registration of encumbrance in certain cases** - In cases under clause 4 & 5 of article 1149 of the Civil Code the alienation shall not be authorized unless preceded by an inspection; and in the case of no.6 of the said article the registration of the

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encumbrance of dowry shall not be cancelled unless the said encumbrance on the assets offered in subrogation is registered or endorsed.

Article 1484 - **Types of sale or emphyteutic lease** - The sale or emphyteutic lease of assets shall take place in any of the ways indicated in art.1883 as may be decided after hearing the Interested Parties.

The public funds and shares or liabilities quoted in the stock market shall be sold for the price which shall not be less to the one which the Judge fixes according to the latest quotations. After the sale is agreed the buyer shall deposit the price and the judge after canceling the encumbrance by way of dowry shall record in the title of records the ownership in favour of the purchaser.

Article 1485 - **Disposal of the produce** - If the produce or part hereof is meant to establish any son, the latter shall receive the same directly by document the amount awarded for this purpose. If the alienation is authorized for dowry or for acquiring other assets in place of those alienated the produce shall be invested in immovable assets or public securities certificates, the price of the said assets being delivered to the vendors by document drawn in the proceedings.

If the alienation is for the purpose of reparation of other dowry assets, the reparation shall be auctioned following the procedure of judicial sales and the auctioneer shall receive directly the price by document in the proceeding verified by means of inspection wit the intervention of the interested parties that the work is completed on the terms agreed. If the alienation is for maintenance of family the produce shall be deposited and the husband authorized to withdraw monthly from this deposit the amount which is awarded. If the assets are alienated for payment of debts the part of the produce corresponding to the debts shall be handed over to directly to the creditors by record in the proceedings.

Article 1486 - Investment of excess portion - The portion of the proceeds which do not come under clauses nos. 1 to 4 of Art.1149 of the Civil Code shall be invested in immobile assets or registered government securities the price being directly paid to the vendor, by a written record in the proceedings after registering or endorsing the encumbrance on the dowry. The same shall be observed as to the totality of the produce in the cases coming under clauses nos. 5 and 6 of the above mentioned Article.

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Article 1487 - Investment of the return in the case of acquisition - If the assets are acquired for public or private purpose the compensation shall be invested in terms of the proceeding article the investment being made in the proceedings of acquisition.
When it is necessary to invest a part of the produce for the repairs of the remaining part of the acquired property the provisions of the 3rd clause of Art.1385 shall be observed in the fact of this part, and the investment shall be made in respect of the excess portion.

SECTION VI
SALE, EMPHYTEUTIC LEASE OR CREATION OF ENCUMBRANCE ON ASSETS BELONGING TO LEGALLY DISABLED OR ABSENTEE PERSON

Article 1488 - **Judicial permission for sale, emphyteutic lease or creation of encumbrance on assets of legally disabled person** - When it is necessary to sell, give on emphyteutic lease, mortgage or any other way bind the assets of a minor or interdicted person and the act, is subject to judicial permission, the same shall be sought by an application, setting out the reasons for the transactions and furnishing along with the evidence;

The permission shall be granted or refusal after hearing the relatives of the legally disabled persons or other suitable persons which may be convenient to be heard and after taking suitable measures, hearing of the government pleader and of the owner of assets himself when he is more than 14 years of age or interdicted for prodigality being compulsory.

§ Sole paragraph: The application shall be part of the inventory proceeding if there is one or the proceedings for the interdiction.

- This provision is the remedy for the substantive provisions of Art.150 and Art.322 of the Civil Code of 1867 that is to obtain judicial permission for sale, emphyteutic lease, mortgage or creation of any charge or assets of minors of interdicted persons.
- To be more precise with the use of these special proceedings the following may be noted:
  a. Minors may be subject to
     (i)Parental power – Art 150 of Civil Code
     - Parents require permission under Art.1488. The purpose is to find whether the alienation or the creations of encumbrance is for urgent necessity or clear benefit to the minor. The judge will ascertain this and grant or refuse permission accordingly.

     (ii)In the case of guardianship it is the family council and not the judge which authorizes the guardian to sell or mort-gage the assets of the ward (Civil Code Art.224(13) and 224(16). Here therefore proceeding under article 1488 are not required.
     - The permission is obtained by seeking the convening of the family council in term of Art.1490 onwards for the purpose of deliberately on the issue.

  b. Persons interdicted for lunacy or for being deaf and dumb. Here there are two possibilities:
     (i) Guardianship is exercised by father or mother;
     (ii) Guardianship is exercised by other persons.
     - In the first case the parents have to seek permission to exercise their paternal power granted to them u/Art. 322 of the Civil Code, by seeking judicial permission u/Art. 1488 of Portuguese Civil Procedure Code. The need for judicial permission is laid down in Article 150 of the Civil Code. In the second case Art.1488 has no application because the system applicable to guardianship operates and for this reason the guardian has to seek permission from the family council through the procedure mentioned in Art. 1490.
     - Whatever has been stated in the respect of interdiction of lunacy applies for also interdiction for being deaf and dumb (Civil Code Art.339)

  c. Interdiction for prodigality
     - In the Civil Code there is no specific provision expressly laying down the need for permissions to sell or mortgage the assets of a prodigal person. But it is evident that curators or administrators of the person interdicted for prodigality cannot carry out these acts without permission either form the judge or from the family council, because it would be absurd that these persons would be in a better position than the parents and guardians therefore the question is whether the permission is to be sought from the Judge or the family council.
     - The earlier Portuguese Civil Procedure Code (Art.657, 658) provided that judicial permission was required. The same is the case today. Art.351 of the Civil Code attributes to the administration of the assets of the prodigals the same rights and obligations as possessed by the provisional curators of the assets of an absentee person. Now such provisional curators can only exercise purely administrative powers (Civil Code Art.59) in the case of acts which exceed the administrative function they will obtain permission; and this can be given only by the judge since there is no family council functioning along with the curator of the absentee person. This conclusion is also supported by making an analogy with the case of final curatorship (Civil Code Art.76). Otherwise also provisional or final curators of assets of the absentee person have to obtain permission of the judge by the procedure laid in Art.1488, this being clearly laid down in Art.1489. It has to be therefore taken to be very clear that the curators of the prodigal person require judicial permission by the procedure laid down in Art.1488 for the sale and emphyteutic lease, mortgage or creation of any encumbrance on the assets under their administration.

Article 1489 - **Sale emphyteutic lease and creation of encumbrance on assets of the absentee**- The provisions of the preceding articles are also applicable to the sale, encumbrance,

mortgage or creation of any other encumbrances on movable or immovable assets of an absentee person when provisional or final curatorship has been granted and the act is justified to prevent deterioration or deduction of the assets, payment of debts, to meet the cost of necessary or useful improvements or to meet any other urgent need.

SECTION VII

COUNCIL OF THE FAMILY AND FOR GUARDIANSHIP

Article 1490 - Requirement for constitution and convening for family council - If it becomes necessary to convene the family council to authorize any act, make good the consent or deliberate on matter within that powers, the application shall indicate the purpose of convening it and the reasons for the requirements, naming straight away the person who should constitute the council if it has not yet been constituted.

The judge shall hear the government pleader on formation of the council and may solicit the information which he thinks necessary.

Even after the council is constituted any relative who ought to have had preference may demand his appointment in place of a member already appointed and the replacement may be applied for by the person who is interested in having the council duly constituted.

§ Sole paragraph: The application shall be annexed to the inventory proceedings when there is one.

- The attributes of the family council are mentioned in a general manner in Art.224 of the Civil Code. Originally the entire matter was dealt with under Arts.217 to 219 of the Civil Code of 1867 but these provisions though sufficient in respect of the constitution of the family council, did not sufficiently regulate its function. Accordingly in the Civil Procedure Code of 1939 new matter has been included under Art.1490 onwards as follows:-
  - o(i) Constitution of the family council – Art.1490, (ii) It's functioning – Arts.1491-1494, (iii) Appeal from the deliberations – Art.1495, (iv) Constitution of guardianship council – Art.1496, (v) Functioning of the said council – Arts.1497-1498, (vi) Appeal from the deliberations of the guardianship councils – Art.1499
  - oAs for Art.1490 it is general in scope whenever a council has to be constituted whatever may be its purpose, this is the provision that has to be followed. No doubt the provision of Art.207-209 of the Civil Code continue in force since Art.1490 does not indicate the persons who will constitute the council. The provision of Art.1490(3), are in conformity of the paragraph 3 of Art.307 of the Civil Code. It deals with the reconstitution of the council after it is constituted. Regarding the functioning, the second para of Art.1494 specifically adverts that Art.1493 and 1494 do not apply to the decisions which, pertain to the family council in orphanological inventory in Art.1392 onwards nor to the cases foreseen by Arts.1019 and 1442. They also don't apply, though there is no specific mention to the functioning of the council in proceedings of the interdiction; because in such proceedings the council doesn't decide but only issues an opinion and Arts.1493 and 1494 regulate the manner in which the council takes decisions. Art.1495 is general in application. It applies even in the cases covered by Arts.7392 onwards, Art.1019 and Art.1442. Once the family council takes a decision an appeal from the decision lies to the Tutorship Council in terms of Art.226 of the Civil Code;
  - oArticle 1495 does not confine the appeal to the subject matter of the deliberations of the decisions, it is limited to the question of valuation only. As it amounts to a real appeal the time limits and other requirement laid down in Arts.677 -690, with the exception of Art.689, have to be observed, because clause 2 of Art.1495 specifically declares that a further appeal lies to the high court from an order refusing to admit the appeal. This appeal is not specifically mentioned in Art.677 because it is not an appeal from a judicial division as such.
  - oArticle 1496-1499 apply to all cases of appeals to the guardianship council. Art.1496 alters the constitution of the guardianship council; instead of the Civil Judge and 2 substitutes it is now constituted by the guardianship Court.

Article 1491 - Summoning of the Council - Once the Council is constituted it shall be summoned to deliberate the members in the notice being notified of the main purpose for which

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they are being summoned.

The order of summons shall be notified to the government pleader to the minors of more than 14 years. To those interdicted for prodigality and the respective representatives and any other persons who may be interested in the decisions of the council.

The personal appearance of the members of council, of the government pleader and the representatives of the legally disabled persons is compulsory.

Article 1492 – Chairmanship - The judge presides over the family council without right to vote.

Article 1493 - Functioning of the council - On the date appointed for deliberations, at least three members of the council being present, the initial application shall be read and the applicant or his representative shall be allowed to speak and make a brief exposition meant to justify the content of the application and produce any evidence.

Thereafter any interested party may speak, opposing the application whether he has been summoned or has appeared on his own. The opponent may also produce any evidence.

Thereafter the government pleader and the representative of the legally disabled persons shall be heard. At the end the council shall retire along with the judge to the conference hall and there shall take its decision by absolute majority of the members present. The decision shall thereafter be inserted in the record of the proceedings.

Corresponds to Section 110 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1494 - Steps to be taken in case measures are necessary - If the council does not find itself able to decide in the light of the allegations and evidence produced it shall indicate the measures and classification which it thinks necessary.

These measures being promptly taken and classification obtained the council shall deliberate on the day fixed or designated, the space between the first and the second meeting being not more than 15 days.

§ 1: If the day of the second meeting is immediately fixed, the members of the council who have remained absent shall be notified.

For the second meeting only those persons which the council wants to hear and specifically indicates shall be summoned.

§ 2: The provisions of this article and the previous one shall not apply to the decision which the

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family council is competent to take in orphonological inventories, in terms of Art.1392 onwards, nor to the cases foreseen by Arts.1019 and 1442.

Corresponds to Section 111 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1495 - Appeal from decision - From the decisions of the family council when the valuation exceeds the pecuniary limits of the Civil Code of the judicial division, appeal may be filed to the guardianship council.

The appeal may be filed before the judge who has presided over the council, a further appeal shall lie to the High Court from the order refusing to admit the appeal. The appeal shall operate as stay unless the judge finals it necessary to immediately the decision of the family council.

Corresponds to Section 112 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1496 - Constitution of the Guardianship council - The guardianship is constituted by the code of guardianship of children in the respective judicial division.

Corresponds to Sections 106 and 113 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1497 - Procedure in appeal - Upon the appeal being filed the file shall be immediately placed before the president of the guardianship court if he is not the same judge who has forwarded the appeal memo.

Interested parties may within 8 days submit documents, apply for any steps or file return pleadings. The president of the Tribunal after directing the enquiries and steps which he deems necessary shall fix the day for hearing which should be within 30 days following the 8 days mentioned in the proceeding clause.

Corresponds to Sections 106 and 114 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1498 - Hearing of the appeal - Once the council is constituted the applicant may submit before it a brief oral submission in support of the grounds of the appeal and submits any proof. Whoever is interested that the decision of the family council has to be maintained shall be permitted to reply and produce evidence. If there are many interested parties they shall all be represented by a single attorney.

Thereafter the government pleader shall be heard and thereafter the council shall deliberate in conference its decision being transcribed in the record.

Corresponds to Section 115 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

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Article 1499 - Appeal from guardianship council - From the deliberation of the guardianship confirming that of the family council no further appeal lies; if it revokes the same an appeal may be filed in the High Court.

SECTION VIII
VERIFICATION OF PREGNANCY

Article 1500 - Procedure for verification of pregnancy - Whenever for any purpose a woman requires verification as to whether she is pregnant or not she shall apply for an examination mentioning therein a physician.

The government pleader shall have opportunity with 48 hours to indicate another physician and the judge shall appoint a third one for breaking the tie. After the procedure is carried out the applicant may have her say within three days; the proceedings shall be submitted for the same period to the government pleader who may make his observations and thereafter order shall be passed taking as verified the condition of the applicant according to the replies of the three experts or majority of them if they are precise or conclusive.

Corresponds to Section 117 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1501 - Intervention of Medico Legal Council - If the condition of the applicant cannot be ascertained by reason of the replies of the physician being doubtful she may apply that the examination be carried out by the Medico Legal Council of the said circumscription. In such case the file shall be forwarded to the council who will examine the applicant and give its opinion. Upon the file being returned with the opinion, judgment shall be pronounced in accordance with the findings of the council.

Corresponds to Section 118 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION IX
PROTECTIVE MEASURES AND PROVISIONAL CURATORSHIP OF THE ASSETS OF THE ABSENTEE

Article 1502 - Preventive measures - If on account of absence of the owner or by reason of the inheritance being in ambiance or for other reason there are assets lying abandoned and if it is

necessary to take precautionary measures against lost or deterioration they shall be recovered judicially, through enlistment and deposit.

These measures may be ordered suo moto or on the applicant of the government pleader or of any interested party. If they are applied for the judge may demand evidence and obtain such information which he may think necessary.

- **Articles 1502 to 1506** – Protection of absentee are also peculiar to this Code.

Article 1503 - Provisional curatorship - Where provisional curatorship is sought in respect of the assets of an absentee person the need for the measure shall be shown and the presumed heirs of the absentee shall be indicated and in their absence the persons who have interest in the preservation of the assets.

The absentee shall be notified by notices of 30 days; and after hearing the government pleader when he is not the applicant as well as the partner's or possessors of the assets, after production of evidence and obtaining such information as may be considered necessary the curatorship shall be granted or not.

§ Sole paragraph: If there is more than one presumed heir, or in his absence more than one person interested in the preservation of the assets of the absentee the more suitable one from amongst them shall be chosen as the curator.

- Corresponds to Section 119 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1504 - Publication of judgment - The judgment granting curatorship shall be published by public notice affixed on the door of the house of the village administrator in the parish of the last residence of the absentee and by notice in the newspaper, reference to by Art.945.

The notice in the announcement shall contain only the name of the absentee and the designation of the curator who has been appointed for him.

Article 1505 - Enlistment and security - The curator shall take charge of the assets through enlistment and after furnishing security.

The suitability of the security shall be dealt with in the proceedings of curatorship after hearing the government pleader and taking the necessary measures.

Article 1506 - Cessation of curatorship - If the absentee returns and the curator refuses to handover the assets the provisions of Arts.1115 shall be observed.

§ Sole paragraph: As soon as the court comes to know about the absentee and the place where he resides, he shall be officially notified that the assets are in provisional curatorship and the curatorship shall continue until he takes measures.

- This is connected with Art. 63(1) of the Civil Code.
- Corresponds to Section 121 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION X
JUDICIAL LEASES

Article 1507 - Procedure for lease of share - When any co-holder desires that the property be leased in public auction he shall apply that the possessor and other co-holders be notified to within 5 days oppose the application or declare whether they agree to the lease.

If there is opposition the matter shall be decided after the necessary steps. In the absence of opposition or when the same is rejected the day for the lease shall be designated if the majority of the interested parties, agree to the request. It is presumed that the co-holders which remains ex-parte give their consent.

Article 1508 - Form of lease - The provisions which regulate judicial sale are applicable to lease to the extent to which they are applicable.

Article 1509 - Request for improvements - In the 10 days following the sale the possessor may raise in the same proceeding a claim for any improvements made by him from which they increase in rent errors. After notifying the co-holder to file their objections, the terms of an ordinary suit, summary or very summary proceedings shall be followed depending on the valuation.

- The procedure in Arts.1507-1509 is for enforcing the right given by Art.2191 of the Civil Code to the co-holders to demand the lease of their share.

Article 1510 - Applicability to lease or common assets - What is mentioned in this Section is equally applicable to the lease of common assets, all the co-owners being notified; and any of them may ask for the value of the improvements to which he is entitled.

- This is related to Art.2179 of the Civil Code.

SECTION XI
NOTICE FOR PRE-EMPTION

Article 1511 - Procedure for giving notice of pre-emption or preference - If it is desired that anybody should be notified to exercise if he so desires the right of preference there shall be specified in the application the price and the conditions of the agreement and it shall be prayed that the person be notified to declare within 8 days if he or she wants to exercise the rights of preference. After carrying out the procedure the application and the certificate shall be handover by the clerk in the court office.

In case the person summoned desires to exercise the rights of preference he shall so state to the head of the court office, who shall draw up the necessary written record pursuant to the certificate, if it is within time. In the case of refusal or doubts on the part of the head of the Court office, the interested party may apply to the judge to have the written record drawn up.
After the record is made, the person seeking to exercise preference shall lose his right if within 20 days he does not execute the respective deed or does not apply that the opposite party be notified to receive the price in the office on the day and time designated by the judge, on penalty of being deposited. If afterwards the person exercising right of preference does not deliver or deposit the price he shall similarly lose the right besides being subject to liability for losses and damages. § Sole paragraph: Upon the price being paid or deposited the assets shall be adjudicated in the favour of the person exercising right of preference.

- **Articles 1511-1518** – Preemption is peculiar law.
- The Civil Code recognises the right of preference or pre-emption in the following cases:- o Amongst co-owners, Art.1566
  - o Owner and holder (lessee) on emphyteusis, Art.1678 & 1704
  - o Cession with reservation Art.1708 to the possessor or co-holder 2-1-95
  - o Dominant and servient owner in the case of easement, Art.2309(1).
  - o Owners and lessees of commercial establishments, Art.9 & 11 of Law nos.1662 of 4-9-1924.
- Article 1511 applies where an independent notice of preference is sought. However where other judicial proceedings are pending like execution, bankruptcy or insolvency the procedural provisions relating to the same provide for a notice of preference.

Article 1512 - Notice where the right of preference is available simultaneously to various persons - If the right of preference is available to various persons simultaneously, all shall be notified to appear in the court on the day and the time designated to effect the licitation among them.

The result of the licitation shall be recorded in a written record in which the highest bid of each participant will be recorded. To the participant who has offered the highest bid the provisions of the preceding sections shall apply in the matter of losing the right of preference.

§ Sole paragraph: If the participant in licitation neither pays nor deposits the price within the time, the right of preference shall devolve upon the interested party who has offered the next highest bid and so on successively, but the time for payment or deposit in the case of each of these interested parties, shall stand reduced to 8 days. As each of the participants in the licitations goes on losing his right the applicant for the notice of preference shall inform the fact by means of a new notification, to the next participant. In the event of devolution of right of preference in terms of this paragraph the participants in the licitation incur no liability if they don't maintain their beat and do not want to exercise their right.

- A case of this nature could arise for example: -when the owner of a land locked property has an easement of passage through various properties. In such case if the owner of the land locked property desires to sell the same he shall offer a right of preference to the various servient owners (Civil Code Art.2309(3)).
- It could also happen u/Art.1566 of the Civil Code, where the co-owners are many and have equal rights.

Article 1513 - Notification in case of right of preference in various persons successively - If various persons successively have right of preference they may all be notified to declare whether they intend to avail of the said right incase it comes to belong to them or the notification may be made to each one as and when his turn comes as a result of the remuneration or loss of right by the previous interested party.

In the first case the person to whom the right of preference belongs in the second place shall have to pay or deposit the price within 20 days after the expiry of the period in which the first one was entitled to exercise his right of preference and so on successively except if the 20 days end before the next preferring party is notified, or before 20 days have expired form the notice. Because in such cases the person exercising right of preference may always effect the payment or the deposit in the 20 days following the notice to him.

But if any of the interested parties declares that he wants to exercise preference and thereafter fails to effect the payment and deposit within time this fact shall be brought to the knowledge of the next person entitled to preference by means of a fresh notice and the said next preferring party shall pay the price within 8 days.

- In the case of Art.1512 the right is equal and simultaneous but in case of Art.1513, the right of preference arises in a hierarchal manner. All are not in a same position, the right of some of the parties arises before that of others. An example of this is Art.2195(1) of the Civil Code where in , if a co-holder wants to sell the right of preference in first place goes to the possessor and thereafter to the other co-holder. Similarly u/Art.1566 of the Civil Code the person having the bigger share has the first right of preference and the one with the next share has the second one and so on.

Article 1514 - Notification in case of assets belonging to the inheritance - If the assets belong to the inheritance the administrator shall be notified except if they have already been auctioned or have been included in any of the shares in which case only the respective party shall be notified. The administrator as soon as he is notified shall apply for the conference parties, to decide whether the estate should exercise the right of preference. In case there are legally disabled persons who are not represented by their parents, the family council shall also participate in the conference.

If the estate does not exercise right of preference, any of the heirs exercise the right within the same time, independently of any other notice.

§ Sole paragraph: In case more than one heir comes forward to exercise his right of preference, the priority shall be determined by the greatest size of the shares; in case the payment or deposit is not made within time the provisions in the last part of the preceding article shall be applicable. If the shares are equal, auction shall follow in terms of Art.1512.

- This article deals with a case in which the right of preference vests on an undivided estate or inheritance. Suppose an owner of a property on emphyteusis wants to sell it, he has to offer the right of preference to the partner in emphyteusis, but the partner is dead and his estate is undivided or suppose the owner of a land locked property wants to sell it but the servient heritage is part of an undivided heritance or even one co-owner is dead and his share is part of an inheritance. All these are cases covered by Art.1514.

- In the conference of interested parties, mentioned in this section it is the interested parties and not the administrator who will decide whether the estate will exercise right of preference or not. If the conference does not take place or does not take a decision it is taken that the estate is not exercising its right of preference and the heirs will be free to exercise their right individually.

Article 1515 - **Notice in case of assets belonging to spouses** - If the assets belong in common to the spouses the husband shall be notified; but incase he does not desire to exercise his right of preference the same may be exercised by the wife, if there is pending or decided a suit for divorce, separation of persons or assets or only for separation of assets in which case she shall be notified.

Article 1516 - **Notice in case of assets being joint** - If the assets are in joint ownership of various persons all the co-owners shall be notified. If more than one comes forward to exercise the right of preference the provisions of Art.1514 sole paragraph shall be observed.

Article 1517 - **Disposal of records -** If none of those notified comes forward to exercise right of preference the application and certificate of steps taken shall be handed over to the applicant. In the contrary case the papers shall be filed in the court office, for the interested parties to be able to inspect the same and obtain the certificates which they may need. Documents attached to the application are excepted and shall be handed over to the applicant as soon as the proceeding of notification are over without keeping any extract.

Article 1518 - **Costs** - Costs shall be paid by the applicant except in the case of auction, in which case the cost shall be paid by the bidder who offers the highest bid. If the notified person having made the declaration referred to in Art.1511, fails to execute the deed or pay or deposit the price within the time he shall be bound to pay all the costs. When various interested parties commit this default all the costs shall be paid by the one who defaulted first.

SECTION XII

ESTATE IN ABEYANCE

Article 1519 - **Procedure to ascertain whether the heirs accept or renounce the inheritance** -Upon an inheritance being open, if the heirs being known do not express or tacitlyaccept it, the government pleader, any interested party or creditor may apply to the court of the place where the inheritance has opened. To notify within 30 days to declare whether they accept or repudiate the inheritance. Any declaration shall be drawn into a written record, this being done in the case of repudiation in the appropriate book. In the absence of declaration the inheritance shall be taken to have been accepted.

- **Articles 1519-1522** – Estate in Abeyance
- This corresponds to Art.201 of the Civil Code.

Article 1520 - **Notice to heirs next after the persons relinquishing** - If those notified repudiate the inheritance, the known heirs next after them shall be successively notified until there is no one who has a preferential right of succession over the state.

- Vide Art.1969 of the Civil Code. If there are no other heirs the state gets the right vide Art.1969(6).

Article 1521 - **Acceptance of inheritance by the creditors for payment of debts** - If the creditors of the heir who has repudiated the inheritance desire to accept the inheritance inorder to be paid form the assets thereof in terms of Art.2040 of the Civil Code, they shall so declare within

a period of 20 days counting from the date of which they become aware of the repudiation. Upon this declaration being made the creditor shall make out by proper means the claim for their credit against the person who has repudiated and against those to whom the assets have passed on as result of the repudiation. After obtaining favourable judgment, they may execute the same against the estate.

Article 1522 - **Appointment for curator for the inheritance** - When the inheritance held in ambiance requires a curator, the same shall be appointed suo moto or on the application of any legatee, creditor or interested party in which there is someone who can represent the inheritance in the court.

The powers of the curator shall cease as soon as the inheritance is accepted or declared vacant.

SECTION XIII

EXECUTORSHIP

Article 1523 – **Appointment of Executor** - Where the judge is empowered to appoint an executor, for the will in terms of Arts.1839 and 1893 of the Civil Code. Any interested party may apply for the same. After identifying the other interested parties and specifying if he so desires the one who in his view is in the best conditions to discharge the role.

After hearing the other interested party and their representatives the appointment shall be made.

- **Articles 1523-1530** – Executorship
  - Are all part of Succession Law.

Article 1524 - **Exemption of the executor** - The executor who desires to resign after having accepted the charge should seek exemption after giving a justifiable reason.

A legitimate reason for exercising is a subsequent impossibility on account of sickness, prolonged absence or incompatibly with the exercise of any public office. The exemption shall be granted or refused after hearing the interested parties and collecting the required evidence and information.

- This relates to Art.1891 of the Civil Code. Before accepting the post the executor may excuse himself, but at that point it is not for the judge to permit the same. This situation is foreseen by Art.1590 of the Civil Code.

The judge comes into the picture only when the executor desires to quit after he is appointed.

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Article 1525 - **Removal of the Executor** - The interested party who desires the removal of the executor shall state the facts which justify his application and shall furnish the evidence along with. The opposite party shall be notified to reply and submit evidence.

After the indispensable evidence and hearing the other parties if necessary the matter shall be decided.

- This provision is for implementing Article 1909 of the Civil Code.

Article 1526 - **Procedure for inspection of the Will** - An interested party who desires to inspect the Will, or obtain a copy of the same may request that the executor produces the same in the court for this purpose.

The executor shall be notified to produce the will within specified time;
If the notified person does not do so nor proves good reason he shall be removed from the executorship.

- This regulates the exercise of the right given to interested parties by Art.1899(4) of the Civil Code.

Article 1527 - **Appendage to inventory** - The applications mentioned in the preceding article shall be annexed to the inventories when there is one.

SECTION XIV

SALE OF ASSETS BY THE EXECUTOR

Article 1528 - **Petition of sale of assets by the executor** - If the executor desires to carry out the sale of assets in terms of Art.1898 of the Civil Code, he shall present the account of the expenses made or to be made and request that the heirs be notified to furnish within 20 days the necessary means, or dispute the expenses or designate the assets which will be sold.

§ Sole paragraph: This prayer shall be annexed to the inventory if there is one.

- This provision is for exercising the right granted u/Art.1898 of the Civil Code, where by the executor can sell assets to meet the expenses of the executorship when in the inheritance there is no money and the heirs do not or cannot advance the same.

Article 1529 - **Steps to be followed in case of opposition** - If the heirs dispute the expenses this shall be resolved after hearing the executor or obtaining the classifications and the evidence which may be thought necessary. But at the request of the executor it may be ordered that the

opponents deposit immediately the amount indispensable for satisfaction of the urgent debts authorized by law on pain of the opposition being rendered ineffective.

After the amount is deposited the executor may withdraw the same before the final order if he furnishes security.

Article 1530 - **Procedure in absence of opposition** - If the heir neither oppose the expenses nor specify the assets those indicated by the executor shall be sold. If there is no agreement amongst the heir as to the specifying of assets or if the income from the sale is insufficient, other assets which may be necessary shall be specified in the order laid down in Art.2151 of the Civil Code.§ Sole paragraph: The sale shall be done in the manner indicated by the judge.

SECTION XV

EXERCISE OF THE RIGHT OF THE SHAREHOLDERS OF THE COMPANY

SUB-SECTION I

JUDICIAL INQUIRIES

Article 1531 - **Procedure for ordering inquiry** - The share holders who propose to initiate investigation through Court of the books and documents, accounts and papers of the company, whenever the law permits, shall set out the grounds and purpose of the investigation.

Summons shall be issued to the Administrator or management of the company to give their say. In absence of reply, investigation shall be ordered; and also in case of reply, if it is found that there is a ground to proceed with an investigation.

- **Articles** 1531-1554 – Right of shareholders of companies are subject matter of the Companies Act.
- **Note**: The word "Society" means "Company". Portuguese Commercial Code Article 149; law dated 11.04.1901, article 46 para 5.

  Department's clarification - As regards the extension of the Companies Act to Goa, Daman and Diu, the following information is given in the Annual Report submitted to Parliament under section 638: "*It was decided in consultationwith the Goa Administration that For Quota Societies formed under the Portuguese Laws should be given an opportunity to be incorporated as Companies under the Companies Act. Upon such incorporation such a society should be deemed to be a company under the said Act with effect from the date of its formation under the Portuguese Commercial Code, as if the Companies Act had been in force on the date of its formation under the Portuguese Commercial Code, as if the Companies Act had been in force on the date of its formation under that Code. To achieve this purpose, a Notification was issued*

under section 620-B of the Companies Act (as extended to Goa) amending section 34 of the Companies Act in its application to Goa, Daman and Diu. The said Notification gave the benefit of continuity of existence to for Quota Societies, provided they registered themselves as companies under the Companies Act on or before the 18th March, 1965. The time limit was later extended to the 30th June, 1965, at the instance of the interests concerned. By another Notification, such Par Quota Societies as registered themselves as companies within the aforesaid period were given exemption from the initial payment of registration fee, and fees in respect of filing the documents required to be filed at the time of registration. Till 30th June 1965, 21 Por Quotas Societies have been registered as private companies." (Ninth Annual Report, dated 5th August, 1965, page 3).

Article 1532 – **Procedure in inquiry** - Whenever investigation is ordered, the court shall fix the points for determination which the investigation should include, after hearing the petitioners and the management of the company, if the same has not remained ex-parte.

Also experts shall be appointed to take up the investigation following whatever has been provided in the matter of examination.

Article 1533 – **Preventive measures** - As a consequence of the investigation the court may, if any, application made order interim measures which may be necessary to secure rights of shareholders and of creditors.

Article 1534 – **Right to apply for inquiry at the stage inquiry in extra judicial liquidation** -The investigation may be ordered at the stage of liquidation of the company outside the court.

Article 1535 – **Regime of costs** - As to the costs, the following shall be observed:
a) If the result of the investigation does not confirm the suspicions of the applicants, they will be liable to pay the costs; and they also will be liable to pay the expenses which to be incurred with the publication of report and of the conclusions of the experts or only conclusion alone, in the event the board administrator and management of the company demands such publication; b) As a consequence of the investigation, if any, temporary measures have been issued meant to secure the share holders and creditors, the liability to the cost is cast upon the board administrator and management of the company;
c) If as a consequence of the investigation any suit has been instituted whoever has been directed to pay the costs of the suit shall pay also the costs of the investigation, which shall be

provisionally awarded to the applicant, except in the case foreseen in the previous clause.

SUB-SECTION II

REMOVAL OF THE ADMINISTRATOR

Article 1536 – **Only Court to withdraw powers of administrator** - Whenever the management of the company is entrusted to one shareholder alone as per the special clause in the contract which cannot be revoked without legitimate cause, in accordance with sole paragraph of article 1266 of the Civil Code and of sole paragraph of article 155 of the Commercial Code, the administrator shall not be deprived of his powers, until the court has ordered that there is a ground for his removal.

Article 1537 – **Procedure to withdraw powers** - Any shareholder may seek removal, pleading the facts which justify the removal and presenting immediately the proofs.

The delinquent shall be summoned to reply and lead his evidence if any.
After evidence is led and all the clarifications having been obtained, the question shall be decided.

SUB-SECTION III

CONVENING THE MEETING AND ASSEMBLY OF THE SHARE HOLDERS

Article 1538 – **Procedure for convening of general body or meetings of members** -Whenever, in any company, there has not been convened the general ordinary assembly or extraordinary or the meeting of the shareholders, or when by any reason there is a obstacle to hold such meetings or its functioning, the applicant may apply to the court either to convene the meeting or authorize the applicant to do so.

As soon as the document of the constitution of the company is produced, the court shall resolve within 5 days, after hearing the management of the company, when it found convenient and undertaking the inquiry which is found necessary.
If the application is granted, the court shall designate, among the share holders the person who shall act as a president and direct the steps which may be indispensable for holding the meeting or assembly.

The court may appoint also as a president a Government servant of higher category if there is strong reason not to make selection amongst the shareholders.

- Commercial Code article 180, sole paragraph; law no. 11.4. 1901 article 37. Paragraph 2 and 3.

SUB-SECTION IV

REDUCTION OF CAPITAL OF THE COMPANY

Article 1539 –**Requirements of application** - The commercial company which proposes to reduce its capital, shall present to the court with the project of the reduction provisionally registered, or

document which proves the agreement of all the creditors, or the inventory and balance sheet from which it is found that the balance of the effective capital exceeds 1/3"1 of the debts of the company.

If the court holds existence of such requirement proved, shall direct that resolution of the company be published.

- Commercial Code article 116 sole paragraph.

Article 1540 – **Objection** - Within 30 days following the publication, any member, share holder or dissenting creditor may oppose the reduction, justifying his locus standi and by way of paragraph wise objections raise grounds of his objections and apply that the resolution be stayed.

Article 1541 – **Decision** - After all the objections are brought in to the file, the court shall ascertain if the locus standi of the opponent is tenable and shall reject the objections raised by opponents who have no locus standi.

If any objection is to be considered, the deliberation shall be stayed and notified to the management of the company, to reply within 10 days, and thereafter the procedure of summary proceedings shall be followed subsequent to the written statement.

§ Sole Paragraph: The registry shall certify that the deliberation is suspended and shall remit the certified copy to the conservator in order that he makes the endorsement of the suspension at the margin of provisional registration of the deliberation.

SUB-SECTION V

ENDORSEMENT, CONVERSION AND DEPOSIT OF THE SHARES AND OBLIGATIONS

Article 1542 – **Right to apply for endorsement on shares or liabilities** - If the management of the company fails to carry out within 10 days the endorsement of the shares and liabilities which

have been produced for this purpose or does not issue, within the same period, a precautionary measure with the declaration, that the documents are in condition of being endorsed, the interested party may apply to the court of the registered office of the company for a direction to make the endorsement.

§ Sole paragraph: The precautionary measure referred to in this article shall have same value as the making of an endorsement.

Article 1543 – **Initial petition and subsequent steps** - The share holder or bond holder shall formulate the prayers with grounds and apply that the management of the company be summoned to contest within 5 days, failing which direction will be issued to carry out the endorsement. If the company contests, the applicant may reply within next 3 days.

No other evidence other than by way of document shall be admitted and the judgment will be passed within a period of 5 days after the reply.

Article 1544 - **Execution** – When endorsement has been finally directed, the interested party may apply for service on the management of the company to carry out the decision within 3 days. Failing compliance, the judicial decision shall be noted in the title deeds, which shall for all purposes have same value as an endorsement and the administrator shall be liable to penalty corresponding to the offence of aggravated disobedience, without prejudice to payment of the damages caused.

Those who refuse to recognize the judicial decision shall incur in the same liability.

§ 1: The effects of the endorsement directed by the court, retroacts to the date on which the title deeds were presented to the management of the company;

§ 2: The title deeds and the documents shall be delivered to the interested party as soon as the file is closed without keeping on record any note nor even integral certified full text of the copy of the order.

Article 1545 – **Proceedings during vacations** - Such proceedings may be taken up during the vacation also.

Article 1546 – **Conversion of nominative documents into bearer documents** - What is provided in the previous articles is applicable in case the share holders or bond holders have the right to demand conversion of a nominating credit instrument into bearer title if the management of the company refuses to make such conversion.

After the conversion is ordered, if the management refuses to comply with the decision endorsement shall be made on the credit instrument that they are bearer title and the administrators shall incur in the liability imposed on them, as provided in article 1544.

Article 1547 – **Deposit of shares or obligations in the bank** - The deposit of the shares or bearer instruments, necessary in order to take part in general body, may be made in the establishment where the judicial deposits are made when the management of the company refuses to do so.

Article 1548 – **Mode of depositing** - The deposit shall be done in the basis of a written declaration of the interested party, or some other in his name, in which there is an identification of the company and there is an indication of the purpose of the deposit.

The declaration shall be presented in duplicate, and one of the copies of the same shall remain in the custody of the depositor, with the noting of deposit having been made in the said document.

Article 1549 – **Legal effect of deposit – responsibility to admit the same** - The chairman of the general body shall be bound to admit at the meeting the share holders and bond holders who produce the document of the deposit, referred to in the previous article, once they demonstrate through the said documents that the credit instrument has been deposited within legal period and the depositor possesses the number of the title deeds necessary to take part in the assembly. If he does not do so, he shall incur the penalty prescribed in the article 1544.

SUB-SECTION VI

EXAMINATION OF THE BOOKS AND DOCUMENTS

Article 1550 – **Petition and summons for examination of books of accounts and documents** -In the event a share holder has been refused the exercise of the right recognized by clause no. 3 of article 119 of the Commercial Code, the interested party may apply to the court to eliminate the refusal, indicating as clearly as possible the facts which are to be inquired and part of the writing

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in the books or documents which are required to be examined.

The management of the company shall be summoned to contest within period of 5 days, failing which the examination will be permitted immediately.

Article 1551 – **Subsequent steps - books of accounts and documents** - In the case of the contest the applicant may reply. After the evidence is led and necessary steps have been carried out, the court will decide the question. If the examination is admitted, the books and document whose inspection is demanded by the applicant shall be made available to the applicants and also time when the same may be examined and time when the same may be examined.

Article 1552 - **Execution** - If the management of the company does not comply with the decision despite the notice thereof, the share holder shall get testified the factum of the resistance through an officer of the court and two witnesses and necessary record will be made.

Once the factum of refusal is established with the signature of the witnesses, the judge shall order the seizure of the respective books and documents and which will remain in the custody of the court for

the examination of the applicant and the administrators shall incur the liability prescribed in article 1544.

SUB-SECTION VII

INSTALLATION OF THE BOARD OF THE COMPANY

Article 1553 – **Procedure for appointment of office bearers** - If one person duly elected or appointed for exercise of any office of the company is facing obstacles which obstruct him to assume the charge of the office, he may apply that he may be installed by the court, and justify immediately, by any evidence, his right to hold the office.

Whoever has given cause for judicial intervention shall be summoned to, within period of 5 days, contest the prayer, failing which the application will be immediately granted.
If there is a contest, the applicant may rejoin and thereafter after taking the steps and obtaining the necessary information, the decision will be passed.

Article 1554 - **Execution** - If the installation is directed by the court, the applicant may pray that he may be installed in the office through the court.

The installation shall be done, either by the judge, if it is applied for, or by the registry of the court. Thereafter respective report shall be made in the head office of the company or at the place where the office is to be exercised and in such occasion the applicant shall be given the keys, papers, amounts and any other objects which must be retained in his possession, and for which all the steps shall be taken including breaking, which becomes necessary.

At the time of the investiture in the office, if it is possible or subsequently notices shall be issued against the persons, the action was sought to abstain from causing any objections which may constitute obstacle to exercise the office on the part of the officer who was to be installed, on the pain of offence of disobedience.

SECTION XVI

MEASURES CONNECTED WITH SHIPS OR THEIR CARGO

Article 1555 – **Expert inspection of ship, to ascertain its navigability** - When it is intended to hold arbitrament of a ship in order to ascertain its status of navigability, in accordance with article 505 of the Commercial Code, the captain may apply to the court of the jurisdiction where the port in which the ship is surfaced lies, that experts be appointed and arbitrament to be carried out. The judge after examining the inventory on the board of the ship shall appoint, depending upon the circumstances, the experts that are found necessary and fit for the appreciation of the different parts of the ship shall fix the period for the inspection and examination.

The experts shall carry out the inspection without intervention of the court or maritime authority of the port and deliver within the time the result of its arbitrament.

The period may be extended, if the extension is absolutely necessary.

- **Articles 1555-1560** – Ships and Cargo is dealt by specific legislation.

Article 1556 – **Other expert inspection of ship or its cargo** – The same steps shall be observed in all the cases in which arbitrament is sought of the ship or its cargo in the exercise of voluntary jurisdiction.

If the inspection is urgent, the maritime authority instead of approaching the judge for appointment of the expert can carry out the inspection by themselves.

Article 1557 – **Notice incase of a foreign ship** – If it is a foreign ship and in the port there is a consular agent of the respective state, communication will be sent to such agent giving him knowledge of the procedural step required.

The consular agent is permitted to apply for any procedural steps in the protection of the respective nationals.

Article 1558 – **Sale of ship for innavigability** - When the ship cannot be repaired or when the repair is not justified because it is not economic, the captain of the ship may apply that it may be declared that the ship is not navigable, for the purposes of article 513 of the Commercial Code. The judge shall appoint the necessary expert or experts and shall fix a period for carrying out the inspection, by issuing notice to the interested parties residents within the judicial division to remain present for such inspection, if they so desire.

If the experts conclude that the ship is absolutely not navigable or relatively not navigable they shall so declare and sale of the ship shall be ordered with its belongings.

§ Sole Paragraph: What is provided in the previous article is applicable to this article.

Article 1559 – **Judicial permission for acts to be done by the captain** - When the captain of the ship requires judicial permission to do certain acts, he shall seek the permission to the court of the port where the ship has surfaced. The permission shall be granted or denied as per the circumstances, after taking necessary steps and obtaining the information which is deemed necessary.

- Commercial Code article 551 and 660.

Article 1560 – **Appointment of consignee** - If the captain of the ship pray that a consignee be appointed as in the cases of article 559 and 560 of the Commercial Code and explain and justify summarily the ground for which the appointment is sought. If the prayer found justified the judge shall appoint consignee and permit him the sale of the goods by any of the methods indicated in article 883.

BOOK IV
ARBITRAL TRIBUNAL
(Articles 1561 – 1580)

BOOK IV

ARBITRAL TRIBUNAL

TITLE I

VOLUNTARY ARBITRAL TRIBUNAL

CHAPTER I

ARBITRATION AGREEMENT AND ARBITRATION CLAUSE

Article 1561 – **Permissibility of arbitration agreement** - It is lawful to enter into an agreement whereby a particular dispute, even though pending before the Court, be decided by one or more arbitrators.

- **Articles 1561-1580** – Agreement and arbitration clause - Corresponding provisions in C.P.C. 1908: -o Settlement of disputes outside the Court - S.89
- Covered by Arbitration and Conciliation Act, 1996

Article 1562 – **Parties to arbitration agreement should be competent to enter into contract** -The guardians of the persons under disability and representatives of the collective bodies may enter into agreement on the subject which comes within their powers or after getting sanction from persons competent to grant it.

It shall not be lawful to enter into agreement in respect of juridical relations in respect of which parties are forbidden to contract.

Article 1563 – **Requirements of agreement** - The-arbitration agreement shall be made in writing and signed by the parties and shall specify, on pain of nullity, with all the precision:

1. The dispute to be decided;
2. The arbitrator or arbitrators to whom the decision is referred,

Article 1564 – **Lapse of agreement** - The arbitration agreement shall be of no effect:

1. If the parties revoke it;
2. If any of the arbitrators, dies or seeks exemption or is prevented from exercising his functions and the parties do not agree to appoint another;
3. If there is no absolute majority in respect of decision of the dispute;
4. If the arbitrators do not deliver their judgment within the time fixed in the agreement, or the same being silent, within the time of six months, except where the parties agree to extend the time.

§ 1: The revocation may take place at any time; but it is necessary that all the interested parties should agree to the revocation and such agreement shall be recorded by document of the force equal to the original agreement.

§ 2: The arbitrators or arbitrator who give the cause to delay the delivery of the decision within the time are liable to pay compensation for damages.

Article 1565 – **Arbitration clause** - It is lawful to stipulate a clause whereby the disputes arising between the parties in future shall be decided by the arbitrators, provided that the juridical act from which the disputes may arise is specified.

Once the arbitration clause is stipulated, where any dispute covered by said clause arises, and one of the parties refuses to comply with the agreement, other party may apply to the court of domicile of the former that notice be issued to appear in person before the court, on specified day and time in order to appoint arbitrators.

Where the party to whom the notice is issued remains absent or refuses to appoint an arbitrator, the appointment shall be done by the judge, who besides that shall appoint a third arbitrator. Where the parties do not agree on the appointment, each party shall appoint his arbitrator, and the judge shall appoint a third one.

Minutes shall be recorded in which names of the arbitrators shall be mentioned and mention shall be made with precision of the subject of the dispute as per agreement of the parties, and, in the absence of agreement, as per decision of the judge. Such decision is appealable.

CHAPTER II
ARBITRATORS

Article 1566 – **Appointment of arbitrators** - Save what is provided in the previous articles, the arbitrator shall be appointed by agreement between the parties, and no objection can be raised after the agreement is arrived at, even though there may be supervenient causes. But the

appointment shall be of no effect where in relation to any of the arbitrators there arises cause which, in accordance with no. 1, 2, 6 of Article 122, would prevent him to be a judge.

§ 1: The arbitrators shall be Portuguese citizens with capacity and persons of good repute; § 2: In case provided in Article 1565, the regime of impediments and exemption with respect to the experts shall apply when the appointment has not been done by the agreement of the parties.

Article 1567 – **Acceptance - exemption** - Nobody is bound to accept the assignment of arbitrator. But the person who has accepted the assignment is not permitted to seek exemption therefrom, save where there is supervenient cause which prevents him absolutely from exercising his functions.

§ 1: The arbitrator is deemed to have accepted the assignment if he does any act from which necessarily the acceptance flows or he remains silent for a period of 10 days from the time of notice of the appointment, without informing any of the parties that he does not want to accept the assignment.

§ 2: The exemption founded in supervenient impossibility shall be decided by the court of the domicile of the applicant or by the court where arbitral tribunal is set up, where the impossibility arises alter setting up of the tribunal. The arbitrator shall set out, in the application the ground of exemption, and the evidence which he wants to lead; the judge shall issue and notice to parties to give their say and thereupon decision shall be delivered.

CHAPTER III
PROCEDURE

Article 1568 – **Freedom to agree on procedure – steps in case there is no agreement on procedure** - The parties may indicate in the agreement or in subsequent writing the court where the arbitral tribunal shall be set up and function, the persons who shall act as judicial staff, the arbitrator who shall conduct the proceedings, the steps to be followed in the matter of such conduct of the proceedings and the remuneration of the persons who will participate in the proceedings. In the absence of stipulation whatever is provided in following articles shall be followed.

§ Sole Paragraph: Where the conduct of the proceedings is entrusted to one of the arbitrators, he shall exercise, for such purpose same jurisdiction as of the judge.

Article 1569 – **Place and mode of functioning of arbitral tribunal** - The arbitral tribunal shall be set up in the court where the suit should have been instituted as per normal rules of jurisdiction.

The office shall file the arbitration agreement and subsequent records which form part of the same.

The preparation of the proceedings shall vest in the respective judge.
The person designated by the arbitrator or by the judge in whom vests the conduct of the proceeding shall act as officer of the court.

§ Sole Paragraph: The arbitrator shall have right to attend all acts of conduct of the proceedings.

Article 1570 – **Oath for the arbitrators** - The judge of the court where the arbitral tribunal is set up shall give oath to the arbitrators to perform conscientiously their functions.

Article 1571 – **Procedural steps** - The procedural steps shall be those which, according to this Code, correspond to the case to be decided.

But where the parties had, in the agreement or subsequent writing, authorised arbitrators to decided *'ex equo et bono'*, such authorization involves necessarily, the conferment on the arbitrators the power to adopt the steps to be taken in the conduct of the proceedings, they being bound always to hear the parties after the preparation and before the decision.

CHAPTER IV
ARBITRAL AWARD

Article 1572 – **Power to decide** - If the arbitrators are authorized to decide *'ex oequo erbone'*, or as per equity, they are not subject to the provisions of the law and they will decide as they deem fit. If such authorization in not given, they shall assess the evidence and apply the law as any civil court of competent jurisdiction would have done.

Article 1573 – **Drawing up of the award** - The trial shall be held in conference and the collegiate judgment shall be prepared by the arbitrator who was entrusted with the conduct of the proceedings. Where the preparation was done by the judge, the arbitrators shall decide by agreement who amongst them shall prepare the award.

The judgment shall be dictated by the assigned arbitrator and signed by all. Once the decision is delivered the file shall be handed over to the office of the court where tribunal functioned. The service of notice of judgment and all subsequent procedural steps shall be undertaken by the judicial officer as per the rules of distribution.

§ Sole Paragraph: In case foreseen in Article 1569 what is provided in second clause of Article 1578 shall apply.

Article 1574 – **Binding force of award** - The decision of the arbitrator shall have the same force as judgment passed by the court.

§ Sole Paragraph: What is provided in Article 717 shall equally apply to the arbitral decision.

CHAPTER V

APPEALS

Article 1575 - **System of appeals** - If the parties have not given up the right to the appeal from the decision of the arbitrators, appeal would lie to the High Court as in the case of the judgment and order of a civil court.

Article 1576 – **Giving up right to appeal** - The authorization given to the arbitrators to decide the dispute as per equity and good conscience implies that parties give up their right to the appeal.

TITLE II

STATUTORY ARBITRAL TRIBUNAL

Article 1577 – **Statutory arbitration** - Where the arbitration has been prescribed by the special law what is provided in such law shall be followed. Where the law is silent the following shall be observed.

Article 1578 – **Appointment of arbitrators - Umpire** - Any party may apply the notice be given to other party for the appointment of arbitrators and in case what is provided in Art. 1565 and in 2nd paragraph of article 1566 shall apply.

The third arbitrator shall always give his vote but he is bound to agree with one of them so that there may be majority on points of difference.

Article 1579 – **Replacement of arbitrators – liability of defaulting arbitrator** - Where any of the arbitrators die or is prevented from acting the appointment of the arbitrator shall take place in accordance with previous article and the right of appointment shall vest in the party who has appointed earlier arbitrator.

Where the arbitrators do not deliver judgment within the time, new period shall be fixed by the agreement of parties or as per the decision of the judge and the arbitrators are liable to pay compensation for damages and each of them shall be liable to pay fine except where the judge finds sufficient cause for justification of delay. In case of repetition the fine shall be doubled.

Article 1580 – **Applicability of provisions relating to voluntary arbitration** - Whatever is not especially provided the provisions of the previous chapter shall be applicable.

Ministry of Justice, 28/05/1939 - Minister of Justice, Manuel Rodrigues Junior.