PORTUGUESE CIVIL CODE, 1867

Official Translation with notes

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INTRODUCTORY NOTE

- **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 Civil Code 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 Civil Code is in force or not.**

- Unlike certain local legislations like the Code of Communidades, the text of the provisions of which were actually amended, bodily amendments in the text of the articles of the Civil Code were never carried out at any time after Liberation.
- This type of amendment was done only once by the Portuguese Central Government at Lisbon, by Decree No.19126 of 16/12/1930, when the text of many articles were amended and subsequent editions of the Code were published with the amended text.
- The Family Laws (Marriage, Divorce and Protection of Children) enacted in 1910-11 were also not physically integrated in the body of the Code.
- So also the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 enacted in 2016 does not directly and specifically repeal but only states that corresponding provisions shall stand repealed.
- **A comprehensive re-codification of the Code including in it also the Family Laws, Succession and Inventory into one unit is the need of the hour.**
- The Portuguese Civil Code, 1867 has survived by virtue of Section 5(1) of the Goa, Daman and Diu Administration Act, 1962.
- 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 in Public Interest Litigation (Suo Moto) No.1 of 2017 also ordered that an official translation of this Code in English be prepared.

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- 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 Civil Code 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 considering the fact that this is a case of rendering a mid 19th century exposition of law in elegant, often archaic Portuguese into a legal language understandable to contemporary Indian lawyers.

Dr. F.E. Noronha

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CHARTER OF LAW OF 1ST OF JULY 1867

DOM LUIZ, by the grace of God, King of Portugal and Algarves, etc. We hereby make known to all our subjects that the general courts have decreed and we want the law to be as follows:

Article 1 – The project of the Civil Code, which is a part of the present law, is hereby approved.

Article 2 – The provisions of the said Code shall come into force in the entire continental territory of the Kingdom and adjacent islands, six months after the publication of the present law in the Gazette of Lisbon.

- Publication was done from 5th August to 21st September 1867 and the Code came into force on 22nd March 1868.

Article 3 – For all the purposes foreseen in the same Code the date of promulgation, shall be the date on which the Code shall come into force in terms of preceding article.

Article 4 – All the provisions of the Civil Code, the implementation of which absolutely depends upon the existence of public offices or other institutions, which are not yet created, shall be binding only from the time such institutions function.

Article 5 – From the time the Civil Code comes into force, all earlier legislation dealing with matters which the said Code covers shall stand revoked, whether this legislation is general or special.

Article 6 – All the modifications to the law, which are made in the future on matters contained in the Civil Code, shall be considered as being part thereof and inserted at the proper place, whether by replacement of the altered articles, or by deletion of repealed articles or by adding those which are necessary.

- Only Decree no. 19126 of 16/12/1930 was implemented in this manner.

Article 7 – A commission of jurists shall be entrusted by the Government, during the first five years of the implementation of the Civil Code to receive all representations, reports from the

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Courts and any observations, concerning improvements of the said Code and to the solving of difficulties which may arise in the implementation of the same. This Commission shall propose to the Government any measures which, for the purpose indicated, appear to it necessary or convenient.

Article 8 – The Government shall frame regulations necessary for the implementation of the present law.

Article 9 – The Government is empowered to extend the Civil Code to the overseas provinces, after hearing competent agencies and after making modifications, which are required by special circumstances of the provinces.

- In the exercise of this permission, the Government published the Decree of 18/11/1869 extending the Code to the overseas provinces safeguarding the usages and customs of the natives of the New Conquests. The Code came into force therein on 01st July 1870. Subsequently by Decree of 16th December 1880, it ordered safeguarding in favour of the gentile Hindus of Goa without distinction of Old and New Conquests, their special and peculiar usages and customs reviewed and codified by this decree.

Article 10 – All the legislation to the contrary stands revoked.

We order therefore all the authorities to whom the knowledge and implementation of the said law concerns, to carry out and have the same carried out and observed it as fully as contained therein. The Ministers and the Secretaries of State of Ecclesiastical affairs and Justice and of Naval and Overseas Affairs, to have it printed, published and circulated.

Issued in the palace of Ajuda, on 01st July 1867.
The King, with seal and coat of arms - Augusto César Barjona de Freitas - Viscount of Praia Grande - Place of great seal of royal arms.

Charter of law by which your Majesty having sanctioned the Decree of the general chambers of 26th June last, which approves the project of the Civil Code, which is part of the present law, and the provisions of which shall come into force in the entire continental territory of the kingdom and adjacent islands, six months after the publication of the same law in the Lisbon Gazette; and authorizes the Government to make it extensive to the overseas provinces, effecting to the same

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modifications, which the circumstances therein demand; orders the same decree to be carried out and observed, as fully as contained therein, in the manner herein before declared.

For your Majesty's approval – Joaquim Pedro Seabra Júnior, prepared it.

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LAW DATED 18TH NOVEMBER , 1869 EXTENDING THE CIVIL CODE TO THE OVERSEAS PROVINCES

Taking into consideration the report of the Minister and Secretary of the State of the Naval and Overseas Affairs and in exercise of the powers conferred by Article 9 of the Law of 1st July, 1867;
Having heard the consultative body of the overseas and the Council of Ministers:
It is hereby ordered as follows:

Article 1: The Civil Code approved by the Charter of law dated 1st July 1867, is extended to the overseas provinces, along with the regulations of the Council on tutelage and divorce causes, dated 12th March 1866 and of Registration of properties dated 14th May of the same year.

Article 2: The Code as well as those regulations shall come into force, regardless of their publication in respective Official Gazettes, in all overseas provinces with effect from 1st July, 1870 and the same day is deemed equally as its publication in the overseas territories for all purposes, with the modifications contained in this decree.

Sole Paragraph: The Ministry of Navy and Overseas shall remit to the Governors of the overseas provinces, copies of the Code and of respective regulations to the officials who are entrusted with the work of distribution of the Gazettes.

Article 3: The transitory legislation over the slaves, who have been given freedom by the decree dated 25th February last, shall continue in force.

Article 4: The marriage performed as per religious rites amongst non-Catholics, shall have civil effects which the Code recognizes to the catholic marriage and civil marriage.

Article 5: The registration of ownership shall continue to be mandatory in the overseas, as it was as per Article 10 of the Code of Property credit, approved by decree dated 17th October, 1865.

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Article 6: All the provisions of the Civil Code, the enforcement of which is dependent absolutely on the existence of law offices or other institutions which have not been created, shall be effective only when such offices start functioning.

Article 7: The Official Gazettes of the overseas provinces shall be substitutes of the "Gazettes of Relação" for the purpose of all publications referred to in the Code.

Article 8: From the date the Civil Code comes into force, all the legislation contrary to that covered by the Civil Code shall stand repealed.

Paragraph 1 : The repeal shall not effect:-

(a)In India the usage and customs of the New Conquests and of Daman and Diu, compiled in respective codes and which are not contrary to moral or public policy.

(b)In Macau, the usage and customs of Chinese in the causes within the competence of the Procurator of Chinese affairs.

(c)In Timor, the usage and customs of indigenes in relation to dispute between them.

(d)In Guinea, the usage and customs of gentiles known as grumetes in relation to disputes between them.

(e)In Mozambique, the usage and customs of Baneanes, Bhatias, Parsis, Muslims, gentiles and indigenes in relation to disputes between them.

Paragraph 2 : Wherever the parties mentioned in the preceding paragraph opt for the application of the Civil Code, the same shall be applicable.
Paragraph 3 : The Governors of the overseas provinces shall start codifying the usages and customs saved and not codified and shall submit the draft for the approval of the Government.

Article 9: A committee of legal advisors shall be entrusted by the Government, for a period of five years from the date of the commencement of the Code, with the task of receiving all the representations, views of the Courts and any other suggestions relating to the improvement of the same Code, and for the solution of the difficulties which may arise in connection with execution of the Code. Such committee shall propose to the Government any other measure which it deems fit for the above purpose.

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Article 10: The Government shall frame regulation necessary for the implementation of the present decree.

Article 11: All the legislation contrary to the same shall stand repealed.

The Minister and the Secretary of the State relating to the affairs of the Navy and Overseas to take steps for the enforcement of the decree.

Seat of the Palace on 18th November, 1869 – King – Luiz Augusto Rebello da Silva.

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Chronology of Legislation affecting the Code:-

- 1876 - A Code of Civil Procedure was enacted affecting certain provisions in the remedial part of the Code.
- 1880 - Code of Usages and Customs of Hindus.
- 1888 – Portuguese Commercial Code.
- 1910-1911 – **Family Laws**:- **Law of Marriage** and **Law of Protection of Children** were passed. Amendments are noted in the present translation at appropriate places.

  Law of Divorce was new and additional to the provisions of the Code.
- 1912 - **Civil Registration Code** was passed in Portuguese India affecting the Civil Registration and Notarial Law.
- 1927 - Notarial decree no. 8373 regulating notarial law.
- 1930 - Decree no. 19126 was passed with amendments which are already carried out in the text of the Code.
- 1939 - **Code of Civil Procedure** deals with many procedural provisions in the Civil Code.
- 1940 – Concordat.

  Decree no. 30615.
- 1946 – Decree on Canonical Marriages.
- 1961 – Decree no. 43525 dated 07/03/1961 regulating leases.

Codigo do Registo Predial, 1959.

After Liberation of Goa Daman and Diu

- 1962 - Goa Daman and Diu Administration Act, Sec 5(1) maintains provisions which have been not repealed
- 1963 – **Evidence Act**, **Contract Act**, **Transfer of Property Act**, Indian Stamp Act, Registration Act, Child Marriage Restraint Act, Sale of Goods Act, Partnership Act, Lunacy Act, Treasure Trove Act are extended.
- 1965 – **Code of Civil Procedure**, 1908, extended to Goa, Daman and Diu.
- 1987 – Mental Health Act.

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- 2016 – **Goa Succession, Special Notaries and Inventory Proceeding Act**, 2012.

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Internal Organization of the Civil Code

Code, Parts and Books

The Code is organized into:-

Parts I, II, III & IV

Each part has Books

Part I Civil Capacity has only one, Sole Book

Part II – Acquisition of rights has

Book I – Original and unilateral rights

Book II – Bilateral rights (Contracts)

Books III – Rights acquired solely from another and statutory rights (Succession)

Part III – Property: Sole book

Part IV – Violation and restitution of rights

Book I - Civil Liability

Book II – Proof and restitution

Books are further divided into Titles, Chapters, Sections and Sub-sections and Divisions and finally articles.

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PART I
CIVIL CAPACITY

SOLE BOOK

TITLE I

CIVIL CAPACITY AND LAW REGULATING IT IN GENERAL

Article 1 – **Concept of Judicial personality** – Only man is susceptible to rights and obligations. This constitutes his juridical capacity or personality.

Article 2 – **Concept of right and duty** – Right means the moral faculty to do or not to do certain acts and duty or obligation the moral need to do or not to do certain acts.

Article 3 – **Scope of civil law** – If the rights and duties are confined to mutual relations amongst the citizens themselves as private persons or between citizens and the State in matters of property or of purely individual rights, these rights, and obligations constitute the civil capacity of citizens, they are

known as civil rights and obligations and are regulated by the private law contained in the Civil Code with the exception of matters which are regulated by special law.

Article 4 – **Sources of rights and obligations** – These rights and obligation originate:- 1. From the very nature of man.

2. From one's own factum and will irrespective of the co-operation of another. 3. From one's own factum and will and that of another jointly.

4. From the factum and will of another.

5. By mere provision of law.

Article 5 – **Function of civil law** – Civil Law recognizes and specifies such rights and corresponding duties; ensures and protects the enjoyment of rights and the performance of duties; lays down the circumstances in which a citizen may be disabled from exercising rights and the manner in which such disability may be overcome.

Article 6 – **Commencement of juridical capacity** – Juridical capacity is acquired by birth; but an individual, as soon as conceived, comes under the protection of law, and is treated as having been born for the purposes mentioned in this Code.

Article 7 – **Principle of equality before the law –** The Civillaw is the same for all, and makes no distinctions between persons, sexes, except where specifically provided.

Article 8 – **Principle of non retrospectivity of the law** – Civil law does not have retroactive effect. Interpretative law is excepted, the same is applied retroactively, except where this application results in violation of acquired rights.

Article 9 – **Irrelevance of ignorance or of the desuetude of mandatory law –** None may exempt himself from following the obligations imposed by law on the pretext of ignorance of the same or of its disuse.

Article 10 – **Consequences of violation of mandatory law –** Acts carried out in violation of the provisions of the law whether prohibitive or preceptive, result in nullity, except in cases in which the said law directs the contrary.

§ Sole paragraph - This nullity may however be condoned with the consent of the interested parties if the law violated is not in the domain of public interest or public order.

Article 11 – **Prohibition of application of exceptional rules by the use of analogy -** A law which lays down an exception to the general rules of law cannot be applied in cases not specified in the said law.

Article 12 – **Principle of legitimation of exercise of right** - Every law which recognizes a right renders lawful the means indispensable for its exercise.

Article 13 – **Immunity from damages resulting from exercise of right -** Whoever, in accordance with the law, exercises his right shall not be liable for damages which may result from the exercise of the same.

Article 14 – **Conflict of rights** - Whoever in exercise of his own right, seeks advantages should in case of conflict and in absence of specific provisions concede in favour of whoever intends to avoid losses.

Article 15 – **Plain concurrence of rights** – In case of concurrence of rights which are equal or of the same nature the interested parties shall reciprocally relinquish that which is necessary to ensure that these rights produce their effect without greater detriment to one party than to the other.

Article 16 – **Interpretation and integration of the law** – Where the questions relating to rights and obligations cannot be resolved, either by the text of the law or by its spirit, nor even by analogous cases, envisaged in any other laws, they shall be decided on the principles of natural law according to the circumstances of the case.

Article 17 – **Applicability of the Portuguese Civil Code to Portuguese citizens only** – Only Portuguese citizens may enjoy to the full extent all the rights which the civil law recognizes and secures.

- Section 1(4) particularly sub-clause (d) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 is a modification of this provision.

TITLE II

AS TO HOW THE STATUS OF PORTUGUESE CITIZEN IS ACQUIRED

Article 18 – **Acquisition of Portuguese citizenship** - The following are Portuguese citizens: 1. Those who are born in Portuguese territory, of Portuguese father, or of Portuguese mother being illegitimate issues;

2. Those who are born in Portuguese territory of a foreigner father, provided he his not in the service of his nation, unless they declare, by themselves, being majors or emancipated, or through their legal representatives, being minors, that they do not want to be Portuguese;

3. The issues of Portuguese father, though expelled from Portuguese territory and illegitimate issues of Portuguese mother, born in a foreign country who come to establish domicile in Portuguese territory, or who declare by themselves, being majors or emancipated, or through their legal representatives, being minors, that they want to become Portuguese;

4. Those who are born in the Portuguese territory of unknown parents or of unknown nationality;
5. Those who are born in foreign territory, of Portuguese father, who resides there in the service of the Portuguese nation;
6. A foreign woman who gets married to a Portuguese citizen;
7. Foreigners who have been granted naturalization.

§ 1 - The declaration prescribed by the second clause shall be made before municipality of the respective residence; and that prescribed by the third clause shall be made before respective Portuguese consular agents or competent foreign authority.

§ 2 - The minor, upon attaining majority or being emancipated, may by way of new declaration object to the declaration which, during his minority, was made by his legal representative, in accordance with the second clause.

§ 3 - A Portuguese citizen who by any chance is deemed to be national of another country, as long as he resides in such country, is debarred from claiming the status of a Portuguese citizen.

- Section 1(4) particularly sub-clause (d) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 is a modification of this provision.

Article 19 – **Requirements for grant of naturalization** – The Government may grant a certificate of naturalization to the foreigners who so apply at the municipality of their residence, if found to satisfy the following conditions:

1. They are major or deemed as major, both by Portuguese law as well as by the law of their country;
2. They are able to earn a salary through their labour or have other means of subsistence; 3. They have resided at least for three years in Portuguese territory;
4. They are free from Penal liability;
5. They have fulfilled the law of military recruitment of their own country.

§ 1 - The signature on the application referred to in this article requires to be authenticated.§ 2 - The third condition is not essential to the descendants of Portuguese blood who have come to be domiciled in the country and may be dispensed with in case of a foreigner married to a Portuguese wife, and to one who has rendered or has been called to render any relevant service to the Nation which justifies the exemption.

§ 3 - The fourth condition is proved by a certificate of the country of the origin of the foreigner who applies for naturalization and by a certificate of his criminal record in Portugal.

§ 4 - Besides the documents mentioned above, only those which may be prescribed by treaty or convention between Portugal and the country of the person who applies for naturalization, may be demanded.

§ 5 - The documents are not subject to law of stamp duty and the Government may dispense them and substitute them by other information supplied by competent institutions, authorities and functionaries.

- Section 1(4) particularly sub-clause (d) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 is a modification of this provision.

Article 20 - Restrictions to the juridical capacity of the citizen by naturalization - The foreigner who has been granted naturalization shall not hold public office of any nature nor exercise functions of supervision or control of Companies or other entities dependent on the State through contract, or subsidized by it, till the expiry of at least ten years from the date of the grant of naturalization.

§ Sole paragraph - During the same period the foreigner who has been granted naturalization shall be subject to same restrictions which apply to the foreigners in respect of acquisition and holding of assets.

Article 21 - **Registration of certificate of naturalization** - The certificates of naturalization shall have effect only when they are registered within the period of six months, from the date of the grant, in the records of municipality of the taluka where the foreigner has established his domicile.

TITLE III

AS TO HOW THE PORTUGUESE CITIZENSHIP IS LOST

Article 22 – **Loss of Portuguese citizenship** – The status of a Portuguese citizen shall be lost by: 1. By one who obtains naturalization of a foreign country. He may, however recover this status, by returning to the kingdom, with the intention of taking domicile therein and so declaring before the municipality of the place, chosen by him for his domicile;

2. By one who, without permission of the Government, accepts public employment, largesse, pension or honours from any foreign government. However there can be rehabilitation by special permission from the Government;

3. When he is expelled by an order, until the effects of the order lasts;

4. A Portuguese woman who marries a foreigner, save where she is not by reason of this fact naturalized, according to the law of the country of the husband. However, after the dissolution of the marriage, she may reacquire her former Portuguese citizenship by complying with the provision of 2nd part of clause 1 of this article.

§ 1 - The acquisition in a foreign country, of citizenship by naturalization by a Portuguese husband, married to a Portuguese wife, does not imply the loss of the status of Portuguese citizen by the wife, except where she declares that she desires to follow the citizenship of her husband.§ 2 - In the same manner the acquisition in a foreign country of citizenship by naturalization by a Portuguese husband even though married to a woman of foreign origin, does not imply the loss of status of Portuguese citizens by the minor children born before the time of naturalization; except where after attaining majority or emancipation they declare that they desire to follow the nationality of their father.

Article 23 – **Effects of recovery of Portuguese nationality –** The persons who regain the status of Portuguese citizens in accordance with the preceding article, may avail of this right only from the date of their reinstatement.

TITLE IV
OF THE PORTUGUESE CITIZENS IN FOREIGN COUNTRY

Article 24 – **Law governing civil acts of the Portuguese in foreign country** – The Portuguese subjects who travel or reside in a foreign country, remain subject to Portuguese laws concerning their civil capacity, their status and their immovable property situated in the kingdom, in respect of acts which will produce effects therein: however, the external form of the acts shall be governed by the law of the country, where they are celebrated, except in cases where the law expressly provides to the contrary.

- Section 8 particularly Clause(3) and Section 373 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 are applications of the principle contained in this article.

Article 25 – **Extra territorial jurisdiction of Portuguese courts** – The Portuguese subjects who contract obligations in foreign countries may be sued in the kingdom by the nationals or the foreigners with whom they were contracted; in case they have domicile therein.

TITLE V
OF THE FOREIGNERS IN PORTUGAL

Article 26 – **Juridical capacity of foreigners in Portugal** - The foreigners, who travel or reside in Portugal, have the same civil rights and obligations as the Portuguese citizens regarding the acts which shall produce their effects in this kingdom; except in cases in which the law expressly provides to the contrary, or, where there exists special treaty or convention which determines and regulates their rights in another form.

Article 27 – **Law governing the status and capacity of foreigners** - The status and civil capacity of foreigners shall be regulated by the laws of their country.

- Article 12 of Commercial Code lays down the same principle.
- Article 62 of Decree No.1 of 25/12/1910 (Law of Civil Marriage) differs from this principle.

Article 28 – **International jurisdiction of Portuguese Courts** - Foreigners found in this kingdom, may be sued before Portuguese courts, in respect of obligations contracted by them with the Portuguese subjects in a foreign country.

- Revoked and substituted by Article 65 of the Portuguese Civil Procedure Code of 1939.

Article 29 – **International jurisdiction of Portuguese courts** – So also foreigners may be sued by other foreigners before Portuguese courts, in respect of obligations contracted within the kingdom if they are found therein.

- Revoked and substituted by Article 65 of the Portuguese Civil Procedure Code of 1939.

Article 30 – **Predominance of treaties** – The provisions of the two preceding articles, is to be observed without prejudice to the provisions of the last portion of article 26.

Article 31 – **Execution of judgements passed by foreign courts** - The judgments passed by the foreign courts in respect of civil rights, between foreigners and Portuguese subjects, may be executed in the Portuguese courts in accordance with the terms prescribed in the Code of Procedure.

- This was regulated by Arts.50 & 1100 to 1106 of the Portuguese Civil Procedure Code, of 1939. Also see S.44A. of the Civil Procedure Code, 1908.

TITLE VI
LEGAL OR JURIDICAL PERSONS

Article 32 – **Concept of Juridical persons** – Legal or Juridical persons are associations or corporations, temporary or perpetual, formed for a purpose, or for any reason of public utility, or of public and private utility together, and which in their civil relations constitute one juridical entity.

Article 33 – **Recognition of legal persons** - No association or corporation is entitled to represent such juridical entity if not legally authorised.

Article 34 – **Capacity of collective persons. Principle of speciality** – The associations and corporations, enjoying the status of juridical entity may enjoy all civil rights in respect of legitimate interests of the institution.

Article 35 – **Capacity of legal persons to acquire assets** – Perpetual associations and corporations of public utility may acquire immobile assets gratuitously; but they are liable to pay the tax on transfer or succession for every period of thirty years.

§ 1 - What is provided in the second part of the body of the article does not apply to immovable assets which are indispensable for the purposes of performance of the duties of the associations or corporations, which may be acquired for consideration.

§ 2 - For the purpose of this article, following associations or corporations shall be deemed as perpetual:-

1. Those which are created for unlimited period;
2. Corporations or associations, though of limited duration, which do not have pecuniary interests.

Article 36 – **Disposal of assets of dissolved legal persons** – Where any corporation or association referred to in the preceding article, is dissolved on whatever ground, its assets shall be incorporated in the assets of the State when any special law has not given any other different destination :-

§ Sole paragraph - However, the clauses whereby the founders or benefactors of any legal person stipulate the mode of disposal of assets in case of dissolution, are valid.

Article 37 – **Collective persons not included in Article 32** –The State, the colonies, the provinces, the talukas, the villages and any administrative corporations and foundations or establishments of beneficence, as well as associations or institutions of the churches, in respect of exercise of respective civil rights, are deemed to be collective persons, save as otherwise expressly provided.

Article 38 – **Abolition of privilege of restitution in full** – Neither the State, nor any corporations or public establishments, enjoy the privilege of restitution in full.

Article 39 – **Regulation of collectivepersons under private statutes for private purposes**–The associations of private interest are governed by the rules in the respective Articles of incorporation.

TITLE VII
DOMICILE
CHAPTER I
GENERAL PROVISIONS

Article 40 – **Purpose of the domicile** – The exercise of civil rights and performance of civil obligations are regulated in different cases envisaged by law, by the domicile of the citizen.

Domicile: In our country we normally follow case law on the subject of domicile. However, there are some provisions on domicile in the Indian Succession Act, 1925.

Article 41 – **Concept of domicile** – Domicile is the place, where the citizen has his permanent residence.

§ Sole paragraph - In relation to corporations or associations, their administrative headquarters takes the place of the residence.

Article 42 – **Types of domicile** –The domicile may be voluntary or compulsory: voluntary is

that which depends upon the choice of the citizen; necessary is the one attributed by the law.

CHAPTER II
VOLUNTARY DOMICILE

Article 43 – **Domicile in case of more than one residence** – When a citizen has different residences, where he lives alternatively, he is deemed to be domiciled where he is found except when he has declared before the Municipality that he prefers one of them.

Article 44 – **Change of domicile** – A citizen may change his domicile, whenever he desires, by declaration of the fact before the Municipalities, from which and to which the change is made.

§ Sole paragraph - Such declaration shall have effect, provided that the transferor has set up his residence in the taluka shown by him.

Article 45 – **Domicile in the absence of permanent residence** – The citizen who does not have permanent residence, shall be deemed to be domiciled at the place where he is found.

Article 46 – **Special domicile** – Citizens may stipulate a specific domicile for the performance of particular acts, which are not subject to a specific domicile under the law, this being done through authentic or authenticated document; however, such choice cannot be left to the discretion of another person.

§ Sole paragraph - In the event of death of any such party, the agreement will have effect in relation to the heirs, there being no declaration to the contrary.

CHAPTER III
DOMICILE OF NECESSITY

Article 47 – **Necessary domicile of the minor** – Minor children not emancipated have as their domicile, the domicile of their father or mother, under whose control they are, and in their absence or legal impediment, that of the guardian.

Article 48 – **Necessary domicile of majors subject to guardianship** – Majors, subject to guardianship, have as their domicile that of their guardian.

Article 49 – **Necessary domicile of married woman** – Married woman has as her domicile, that of the husband, if she is not judicially separated as regards person and assets, save for what is provided in 2nd paragraph of Article 53.

Article 50 – **Domicile of servants and habitual workers** – Majors or emancipated minors who habitually work in the house of others, have as their domicile that of the person to whom they render service, where they live with him, save for the provisions of the two preceding Articles.

Article 51 – **Domicile of public servants** – Public servants, who exercise their employment at a particular place, have their necessary domicile at that place. The domicile is determined by holding of the charge of the employment or by the exercise of respective functions.

§ Sole paragraph - Where the services are not rendered at particular place, the provisions of the preceding chapter shall apply to ascertain the domicile of the employee.

Article 52 – **Domicile of soldiers and sailors** – The enlisted soldiers have domicile at the place where the unit to which they belong is posted. The domicile of the non-enlisted soldiers is at the place where they are on duty, if they do not have any permanent establishment or residence; in which case their domicile will be there.

§ Sole paragraph - The sailors who are on board warships are deemed to have their domicile at Lisbon. Those who belong to commercial ships or coastal boats, have their domicile at the places to which the said ships or boats belong, if, for any other reason, they do not have a different domicile.

Article 53 – **Domicile of the convicted accused** – Those convicted to undergo imprisonment, exile, or deportation have their domicile at the place where they are undergoing the penalty imposed; save with reference to the obligations contracted prior to the commission of the offence, in relation to which they retain the previous domicile, if any.

§ 1 - The convicted not yet transferred to the place where they have to undergo imprisonment, shall have as their domicile where they are detained.
§ 2 - The wife and children of the person convicted to undergo imprisonment who do not accompany the husband to the place where the penalty is to be undergone, do not have the domicile of the husband and of the father, but their own, in accordance with the norms prescribed in the preceding articles.

Article 54 – **Cessation of necessary domicile** – The necessary domicile ceases from the time the fact on which it depends comes to an end.

TITLE VIII
ABSENCE

CHAPTER I
PROVISIONAL CURATORSHIP OF THE ASSETS OF THE ABSENTEE

Article 55 – **Provisional curatorship and conservatory measures for the assets of the absentee** – Where any person disappears from the place of his domicile or residence, his whereabouts being unknown, and without having appointed any attorney, or anyone who may legally administer his assets and it becomes necessary to take measures in this regard, the competent court shall appoint a curator for him.

§ 1 - The court of the domicile of the absentee shall have jurisdiction for such purpose.
§ 2 - The provisions of the preceding paragraph will not prevent the taking of preventive measures which may be indispensable at any other place, where the absentee has assets.

Article 56 – **Who may apply for provisional curatorship** – The Public Ministry[1] and all those who have interest in the preservation of the assets of the absentee are competent to apply for the aforementioned curatorship.

Article 57 – **Preferential order given in the matter of selection of the curator** – In the matter of selection of the curator, the judge will give preference to the presumptive heirs and, in their absence, to those who have greater interest in the preservation of the assets of the absentee.

Article 58 – **Inventory and security for the purpose of receiving assets** –The appointed curator shall receive the assets of the absentee through inventory and shall furnish sufficient security for the value of the movables and the net income of the immovable assets for one year.§ Sole paragraph – When the appointed curator is unable to furnish the security as above, the judge shall order the deposit of the movables which can be usefully preserved and the remaining

1 *Public Ministry – The expression "Ministerio Publico" found all over the Portuguese Civil 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.*

shall be sold in auction and the proceeds thereof as well as other funds shall be invested in securities which offer sufficient security.

Article 59 – **Powers of the provisional curator** – The powers of the provisional curator are confined to acts of mere administration, of which he shall render accounts annually but the curator shall

institute suits of conservatory nature, which cannot be delayed without detriment to the absentee; besides he is empowered to represent the same absentee in any suits which may be instituted against him.

Article 60 – **Appointment of curator ad litem to the absentee** – Where it is necessary to bring a suit against an absentee, who does not have a curator or any legal representative, a special curator will be appointed for him, who shall defend the interests of the absentee in the suit.

Article 61 – **Remuneration of the provisional curator** – The provisional curator shall have five percent of the net income realized.

Article 62 – **Assistance of the Public Ministry to the absentee** – The Public Ministry is entrusted with the task of looking after the interests of the absentee, and he shall always be heard in all judicial acts concerning the absentee.

Article 63 – **End of provisional curatorship** – Provisional curatorship ends:

1. By the return of the absentee, or by the certainty of his existence;
2. By the appearance of duly authorized attorney or person who legally represents the absentee; 3. There being certainty about the death of the absentee;
4. By institution of definitive curatorship.

CHAPTER II

DEFINITIVE CURATORSHIP OF UNMARRIED ABSENTEE

SECTION I

INSTITUTION OF DEFINITIVE CURATORSHIP AND OF ITS EFFECTS

Article 64 – **Institution of the definitive Curatorship** – After the lapse of four years from the time the absentee absented himself, without there being knowledge of his where-abouts, or from the date one last heard about him, his presumptive heirs, at the time of his absence or at the time one last heard about him, either legal or appointed in the will, or, they being dead, their representatives, upon the declaration of absence with the assistance of Public Ministry, may apply for delivery of the assets of the same absentee, except where he has appointed lawful attorney; in this case delivery can be asked only after the lapse of 10 years from the date the said absentee absented himself or from the date of the last news of him.

§ 1 - The heirs, however, may apply, after the lapse of 3 years, in the aforesaid manner, that the attorney may furnish adequate security, in the event there is an apprehension of insolvency; and when the latter is not in a position or is not willing to furnish security, order will be passed putting an end to the power of attorney.

§ 2 - When the power of attorney comes to an end, in terms mentioned in the preceding paragraph or due to any other cause, the assets shall be put under the regime of provisional curatorship, in accordance with Article 55 onwards, till the completion of period of 10 years referred to in this Article, save for the provisions of Article 63.

- This is now regulated by Art.1107 of Portuguese Civil Procedure Code of 1939.

Article 65 – **Formalities required for delivery and execution of the judgment** – The judgment, which grants definitive curatorship, shall not be delivered unless the absentee is served with a notice by substituted service with anticipation of six months in the Official Gazette and by affixation on the notice board of the Parish Church, of the place of his last domicile; it shall not be executed until the expiry of four months from the date of publication of the judgment which shall be done in the same manner as directed for substituted service.

§ Sole paragraph - Such publication shall be done by extract, accuracy of which shall be verified by the Judge, who, after being satisfied about its correctness, shall initial it.

 This is now regulated by Art.1107 of Portuguese Civil Procedure Code of 1939.

Article 66 – **Opening of closed will** – Where the absentee has left a closed will, the Judge, shall before the delivery of the judgement, direct the opening of the said will so that the same may be given due consideration and grant the curatorship in accordance with it.

 This is now regulated by Art.1113 of Portuguese Civil Procedure Code of 1939.

Article 67 – **Delivery of the estate to the legatees and other interested parties** – Once the definitive curatorship is granted, the legatees as well as all who, upon the death of the absentee would have a certain right to some part of his assets may apply that the same part be delivered to them.

§ Sole paragraph - Within the time declared in Article 64, the interested parties, referred to in this article, may apply for delivery of the assets to which they have right, provided that a legal declaration of the absence is made as mentioned above.

Article 68 – **Exclusion of original curator** – Where even after the grant of curatorship, any heir appears who, as per order of succession, excludes the one who was appointed curator, he may use adequate remedies to have the appointed curator removed from the curatorship and to have the curatorship granted afresh to whom it belongs.

SECTION II
INVENTORY AND THE SECURITY FOR THE ASSETS OF THE ABSENTEE

Article 69 – **Inventory and security for the delivery of the assets** – The assets of the absentee may be handed over only to the heirs and other interested parties, after inventory and furnishing of adequate security.

Article 70 – **Consequences of non-furnishing of security** – Where the heirs or interested parties do not furnish the security as aforesaid, the provisional administration of the assets of the absentee shall be continued during the period for which security is required; but it will be lawful for them, upon proof of their lack of means, to apply that half the income they would have had if they had taken charge of the said assets, be adjudicated to them.

SECTION III
RIGHTS AND OBLIGATIONS OF THE DEFINITIVE CURATOR AND OF OTHER INTERESTED PARTIES

Article 71 – **Rights of definitive curators** – The definitive curators may demand the delivery of all the assets and exercise the rights which the absentee could have exercised upto the time he disappeared or upto the date of the last news of him.

Article 72 – **Provisions regarding the assets and rights which accrue to the absentee** – The assets and rights which eventually accrue to the absentee from the time he disappeared without there being knowledge of his whereabouts and from the time one last heard of him and which depend on the fact of his existence, shall pass to those who would have the right to his succession if he was dead.

§ 1 - In such cases, the definitive curators or, in their absence, the Public Ministry, only have the right to apply that such assets be listed by inventory and those who are holding the assets or have taken the delivery of the same assets be directed to furnish adequate security, which shall last for a period of ten years only from the time the assets were taken by them.

§ 2 - The right of the absentee to such assets shall lapse only in accordance with the general rules of prescription; but those who have taken the delivery shall appropriate the income collected by them in case of restoration, provided the enjoyment was in good faith.

Article 73 – **Appropriation of income on the part of curators and other interested parties** –The definitive curators and other interested parties may, save as provided in the preceding article, appropriate from the time of delivery of the respective assets, one-fourth part of the income from the

same, in the event the absentee or his heirs appear within a period of ten years from the time of disappearance of the same absentee or from the time one last heard of him; and if they appear within a period of ten to twenty years, they may appropriate half of it. If twenty years have passed, they may appropriate the entire income.

Article 74 – **Other powers and rights of definitive curators** – The definitive curators may demand accounts from provisional curators, if they themselves were not provisional curators or

where the accounts have not been duly rendered; in addition they may receive the fruits and the income of the earlier administration and they may sue and be sued as legal heirs of the absentee.

Article 75 – **Rendering of accounts by the definitive curators** – The definitive curators are not bound to render accounts of their administration, except to the absentee or his heirs if they have been declared as such.

Article 76 – **In which cases and under what terms the definitive curators may alienate assets of the absentee** – The definitive curators shall not alienate the immovable assets, except where by any other manner they are unable to pay the debts of the absentee, avoid deterioration and damage of any property, pay for necessary or useful improvements which the assets of the absentee require or meet other urgent necessity.

§ Sole paragraph - In such cases prior permission of the competent Court will be necessary and the sale shall be done in public auction with the intervention of the Public Ministry.

Article 77 – **Compromise and renunciation of the inheritance on the part of curators** – The said curators shall not, equally, enter into a compromise without permission from the Court, nor renounce and inheritance which might have accrued to the absentee before his disappearance or from the time one last heard of him, but, they shall accept it under the benefit of inventory.

SECTION IV

TERMINATION OF DEFINITIVE CURATORSHIP

Article 78 – **Termination of definitive curatorship** – The definitive curatorship comes to an end:

1. Upon return of the absentee;
2. Upon receipt of the news of his existence;
3. Upon certainty of his death;
4. By lapse of 20 years;
5. When the absentee attains 95 years of age.

§ Sole paragraph – In the case of Clause 2 the definitive curators shall be considered provisional as long as the absentee or someone who legally represents him does not come back.

 Procedure is laid down under Arts.1112(b), 1114, 1115 & 1116 of Portuguese Civil Procedure Code of 1939.

Article 79 – **Effects of termination of the curatorship** – In any of the last three cases referred to in the preceding article, the heirs and other interested parties stand discharged of the security which they might have furnished and they may alienate the assets of the absentee as their own. Now see Arts.1116 of Portuguese Civil Procedure Code of 1939.

Article 80 – **Return of the absentee or his descendants or ascendants** – Where, after 20 years of absence, or after completion of 95 years, the absentee returns or his descendants or ascendants come forward, he or they shall have only the existing assets, in the state in which they are, those substituted in their place, or the price which the heirs and other interested parties might have received for those which were alienated after that time.

§ Sole paragraph - Such right granted to the descendants and ascendants, prescribes after the lapse of ten years from the time of definitive curatorship.

 Procedure is laid down under Art.1115 of Portuguese Civil Procedure Code of 1939.

Article 81 – **Appearance of other heirs** – When other heirs, who are not those mentioned in the preceding article, come forward, they may only demand the assets of the absentee if the period of twenty years declared in Article 78 Clause no.4 has not lapsed.

CHAPTER III

ADMINISTRATION OF THE ASSETS OF THE MARRIED ABSENTEE

SECTION I

ADMINISTRATION OF ASSETS OF MARRIED ABSENTEE, HAVING NO ISSUES

Article 82 – **Inventory of the assets of the married absentee** – Where the absentee is married, after a declaration of his absence, on the terms laid down in the preceding chapter, proceedings for inventory and partition or separation of assets, with summons to the presumed heirs, shall be proceeded with, according to the nature of the matrimonial contract.

Article 83 – **Administration of the assets of the married absentee, without issues** – Where the absentee has left no issues, the non-absentee spouse retains the administration of the full matrimonial estate for a period of twenty years, reckoned from the time of disappearance or when one last heard of him, or for the period necessary for attaining the age of ninety-five years in accordance with the provision of Article 78 Clause 5.

Article 84 – **Powers of the non-absentee spouse in respect of his/her assets** – The non-absentee spouse may alienate freely his/her assets after inventory, partition and separation of assets.

Article 85 – **Rights and obligations of the non-absentee spouse in respect of assets of the absentee** – The non-absentee spouse has, in respect of assets of the absentee, the same rights and obligations as the definitive curators, with the special attribute that all the fruits and income belongs to him/her.

Article 86 – **Return of the absentee** – When the absentee spouse returns, before the expiry of the period mentioned in Article 83, the matrimonial society shall continue on the terms on which it was constituted.

Article 87 – **Termination of administration** –Upon expiry of twenty years or on completion of the age mentioned in Article 78 Clause 5, or there being certainty of the death of the absentee, the qualified heirs may take charge of the assets of the same absentee and dispose them without restriction.

§ Sole paragraph - The administrator spouse has, in such case, the right of subsistence in accordance with Article 1231.

Article 88 – **Effects of the death of non-absentee spouse** – In the event the non-absentee spouse dies, before the period laid down in the preceding article, the assets of the absentee shall be handed over in the same manner to his heirs, who will be deemed as definitive curators and the period of administration of the deceased spouse shall be duly taken into consideration.

Article 89 – **Late return of the absentee** – In the event the absentee spouse returns after the expiry of the period prescribed in Article 83, he shall have all his assets in the manner declared in Article 80; but, where the non-absentee spouse is still alive, the communion of the estate if any, shall not be deemed as restored, except if the spouses so agree again by public deed.

§ Sole paragraph - To the ascendants or descendants who are successors of the absentee and who appear within the period mentioned in the present article, the provisions of Article 80 shall apply.

SECTION II

ADMINISTRATION OF THE ASSETS OF THE MARRIED ABSENTEE, HAVING ISSUES

Article 90 – **Effects of absence, the absentee having left spouse and common issues** – Where the absentee has left spouse and common issues, proceedings for inventory and partition or separation of assets shall be initiated in the same manner, with the only difference that the assets which come to the share of the absentee shall be sub-divided among the said issues.

Article 91 – **Administration of the assets of absentee, where the children are major or emancipated** – Where the children are major or they get emancipated, they may take charge of the assets allotted to them and administer them as their own, but, they shall not be entitled to alienate them before the expiry of ten years from the time of disappearance of the absentee or from the date one last heard of him, except in cases specified and in the manner prescribed in Article 76 and its paragraph.

§ Sole paragraph - The assets likely to perish or to deteriorate and those whose maintenance is costly, may be alienated on those grounds, before the period prescribed, with prior permission from the Court. The sale proceeds shall be invested productively.

Article 92 – **Rules applicable in case there are minor children** – Where the children are minor, the provisions of Articles 137 onwards shall be followed in respect of the children as well as the assets allotted to them.

Article 93 – **Rules in case the children are not common** – Where the absentee has left other children who are entitled to succeed him/her, whatever is prescribed in preceding articles shall be followed in respect of them.

Article 94 – **Late return of the absentee** – Where the absentee returns after the expiry of the period prescribed in Article 91, he shall have only those assets which still exist in the hands of the children and those substituted in their place or purchased with the price of those alienated.

SECTION III

SIMULTANEOUS OR SUCCESSIVE ABSENCE

Article 95 – **Simultaneous or successive absence of both the spouses leaving major issues** –Where both the spouses disappear simultaneously or successively leaving major issues, the latter shall take charge of the assets of their parents, upon proof of absence, in terms of Article 64, and they will administer them freely in the manner agreed among them; but they shall not alienate them except in the cases and in the manner provided in Article 91 and its paragraph.

Article 96 – **Simultaneous or successive absence there being minor issues** – Where the issues are minor, inventory and partition shall be instituted, as if the absentees were dead, without prejudice to the provisions of the last part of the preceding Article.

TITLE IX

LEGAL INCAPACITY DUE TO MINORITY AND THE MANNER OF MAKING IT GOOD

CHAPTER I

GENERAL PROVISIONS

Article 97 – **Definition of minority** –Minors are persons of either sex until they attain the age of 21 years.

 The Indian Majority Act, 1875, fixing majority at 18 years, was extended to Goa by Goa, Daman and Diu Act 4 of 1966 from 01/07/1966.

Article 98 – **Legal incapacity of minor** – Minors are not legally capable of exercising civil rights, and their acts and contracts will not render them liable to any juridical obligation, except in the cases expressly provided by the law.

Article 99 – **Who can plead minor's incapacity** –The contracts illegally executed by the minors are not, nevertheless, permitted to be challenged by the other contracting parties on the ground of incapacity of the minor.

Article 100 – **Making up for minor's incapacity** – The incapacity of the minors is made good by parental authority, and, in the absence thereof, by guardianship.

CHAPTER II
PARENTAL AUTHORITY

SECTION I
LEGITIMATE CHILDREN

Article 101 [2] **– Children who are presumed to be legitimate -** Children born from a marriage lawfully contracted, after one hundred and eighty days from the date of its solemnization, or within three hundred days subsequent to its dissolution or to the separation of the spouses, judicially decreed by judgment become final for want of appeal, are legitimate, save for what is laid down in the following paragraph.

§ Sole paragraph - Upon the divorce or separation of persons and assets being decreed, on the grounds of complete abandonment of the conjugal home or of absence without any news or of de facto separation freely consented, for the length of time fixed in the law respectively, the period of the second part of this article shall be counted from the date, as found proved in the judgement, on which the co-habitation ceased; and in the case of judicial custody of the wife, from the date of such custody.

2 *Article 101 to 136 of the Portuguese Civil Code of 1867 were expressly repealed in 1910 by the Article 59 of the Law of Protection of Children consisting of 59 Articles. Later in 1930, the decree no.19126 was passed amending various provisions of the Portuguese Civil Code of 1867, among them the Article 101 to which a sole paragraph was added. As a result of this Article 101 of Portuguese Civil Code stands restored, now with the added sole paragraph.*

Article 102 - **Legitimacy of the children born within 180 days subsequent to marriage** - The legitimacy of the child, born within one hundred and eighty days subsequent to the solemnization of marriage, shall not however be challenged:

1. In the case the husband before marrying, had knowledge of the pregnancy of the wife;
2. In case being personally present, he consented that the child be declared as his child in the certificate of birth, or in case, in any other manner, he acknowledged that the child so born was his.

- Corresponds to Art.6 ofDecree No.2 of 25 December 1910 (Law of Protection of Children, 1910)

Article 103 - How the presumption of Article 101 can be rebutted - The presumption of the legitimacy of children born during the marriage, after a lapse of one hundred and eighty days from the date of its solemnization or within three hundred days subsequent to its dissolution or to the separation of the spouse, may be rebutted only upon proof that the husband was physically unable to co-habit with the wife during the first one hundred and twenty-one days or more, out of the three hundred, preceding of the birth of child.

- Corresponds to Art.7 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910) which still requires a pre condition to do away with the presumption of legitimacy founded in article 101, that the possibility mentioned in clause 2 of article 6 does not arise.

Article 104 - How the presumption of illegitimacy of the child born after 300 days can be rebutted - The presumption that the child born after three hundred days subsequent to the separation of the spouses is not of the separated husband, may be rebutted upon proof that the said child really is of the husband.

§ Sole paragraph - Such proof may be made in the manner established in Article 119, Clauses 1 and 2 and paragraphs 1 & 2.

- Corresponds to Art.8 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910) which also includes the possibility of the children being born beyond the 300 days subsequent to the final or provisional decree of divorce.

Article 105 – **Challenge based on the impotency of the husband** -The impotency of the husband prior to the marriage shall not be a ground to contest the legitimacy of the child;

however, the subsequent impotency may be a ground, provided that the allegation is not based on old age.

- Corresponds to Art.9 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910). By this impotency of the husband prior to marriage is also included on the same terms as impotency subsequent to marriage.

Article 106 – **Who can challenge the legitimacy of the children** - The legitimacy of the children may be contested only by the father or by his heirs, in terms of the following Articles.

Article 107 – **Time limit for challenge of legitimacy by the father** - The father may contest the legitimacy of the children in the cases permitted by the law, by instituting a suit in the Court, in case he is at the place of birth, within sixty days from the birth, and in case he is not there, within one hundred and twenty days from the date of his return.

§ Sole paragraph - In case the birth of the child has been hidden from him, he may institute the suit within one hundred and twenty days from the date on which he became aware of the fraud.

- Corresponds to Art.10 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910). It establishes a time limit of 120 days from the date of knowledge by the Plaintiff of the fact of birth.

Article 108 – **Challenge of legitimacy by the heirs of the husband** - The heirs of the husband may challenge the legitimacy of the children, born during the subsistence of the marriage only: 1. In case the said husband, being present, instituted the competent suit and did not withdraw the same;

2. In case he died before the expiry of limitation fixed for institution of the suit;
3. In case the child was born after the death of the husband.

- Corresponds to Art.11 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910), which maintains the provisions of old article 108 of the Civil Code except that as regards clause 2 the small alteration introduced by art.10 to old article 107 must be taken into account.

Article 109 – **Limitation for the suit which can be instituted by the heirs** - The suit on the part of the heirs becomes barred by limitation after the expiry of sixty days from the date on which the child has taken charge of the properties of the presumed father or from the date on which the heirs have been disturbed in the possession of the inheritance by the said child.

- Corresponds to Art.12 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910). While maintaining the contents of old article 109 it classifies that the time limit hereby laid down is one of limitation and not by prescription.

Article 110 - **Condition for acquisition of personality** - For legal purposes, a child is one who is proved to be born alive and with human figure.

- Corresponds to Art.13 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910). See also sole paragraph of Art.1776 of Civil Code.

Article 111 - **Assertion of the status of legitimate child** - The right of the legitimate children to vindicate the status held by them is not subject to prescription.

- Corresponds to Art.14 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910)

Article 112 - **Locus standi of heirs in the suits for assertion of the status** - The heirs of the children may continue the suits for vindication of status which are pending; but they may institute fresh suits only if the child has died or become of unsound mind before the expiry of four years from its emancipation or majority, and having died in such state.

§ Sole paragraph – Such suit becomes barred by limitation after the expiry of four years from the day of death of the child.

- Corresponds to Art.15 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910)

Article 113 - Appointment of tutor to the child and hearing given to mother - In all the cases in which the presumption of legitimacy of the child has been challenged in the Court, in case the child is minor, a tutor shall be appointed, selected from among the relatives of the mother, if any; and the mother shall always be heard in the Court.

§ Sole paragraph – The appointment of the tutor shall be made by family council, the same being constituted of relatives of the mother, or of persons of her friendship, in the absence of the former.

- Corresponds to Art.16 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910)

SECTION II

PROOF OF LEGITIMATE FILIATION

Article 114 - Proof of legitimate filiation – Legitimate filiation is proved by the birth registration records, in their absence, by any other authentic document, and, in the absence of the latter by documentary or oral evidence, that the child has possessed such status.

- Corresponds to Art.17 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910)

Article 115 - Concept of possession of status - Possession of status, in this case, consists, in the fact of someone having been held and treated as the child, both by the parents as well as by their families and by the public.

- Corresponds to Art.18 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910). Article 18 of decree n.º 2, which substitutes the instant provision, changed its doctrine on the following points: 1st) did away with the reputation and the treatment as off springs, by the families of the parents; 2nd) as for the public, the law also shifted to being satisfied with the fact that it reputed the purported titular of possession of status as the legitimate offspring of the one to whom it attributes his paternity.

Article 116 – Other means of the proof of legitimate filiation - In the absence of registration of birth, authentic document and living in such status, legitimate filiation may be proved by any other evidence, there being an initial written proof arising from both the parents, jointly or severally.

- Corresponds to Art.19 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910). See article 517 onwards of Portuguese Civil Procedure Code, 1939.

Article 117 - Probative value of the registration of the birth - No one is entitled to vindicate the status contrary to that resulting from the registration of birth, when the latter are confirmed by the living in such status; as well as no one is entitled to challenge such status.

- Corresponds to Art.20 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 118 - Proof admissible against assertion of status - The vindication of the status may be contested by documentary or oral evidence.

- Corresponds to Art.21 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

SECTION III

LEGITIMATED CHILDREN

Article 119 – Legitimated children - Marriage legitimates the children, born before it, from the persons who contract the same.

1. By recognition of the said children by their parents in the records of marriage registration, or if they have been so acknowledged, in the birth records of the same children, or in the public will or deed, either before or after the marriage.
2. In case the children prove their filiation by way of suit and judgment.

§ 1 - The recognition referred to in Clause I may be challenged by all those who are interested therein.

§ 2 - Articles 130 and 133 are applicable to the suits dealt with in Clause 2.

§ 3 - In all cases, the effects of legitimation begin from the date of marriage.

- Corresponds to Art.2 and 3 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910). See article 1988 of the Civil Code and articles 229 to 233 of the Code of Civil Registration, 1912.

Article 120 – Persons who are benefited by legitimation - Legitimation benefits not only the children, but also their descendants, in case the said children are not living.

- Corresponds to Art.4 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910) and Art.120 of Code of Civil Registration, 1912.

Article 121 – Effects of legitimation - The children legitimated by subsequent marriage are treated as legitimate children for all purposes.

- Corresponds to Art.5 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

SECTION IV
CHILDREN LEGITIMATED THROUGH ACKNOWLEDGEMENT

Article 122 – Children who may be legitimated by acknowledgement - All the illegitimate children may be legitimated, except:

1) The adulterine children;
2) The incestuous children.

§ 1 - Adulterine children are those born to any person, married at the time of conception, from another who is not his/her spouse.

§ 2 - Incestuous children for the aforesaid purpose mean:

1) The children of relatives by consanguinity or affinity in any degree in direct line; 2) The children of relatives by consanguinity upto the second degree inclusive in the collateral line.

- Corresponds to Art.22 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 123 – Eternal form of legitimation by recognition - The legitimation may be made by both the parents by common agreement or by any of them separately, provided that the same is made in the registration of birth or in public deed, will or public indenture.

- Corresponds to Arts.23 to 26 ofDecree no. 2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 124 – Restrictions on voluntary legitimation through acknowledgement by one of the parents - Whenever the father or the mother effects the recognition separately, they shall not disclose in the document of legitimation the name of the person from whom they got the legitimated child, nor mention the circumstances whereby such person could be known.

- Corresponds to Art.27 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 125 – Ingredients of the legitimation by recognition in separate - For such legitimation, being made by one of the parents separately, it is enough that the one who legitimates is competent to contract marriage during the first one hundred and twenty out of the three hundred days, which preceded the birth of the children.

- Corresponds to Art.23 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 126 – Necessity of the consent of a major child - The child who is major of age shall not be legitimated without its consent.

- Corresponds to Art.28 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 127 – Limitation for challenging the legitimation by recognition of minor child - In case the legitimated child is minor, it may challenge the legitimation within four years from its emancipation or majority.

- Corresponds to Art.29 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 128 – Who can contest the recognition or the challenge to the recognition - The recognition by the father or the mother, as well as the challenge by the child, may be contested by all those who have interest therein.

- Corresponds to Art.30 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 129 – Effect of legitimation by recognition - The children legitimated voluntarily or by judgment acquire the following rights:

1) To use the surname of their parents;
2) To be maintained by them;
3) To succeed to their ascendants or to have a share in the inheritance in accordance with the provisions of Articles 1989 and 1992.

- Substituted by Article 31 of Decree no. 2 of 25/12/1910 (Law of Protection of children 1910). However by the Decree no. 19126 of 16/12/1930 it came into force again but Article 31 of the said Decree no. 2 is also in force to an extent. Vide also Article 46 of the Decree no. 2 of 25/12/1910.
- Articles 1458 and 1462 to 1464 of the Portuguese Civil Procedure Code 1939 lay down the procedure regarding maintenance.

SECTION V
INVESTIGATION INTO ILLEGITIMATE PATERNITY

Article 130 – Cases in which investigation into illegitimate paternity is admissible - A suit for investigation into illegitimate paternity is prohibited, except in the following cases:

1) If there is a writing of the father, in which he expressly assumes the paternity;
2) In case the child is found to be in possession of the status, in terms of Article 115; 3) In the case of violent rape or kidnapping, if the time of birth coincides, as indicated in article 101, with the time when the criminal act was committed.

- Corresponds to Art.34 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 131 – Suit for investigation into maternity – A suit for investigation into maternity is permitted; but the child has to prove, by any of the ordinary means that he or she is the same who claims to be born of the purported mother.

- Corresponds to Art.35 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 132 – Cases in which investigation into paternity or maternity is not permissible – A suit for investigation into paternity or maternity is not, however, admissible in court in cases in which acknowledgment of the child is forbidden.

- Corresponds to Art.36 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 133 – Limitation for investigation of suits for declaration - A suit for investigation into paternity or maternity may only be instituted during the life-time of the purported parents, save for the following exceptions:

1. If the parents expire during the minority of the children, because, in this case, they have the right to institute the suit, even after the death of the parents, provided they do it before the expiry of four years from their emancipation or majority;
2. If the child obtains, again, a document written and signed by the parents, in which these reveal their parenthood; because, in this case, they may file the suit at any time when they find the said document; without prejudice to the general rules regarding prescription of assets.

- Corresponds to Arts.37 and 38 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

SECTION VI
SPURIOUS CHILDREN

Article 134 - Meaning of spurious children – Children which may not be legitimated by recognition are called spurious children.

- Corresponds to Art.50 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 135 – Legal position of children who may not be acknowledged - Spurious children only have the right to demand from their parents the necessary maintenance; in everything else they are taken as complete strangers to their parents or to their families.

- Corresponds to Art.51 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

Article 136 – Requirements for demands of maintenance – A spurious child may sue his parents for the above purpose the factum of paternity or maternity is proved in civil or criminal proceedings controverted between the parents or other parties; or in the case covered by sub clause (3) of Article 130, if the fact has been judicially proved.

- Corresponds to Art.52 ofDecree No.2 of 25th December 1910 (Law of Protection of Children, 1910).

SECTION VII

PARENTAL AUTHORITY DURING THE SUBSISTENCE OF MARRIAGE

Article 137 – **Content of parental authority** - It is for the parents to govern the persons of their minor children, to protect them and to manage their assets; the aggregate of these rights constitutes what is called parental authority.

- In case of Divorce see Arts.22 and 23 of Decree dated 03/11/1910 (Law of Divorce).
- For procedural instances see Arts.1458 to 1460 of Portuguese Civil Procedure Code of 1939.

Article 138 – **Attributes of each parent in the exercise of parental authority** - Mothers take part in parental authority and must be heard in all that concerns the interests of the children, but it is especially up to the father, during marriage, as head of the family, to represent and defend his minor children, both in and out of court.

- Corresponds to Art.39 ofDecree No.1 of 25th December 1910 (Law of Civil Marriage).

Article 139 – **Exercise of parental authority by mother** -In case of absence or of other impediment of the father, the mother replaces him.

Article 140 – **Duty of parents towards children** - Parents must provide their children with the necessary maintenance and suitable occupation, in accordance with their means and status.

Article 141 – **Limitations on parental power** - The authority of the parents, regarding the persons of their minor children, is not subject to any preventive control; but, in case of abuse, the parents may be punished, in accordance with the general law, and prohibited from governing the persons and property of their children, at the request of relatives or of the Public Ministry.

§ Sole paragraph - If the father has been prohibited from governing the minor's person and property, a guardian or administrator shall be attributed to the minor, to be appointed by the family council.

Article 142 –**Children's duties towards parents** - Children must, at all times, honour and respect their parents, and, while they are minors, abide by all their instructions in so far as they are not illicit.

Article 1 43 – **Corrective power** - If the child is disobedient and incorrigible, his/her parents may resort to judicial authority, which will have him/her kept in the correctional home so destined, for the period it deems just, which shall not exceed thirty days.

§ Sole paragraph - The father has, however, the power to have the ordered detention ceased.

Article 144 – **Assets of which parents have right to ownership and usufruct** - The parents shall have the rights of ownership and usufruct over the assets acquired by the children while the latter are in the company of the parents, if they were acquired using means or capital belonging to the said parents, notwithstanding the right to remunerate the children, by giving them a part of the said assets.

Article 145 – **Assets of which parents have right to usufruct only** - The parents shall have the right only to the usufruct over the assets acquired by the children, while they are in their company, through their own work, industry and resources, or by any gratuitous means.

Article 146 – **Assets over which only parents have to administration -** Only parents shall have the right to the administration:

1. Of the assets gifted or left to the children with the exclusion of the usufruct of the parents; 2. Of the assets devolving by succession, and from which the parents have been excluded on account of indignity. However, this provision shall not include the spouse who was not debarred from succeeding on the grounds of indignity.

Article 147 - Assets over which parents have no rights whatsoever - Parents shall have neither the right of usufruct nor the right to administer:

1. Assets acquired by the children through their own work and industry, living on their own with the permission of the parents;
2. Assets acquired by the children through military services, arts or liberal professions, whether or not they live in the company of their parents;
3. The assets gifted or left to the children, excluding the administration by the parents.

Article 1 48 – **Charges on statutory usufruct** – The charges on the parents' rights of usufruct are:-

1. All those to which, in general, the usufructuaries are subject, with the exception of the furnishing of security;
2. Proper maintenance and education of the children in conformity with their condition and their means;
3. The payment of any installments due or claims in arrears upon the assets subject to usufruct.

§ Sole paragraph - The exception made to clause 1, concerning security, shall cease if the parents enter a second marriage.

Article 149 – **Cessation of usufruct** – The right of usufruct granted to the parents ceases:

1. On the attainment of majority or emancipation of the children;
2. When, on the death of any of the spouses, inventory proceedings have not been instituted within the period prescribed by law;
3. By renunciation.

§ Sole paragraph - The renunciation, made in favour of the son or daughter, shall be deemed to be a gift.

Article 150 – **Restriction on powers of parents as regards children's assets** – Parents may not alienate, mortgage or in any other way create claims upon the assets of the children if they are mere holders of the right of usufruct or mere administrators of the said property, except in case of urgent necessity, or of evident benefit to the minor, following judicial permission after hearing the Public Ministry.

- Procedure is laid down under Art.1488 of Portuguese Civil Procedure Code of 1939.

Article 151 – **Furnishing of security** - If, during the exercise of parental authority, certain assets devolve upon the children, the parents, when the inheritance consists of movables of considerable worth, shall be bound to furnish security , if this is found necessary.

§ Sole paragraph - If the parents are unable to furnish the said security, the securities shall be deposited, or, at the request of the parents, shall be converted into other securities or placed productively, with the possible security, and the parents shall receive the income from the same.

- Procedure is laid down under Art.442 of Portuguese Civil Procedure Code of 1939.

Article 152 – **Submission of accounts** - Parents are not bound to furnish accounts for their management, save regarding the assets of which they are mere administrators.
§ Sole paragraph - This accounting shall be received by the respective judge, every four years, and the provisions of Articles 253, 254 and 255 shall be observed regarding their net result or debt.

- Procedure is laid down under Arts.1012 to 1018 of Portuguese Civil Procedure Code of 1939.

Article 153 – **Conflict of interests between parents and minor children** - If conflicts of interest arise between parents and minor children, the solution of which is dependent on a public authority, the children shall be provided a special guardian appointed by Court having jurisdiction to defend them.

- Substituted by Art.10 and 11 of Portuguese Civil Procedure Code of 1939.

Article 154 –**Delivery of assets and income to children** - Parents must surrender to their children, once these have become emancipated or have reached the age of majority, if they are not legally incapable due to other reasons, all the assets and income that belong to them, in the manner set out in the preceding articles.

§ Sole paragraph - The movable assets over which the parent holds the right of usufruct shall be returned in the condition in which it is found; if it no longer exists, the parent will pay its value, except if it was consumed in a use that was common to the said children, or if it perished by fortuitous circumstances.

SECTION VIII

PARENTAL AUTHORITY AFTER THE DISSOLUTION OF MARRIAGE

Article 155 – **Parental authority after death of one parent** - When the marriage has been dissolved by the death of one of the spouses, the surviving spouse continues to exercise parental authority and must comply with the following provisions.

- For procedural details see Art.1452 onwards of Portuguese Civil Procedure Code of 1939.

Article 156 – **Inventory of minor's assets** - The surviving spouse shall institute within sixty days after the death of the other spouse, inventory proceedings for the assets that belong to the minor or that must be shared with him/her.

§ Sole paragraph - The spouse who fails to do so shall lose the right of usufruct over the child's assets.

Article 157 – **Guardian of child in womb** - If, at the time of the husband's death, the wife is found pregnant, she will let her condition be known to the competent judge of orphans at the latest twenty days after the said death, or as soon as she becomes aware of it, so that the judge may appoint a guardian at womb, who will temporarily be responsible for the assets that will

belong to the unborn child.

§ Sole paragraph - This curatorship shall last only until the end of the gestation.

- Related procedure is laid down under Arts.1500 & 1501 of Portuguese Civil Procedure Code of 1939.

Article 158 – **Duties of curator of orphans** - The curator of orphans shall promote the prosecution and conclusion of the inventory and shall make all necessary applications regarding the rights of the minors on penalty of losses and damages.

- Under the Portuguese Civil Procedure Code of 1939, the designation of Curator of Orphans was eliminated and given to the Public Ministry.

Article 159 – **Appointment of advisors to widow** -The father may appoint in his will one or more advisors, to direct and counsel the widowed mother in certain cases, or in all cases wherein the well being of the children so requires.

§ Sole paragraph - The father who, at the time of his death, was interdicted from exercising his parental authority shall not have this option.

Article 1 60 – **Who may be appointed advisor -** Only individuals who are eligible to be appointed guardians may be appointed as advisors.

Article 161 – **Prohibition against mother from exercising maternal control -** The mother who, to the detriment of her children, does not follow the opinion of the advisor appointed by the father, or who, in any other way, abuses her maternal authority, may be prohibited from governing the child's person and assets by a decision of the family council, at the request of the said advisor, of the curator, or of any relative of the children.

§ Sole paragraph - In this case, the family council shall appoint a person to act as guardian to the children who are still minors, in accordance with Articles 185 onwards.

- Procedure is laid down under Art.962 onwards of Portuguese Civil Procedure Code of 1939.

Article 162 – **Maternal power of re-married mother** - The mother who enters a second marriage shall lose the right to administer the asset of the children who are still minors, referred to in Article 146, unless the family council otherwise decides, but she will keep her maternal authority regarding the persons of the children.

§ Sole paragraph - The twice-wed mother who, by decision of the family council, keeps the right to administer these assets is obliged to give the security deemed necessary by that council, if it does not consider it convenient to dispense her from that obligation.

- Procedure is laid down under Art.442 of Portuguese Civil Procedure Code of 1939.

Article 163 – Administration of the assets of the minor - Where the remarried mother is permitted to continue to administer the assets of the children, in terms of the preceding article, the husband shall along with her be jointly responsible for the losses that may result from her management, even though he may be judicially separated or divorced, the damages being related to the period prior to the separation or divorce.

§ Sole paragraph - Where the mother is deprived from administering the assets of the children, the family council shall appoint a person, to take charge of such administration, with the same duties and rights that the guardians have in relation to the properties of the minors.

Article 164 – Restoration of the administration - Where the mother becomes a widow once again, she shall recover the administration of the assets of the children, in case she had been deprived of the same.

Article 165 – Regulation in the event of annulment of marriage or judicial separation - In the case of annulment of the marriage, or of judicial separation, the provisions of the relevant sections shall be observed with respect to the children.

- Connected provisions in respect of annulment are Arts.31 & 32 of Decree No.1 of 25/12/1910 (Law of Civil Marriage); in case of divorce, see Art.21 onwards of Decree of 03/11/1910;
- For all these as also for judicial separation and defacto separation, see Arts.1452 onwards and 1458 of the Portuguese Civil Procedure Code of 1939.

SECTION IX
PARENTAL AUTHORITY OVER ILLEGITIMATE CHILDREN

Article 166 – Parental authority in relation to children legitimated by recognition - Minor children legitimated by recognition are subject to parental control, in the same manner as the legitimate children; except where the parents have contested their paternity, and the court decreed otherwise. The parents shall not enjoy, however, usufruct of the assets of the children legitimated by recognition.

§ Sole paragraph - In the case of the exception mentioned in this Article, a guardian shall be appointed for the minor, as per the provisions of Articles 279, 280, 281, where the other parent is unable to exercise parental authority.

- In case of disagreement, Art.1458 of Portuguese Civil Procedure Code of 1939 is to be followed.

Article 167 – Parental power over non- legitimated children - Children who are still minors and have not been acknowledged are not subject to parental authority, and they will be subject to guardianship, as laid down in Articles 279 onwards.

SECTION X
SUSPENSION AND TERMINATION OF PARENTAL AUTHORITY

Article 168 – Grounds for suspension of parental - Parental authority is suspended:

1. Due to the incapacity of the parents, judicially ascertained;
2. Due to the absence of the parents, in accordance with Article 82;
3. Due to a conviction of the parents involving a temporary interdiction in relation to that power.

- Procedure is laid down under Art.962 onwards, 968, 969 and 1460 para 2 of Portuguese Civil Procedure Code of 1939.

Article 169 – Continuance of usufruct – Parents shall however, continue to have the right of usufruct over the assets of their child who is still a minor, in the case of a suspension of parental authority due to unsoundness of mind.

Article 170 – Termination of parental authority – Parental authority is terminated:

1. Upon the death of the parents or of the children;
2. Upon emancipation or attainment of majority by the children.

SECTION XI
MAINTENANCE

Article 171 – Meaning of maintenance – Maintenance means all that is indispensable for subsistence, lodging and clothing.

§ Sole paragraph – Maintenance also includes the education and instruction of the beneficiary of maintenance, if the same is a minor.

Article 172 – **Duty to pay maintenance** – The duty to pay maintenance is reciprocal between descendants and ascendants and between siblings, on the following terms.

- Procedure is laid down under Arts.393 onwards, 1452 onwards, 1458, 1462, 1119 and 1465 of Portuguese Civil Procedure Code of 1939.

Article 173 – **Duty to pay maintenance in absence of parents** – In the absence of parents, or if they do not have the means to provide the due maintenance, or if those means are insufficient, legitimate or legitimated children may request maintenance from their closest ascendants of any line of descent, in accordance with their rights of succession.

Article 174 – **Providers of maintenance in absence of parents and other ascendants** – In the absence of parents and of other ascendants, legitimate or legitimated children may request maintenance from their legitimate, full blood, uterine or consanguine siblings, but only subsidiarily and in the order herein indicated.

Article 175 – **Maintenance to acknowledged children** – Acknowledged children may only request maintenance from their fathers or mothers and from their siblings, in accordance with the rule established in the preceding article.

- Partly modified by Art.1462 of Portuguese Civil Procedure Code of 1939 and Art.23 of Decree No.2 of 25/12/1910 (Law of Protection of Children, 1910).

Article 176 – **Devolution of duty to provide maintenance** – The obligation to pay maintenance is passed on together with an inheritance, if maintenance has been requested in a court of law or has been voluntarily given through an authentic or authenticated document.

Article 177 – **Liability for maintenance in absence of ascendants and brothers or sisters**– Legitimate children without a father, mother, grandparents or siblings who may provide them with maintenance, will receive maintenance until the age of ten from any other relatives up to the

sixth degree, with preference given to the closest relatives.

Article 178 – **Criteria for fixation of maintenance** – Maintenance shall be proportionate to the means of the person obliged to provide it and to the necessity of the person entitled to receive it.

- Procedure is laid down under Arts.393(2) & 1120 of Portuguese Civil Procedure Code of 1939.

Article 179 – **Termination of duty to provide maintenance**

maintenance ceases:

– The obligation to provide

1. When the person who provides it is no longer capable of doing so, or when the person receiving it no longer needs it;
2. In the cases in which disinheritance is permitted.

- Procedure is laid down under Arts.398 & 1121 of Portuguese Civil Procedure Code of 1939.

Article 180 – **Termination or reduction of maintenance due to reprehensible conduct** – The obligation to pay maintenance also ceases when the need for it results from reprehensible conduct of the beneficiary and the latter by correcting himself may render it unnecessary. However, if this correction of conduct can no longer dispense him/her from need of maintenance, the reprehensible conduct shall be taken into consideration only for the purpose of reducing the entitlement to maintenance, or for reducing maintenance already awarded.

Article 181 – **Reduction of maintenance** – The amount of maintenance awarded may be reduced in case of a decrease in the possibility to provide it or of the need to receive it.

- For procedural instances see also Arts.398, 671, 1121, 1457 and 1831 of Portuguese Civil Procedure Code of 1939. Also Art.31 (1) of Law of Divorce dated 03/11/1910.

Article 182 – **Relinquishment of maintenance** – The right to maintenance cannot be renounced, although one may stop asking for maintenance to be paid and may renounce maintenance already due.

Article 183 – Manner of providing maintenance – Where the person who has to provide maintenance proves that he/she is unable to do so as a pension but only in his/her house or company, the Court may decree in such manner. The same procedure shall be followed where the person maintained, without just cause, leaves the house and company of the one who has to provide it.

Article 184 – Date of payment of maintenance – The maintenance fixed, or consisting of periodical installments shall be paid at the beginning of the period for which they are due.

- For procedural instances see also Arts.1119(1) & 1465 of Portuguese Civil Procedure Code of 1939.

CHAPTER III
GUARDIANSHIP OF LEGITIMATE AND ILLEGITIMATE CHILDREN

SECTION I
GENERAL PROVISIONS

Article 185 – **When guardianship of minors arises** – In the absence or impediment of the parents, parental authority is made good by guardianship.

Article 186 – **Mandatory nature of the duty of guardianship** – Guardianship is a burden of which no one may be excused, except in the cases expressly laid down by law.

Article 187 – **Guardianship through whom exercised –** Guardianship is exercised by a guardian, a pro-guardian, a curator and a family council.

Article 188 – **Territorial Jurisdiction of Courts** – The court of the minor's domicile is competent to decide on his/her person and assets.

§ 1 – The provision of this article does not preclude provisional measures, that may be necessary, relating to the assets held by the minor in other jurisdictions.
§ 2 – In such case, the measures taken shall be communicated to the competent court and the minor's curator.

- For procedural instances see also Arts.1452 to 1466 of Portuguese Civil Procedure Code of 1939.

Article 189 – **Intimation of demise of person leaving minor heirs** – Upon the death of any person whose heirs are minors, absentees or incapable of administering their properties, the one who becomes the head of the family or, in his/her absence, any person who was residing with the deceased, shall inform the Curator of Orphans within the time limit of ten days failing which the defaulter shall be liable to a fine ranging from five thousand "reis" to one hundred thousand"reis".

Article 190 – **Interim measures and institution of Inventory** – The curator of orphans shall request the competent court to order provisional measures on urgent matters relating to the persons and assets of the minors, if it is not possible to promptly convene, for that purpose, the family council, and he will also apply for the commencement of inventory proceedings at the latest one month after the date of the intimation mentioned in the preceding article, which should be annexed to the application.

- Procedure is laid down under Art.1490 and for inventory by Art.1369 of Portuguese Civil Procedure Code of 1939.

Article 191 – **Judicial intervention suo moto** – If the court does not receive a request and becomes aware of the need to intervene, it will do so at once, notifying the curator of orphans, who will apply for whatever is laid down by law as against those who have not made the necessary intimations.

§ Sole paragraph – If the court finds that the negligence is due to the curator of orphans, it will report this fact to the Government Advocate.

Article 192 – **Responsibility of the Judge and the Public Ministry** – The curator of orphans who does not institute the inventory and the judge who, having been requested to do so, does not act in accordance with the preceding provisions, shall be liable for all the damages which the minors may suffer, due to their fault or negligence.

- For further instances see Art.1089(3) of Portuguese Civil Procedure Code of 1939.

SECTION II

TESTAMENTARY GUARDIANSHIP

Article 193 – **Appointment of guardian in Will –** The father may appoint in his will, or by an authentic act *inter vivos*, a guardian for a child who is a minor or has been interdicted, if the mother is deceased or if she has been prohibited from exercising parental authority.

§ Sole paragraph – In the absence or impediment of the father, the mother has the same power; however, if she appoints her second husband, the appointment will depend upon the approval of the family council.

Article 194 – **Sole or multiple guardians** – Either the father or in his absence or impediment the mother, may appoint a sole guardian for all the children, or a different guardian for each of the

children.

Article 195 – **Lapse of appointment made by mother –** When the mother appoints a guardian for her children, due to an impediment of the father, and the said impediment ceases, the said appointment shall lapse.

Article 196 – **Successive guardians** – If the father or the mother appoints more than one guardian, so that they may replace each other, the guardianship will befall on each of the guardians in the order in which they were appointed, if no other order of precedence is set out.

Article 197 – **Appointment of guardian or administrator by third person –** Persons who have left to the minor any inheritance or legacy may appoint a guardian for him/her, if the father or the mother have not done so, and if the said inheritance or legacy is of greater value than his/her current property. Such an appointment will however depend upon the approval of the family council.
§ Sole paragraph – However, the person who, by a will, has left some assets to the minor may appoint, in any case, a special administrator for the said assets, until he/she reaches the age of majority.

Article 198 – **Term of testamentary guardians –** Testamentary guardians shall carry out their functions until the child reaches the age of majority or the interdiction ceases.

SECTION III

LEGAL GUARDIANSHIP

Article 199 – **When legal guardianship arises** – There is legal guardianship:
1. In the cases of the prevention of the exercise, the suspension or the loss of parental authority; 2. In the absence of a testamentary guardian.

Article 200 – **Devolution of statutory guardianship** – Legal guardianship shall be entrusted to the relatives of the minor, in the following order:
1. To the paternal grandfather or grandmother;
2. To the maternal grandfather or grandmother;
3. To the remaining lineal ascendants, with preference to the paternal relative at the same degree of ascendancy;
4. To the brothers or sisters, with preference to full blood siblings over consanguine siblings, and to these over uterine siblings, and within each of these classes with preference to the older ones;

5. To the brothers or sisters of the father or mother, with preference always to the paternal relatives, except if they are less capable; circumstances being equal, the eldest shall take preference.

§ Sole paragraph – Where male and female relatives compete at the same degree of relation, the former will take precedence over the latter, except if they are clearly less capable.

Article 201 – **Duration and confirmation of legal guardianship** – Legal guardians shall carry out their functions for the duration of minority.
§ 1 – If there are several relatives, in the same degree of relation and equally capable, each will serve as a guardian for a period of three years.

§ 2 – Legal guardianship depends upon confirmation by the family council.

SECTION IV

GUARDIANSHIP BY APPOINTMENT

Article 202 – **When guardianship by appointment arises –**The absence of testamentary guardians and of legal guardians is made good by means of appointed guardianship.

Article 203 – **Who can appoint the guardian –** Guardians are appointed by the family council.

Article 204 – **Duration of dative guardianship –** Dative guardians are not obliged to serve as guardians for more than three years.

SECTION V

SUPERVISORY GUARDIANS

Article 205 – **Appointment of pro-guardian –** In all cases of guardianship, there shall be a pro-guardian, appointed by the family council in the same session in which the guardian is appointed or confirmed.

Article 206 – **Rules about the appointment of pro- guardian –** If the guardian is a relative of the minor, the pro-guardian may not be appointed from within the same line of relation, except if he/she is a full blood brother or sister.

§ Sole paragraph – If there are relatives in only one of the lines of relation, and the guardian is appointed from within it, a stranger must be appointed as pro-guardian.

SECTION VI

CONSTITUTION OF THE FAMILY COUNCIL

Article 207 – **Composition of the family council** – The family council is made up of the five closest relatives to the minor residing within the jurisdiction of the court competent to carry out the inventory, three from the paternal line and two from the maternal line, with preference to the elder relatives in the same degree of relation.

§ 1 – If there are relatives only within one line of relation, the other members of the council will be appointed from the friends of the minor's parents, with the difference that, in this case, even if the line in question is the maternal one, three members of the family council will be chosen from it.

§ 2 – Full blood siblings of either gender, or the husbands of full blood sisters, as their representatives, may all be members of the family council, even if they exceed the number of five; but if they total an even number, a further relative shall be called upon.

§ 3 – The composition of the family council may be changed whenever a relative requests to be admitted in place of an already appointed member, if he has a better title to be on the family council than the member in question, not precluding the decisions already taken by the family council, except if these were to the detriment of the minors.

- For procedure see also Art.1490 of Portuguese Civil Procedure Code of 1939.

Article 208 – **Composition of the council with strangers** – If there are not enough relatives residing in the jurisdiction of the court competent for the inventory to make up the family council, friends of the minor's parents shall be called upon and, in their absence, any other sound persons.

Article 209 – **Composition with relatives residing outside the jurisdiction of the Inventory Court** – Relatives who reside in a different jurisdiction may, if they so wish, be a part of the family council.

Article 210 – **Meeting of family council** – The family council shall be summoned on the court's own initiative at the latest eight days after the news that the minor became an orphan or that the guardianship is vacant and, in all other cases, within the timeframe deemed necessary.

- Procedure is laid down by Art.1490 onwards of Portuguese Civil Procedure Code of 1939.

Article 211 – **Notice of the meeting** – The judge shall include in the summons the main purpose, which should be put to the decision of the council.

- Confirmed by Art.1491 of Portuguese Civil Procedure Code of 1939.

Article 212 – **Intervention of the child above 14 years** – The child older than fourteen years who is awarded a guardian has the right to sit in and to be heard in the deliberations of the family council, when affairs of the utmost importance are at stake, and, if he/she is not an absentee, he/she shall be summoned in the same way foreseen in the preceding articles, so that he/she may use this right if he/she so wishes.

- For procedure see also Art.1491(2) of Portuguese Civil Procedure Code of 1939.

Article 213 – **Compulsory appearance of the members** – The members of the council are obliged to be personally present at the meetings.

- For procedure see also Art.1491(3) of Portuguese Civil Procedure Code of 1939.

Article 214 – **Penalty for non-appearance** – The member of the council who is not present at the designated day and hour, without furnishing in due time a reason to be excused or an impediment, will be sentenced by the judge to pay a fine of five hundred and five thousand "reis" to go to child care establishments.

Article 215 – **Intervention of the Public Ministry and guardian** –The curator of orphans and the guardians must always be present at family council meetings, with a merely advisory position.

- Reaffirmed by Arts.1491(3) & 1493(3) and (4) of Portuguese Civil Procedure Code of 1939.

Article 216 – **Presiding officer** – The judge presides over the family council, without the right to vote.

- Reproduced fully by Art.1492 of Portuguese Civil Procedure Code of 1939.

Article 217 – **Quorum necessary for decision** – The family council shall not decide with less than three members.

- Maintained by Art.1493(1) of Portuguese Civil Procedure Code of 1939.

Article 218 – **Conflict of interest –** No member of the family council has a right to vote, nor may he be present for a deliberation concerning an affair in which he, or his ascendants, descendants or consort have a personal interest opposed to that of the minors; but this member may be heard, if the council deems it convenient.

Article 219 – **Decision by majority** – The decisions of the family council are taken by absolute majority of the votes of the members who are present.

- Maintained by Art.1493(4) and supplemented by Art.1494(2) of Portuguese Civil Procedure Code of 1939.

SECTION VII

CURATORS OF ORPHANS

Article 220 – **Function of the Public Ministry** – The general curators of orphans and the law officers of the Public Ministry that carry out their functions are entrusted with watching over the interests and rights of minors.

 Under the Portuguese Civil Procedure Code of 1939, the Curator of Orphans is now the Law Officer of the Public Ministry.

Article 221 – **Powers of the curators of orphans** – The curators of orphans must be heard in all that concerns the rights and interests of minors, and may demand that the guardians and proguardians provide all clarifications deemed necessary for the benefit of the minors.

Article 222 – **Joint responsibility of the curator and of the Judge** – The curator shall be responsible, along with the Judge, for all the damages to the minor that may result from the proceedings illegally applied for by the former, and ordered by the Judge or ordered by the Judge with the approval and acquiescence of the curator.

Article 223 – **Penalty to the judge when he fails to hear the curator** – The judge who fails to consult the curator, in accordance with Article 221, is responsible for a judicial error, even if the decision in question does not lead to damage for the minors.

SECTION VIII

THE POWERS OF THE FAMILY COUNCIL

Article 224 – **Power of the Family council** – The family council has the following powers:

1. To confirm the twice-wed mother as the administrator of the assets of the minor or interdicted child;
2. To confirm the legal guardians;
3. To appoint the dative guardians;
4. To appoint a pro-guardian, whenever required;
5. To confirm the guardianship set out in the mother's will in favour of her second husband; 6. To remove the guardian in the cases mentioned in Articles 236 onwards;
7. To determine the profession, craft or the service that the minor will undertake and decide, when the father or mother of the minor had some form of business or commerce, whether such business or commerce should continue to be carried out by the minor, in the absence of instructions from the parents in that respect, or if there is grave inconvenience in the fulfillment of their wishes;
8. To establish at the beginning of the guardianship the amounts the guardian may spend with the minor and with the administration of the assets, not precluding increases or decreases required by circumstances;
9. To specify the value of the mortgage to be imposed on the assets of the guardian, paying attention to the importance of the movable property, and the earnings to be paid to him/her and that he/her may accumulate up to the end of the guardianship; decide on the assets in relation to which a mortgage should be registered and impose a reasonable deadline for this to be done, as well as, when it so deems convenient, to excuse the guardian from the mortgage or merely from its previous registration and other formalities, so that he/she may begin to exercise the guardianship at once;
10. To verify the legality of the passive debts of the minor and authorize and regulate their payment, as long as interested parties do not oppose this;
11. To decide on what to do with the money, jewels or any other valuable objects belonging to the minor;
12. To authorise the guardian to have the minor arrested, in accordance with article 143 and its paragraph;
13. To authorise the guardian to sell the movable property that it is not appropriate to keep, and decide on what to do with it when no buyer is found;
14. To authorise the guardian to carry out any exceptional improvements, and to lease immovable property for more than three years, as long as the final term does not exceed the time of the age of majority;

15. To authorise the guardian to withdraw the capital of the minor earning interest;
16. To authorise the guardian to contract loans, to lend money belonging to the minor, to mortgage or dispose of immovable property, in case of urgent necessity or recognized utility; 17. To authorise the guardian to accept gifts made to the minor, initiate legal actions, arrive at settlements or carry out transactions or accept commitments, under certain terms;
18. To authorise the marriage and the prenuptial agreements of the minor, when the guardian is not the grandparent;
19. To decide, in the absence of opposition, on the allowance or maintenance to be paid on behalf of the minor to his siblings or ascendants;
20. To examine and approve the accounts of the guardianship in the deadlines set by it, which may not exceed four years;
21. To authorise the replacement or reduction of the mortgage to which the asset of the guardian is subject;
22. To emancipate the minor in the absence of the father and the mother.

- For procedure – 224(3): See Art.965 of Portuguese Civil Procedure Code of 1939;
  (6) See Art.1442 of Portuguese Civil Procedure Code of 1939;
- (10) See Art.1394 onwards of Portuguese Civil Procedure Code of 1939;
  - (14) See Art.1438 of Portuguese Civil Procedure Code of 1939;
  - (16) See Art.1438 of Portuguese Civil Procedure Code of 1939;
  - (17) See Arts.12, 25 & 302 of Portuguese Civil Procedure Code of 1939;
  - (18) See Art.6(4) of Decree No.1 of 25/12/1910 (Law of Civil Marriage). Also see Code of Civil Registration, 1912, Art.185;
  - (20) See Art.249 onwards of Portuguese Civil Procedure Code of 1939;
  - (22) See Art.185 of Code of Civil Registration, 1912, and Article 1461 of Portuguese Civil Procedure Code, 1939;
    - Arts.442, 1392, 1404, 1479, 1481 & 1514 of Portuguese Civil Procedure Code, 1939, also mention the proper functions of the family council.

Article 225 – **Single guardian –** The family council shall not appoint more than one guardian for the minor simultaneously. If the minor owns property at a distant place, its administration may be entrusted to an administrator, who will be appointed by the judge of orphans of that jurisdiction, upon request of the judge competent for the inventory.

Article 226 – **Composition and functions of the council of guardianship** – The guardian, the pro-guardian, the curator of orphans, any relative of the minor or any other interested party in a decision of the family council may appeal the said decision to the guardianship council, except in the case foreseen in Article 1062.

§ 1 – The guardianship council is composed of the division judge, his/ her two immediate substitutes and the curator of orphans, who will have a merely advisory role.

§ 2 – A decision of the guardianship council confirming a decision of the family council cannot be appealed.

§ 3 – If the decision of the family council is not confirmed, there is a possibility of appeal to the High court, which shall decide finally.

§ 4 – These appeals suspend the effects of the appealed decisions, except in the cases where the

law explicitly foresees the opposite.

- Substituted by the Arts.1495, 1496, 1497, 1498 & 1499 of Portuguese Civil Procedure Code of 1939.

SECTION IX

PERSONS WHO MAY EXCUSE THEMSELVES FROM BEING GUARDIANS, PROGUARDIANS OR MEMBERS OF THE FAMILY COUNCIL

Article 227 – **Grounds for exemption of guardianship and pro-guardianship** – The following persons may excuse themselves from guardianship and pro-guardianship:
1. Ministers actually holding their post in the Government;
2. Civil servants appointed by the Government;
3. Military personnel even without Gazetted rank; those who are retired may not however excuse themselves if they are employed in active service;
4. Ecclesiastics who are given care of souls;
5. Those already entrusted with a guardianship;
6. Those with five living legitimate children;
7. Those who are seventy years old;
8. Those suffering from chronic illness, that prevents them from leaving the house and personally attending to their own affairs;
9. Those who are so poor that they cannot take charge of the guardianship or pro-guardianship, without great detriment to themselves.

- For procedural instances see also Arts.1440 & 967 of Portuguese Civil Procedure Code of 1939.

Article 228 – **Exemption of the persons who are not relatives** – Persons who are not related to the minor shall not be forced to accept guardianship, so long as there are relatives in the jurisdiction who can exercise it.

Article 229 – **When the exemption should be sought** –The excuse shall not be accepted if the guardian or the pro-guardian do not present it at the session in which they are appointed, if they were present, and, if they were not present, at the latest six days after they were informed of the appointment.

§ Sole paragraph – If the causes of the excuse arise after the appointment, the excuse must be requested at the latest thirty days after the person requesting it became aware of the said causes: after this time they shall not be entertained.

Article 230 – **When the ground for exemption cease to exist** –Those excused from the guardianship or pro-guardianship may be compelled to accept it, if the reason for the excuse has ceased.

Article 231 – **Consequences of rejection of the appeal** – If the family council decides not to excuse the guardian or pro-guardian already exercising their functions, and these appeal from the decision, they shall be obliged to continue to exercise their functions until the appeal is decided. If they fail to continue to exercise their functions, the family council shall appoint a substitute, the party at fault being liable for the substitute's management, unless the appeal is successful. - For procedural instances see Art.1440 of Portuguese Civil Procedure Code of 1939.

Article 232 – **Effects of exemption –** A testamentary guardian who excuses himself, or is removed due to bad management, loses the right to what has been left to him/her in the will, unless the testator stipulates otherwise.

Article 233 – **Exemption by members of family council** – The provisions of numbers 7 and 8

article 227 and of articles 228 and 229 and its paragraph shall apply to the exemption of members of the family council.

- For procedural instances see Art.1440 of Portuguese Civil Procedure Code of 1939.

SECTION X
PERSONS WHO SHALL NOT BE GUARDIANS, PROGUARDIANS OR MEMBERS OF THE FAMILY COUNCIL

Article 234 – **Persons who are barred of being guardians, pro-guardians, or members of the council** – The following persons shall not be guardians, pro-guardians or members of the family council:

1. Interdicted persons;
2. Non-emancipated minors;
3. Those owing the minor a considerable sum;
4. Those pursuing litigation against the minor, or whose parents, children or wives have such litigation, relating to something of importance, and those known as enemies of the minor or his parents;
5. Those of ill behaviour and whose way of life is not known;
6. Those who have been removed from another guardianship due to the non-fulfilment of their obligations;
7. Judges in jurisdictions with only one judge and the curator of orphans in the jurisdiction of the minor's residence or in the one where his property is located.

- Procedure is laid down under Art.1443 of Portuguese Civil Procedure Code of 1939.

SECTION XI
PERSONS WHO MAY BE REMOVED FROM THE GUARDIANSHIP

Article 235 – **Grounds for removal of guardian –** The following persons may be removed from the guardianship:

1. The testamentary guardian or the legal guardian who begins exercising his/her functions before the summoning of the family council and the appointment of the pro-guardian;
2. Those who neither apply for nor promote the inventory in terms of the law;
3. Those who carry on wrongly in their management, regarding both the persons and the property of those subject to guardianship;
4. Those who, after their appointment, fall within one of the reasons for exclusion mentioned in the preceding section.

SECTION XII
EXCLUSION OR REMOVAL OF GUARDIANS AND PROGUARDIANS

Article 236 – **Power of the council for exclusion or removal of guardian and pro-guardian** –It is for the family council to decide the exclusion or removal of the guardian and pro-guardian, verifying the legal causes or impediments, with a hearing of the interested party, whenever it can be held without grave inconvenience.

- Procedure is laid down by Art.1442 of Portuguese Civil Procedure Code of 1939. See also Art.967 of the same Code.

Article 237 – **Reasoned order** – The decision of the family council will always be reasoned.

Article 238 – **Immediate execution** – If the interested party accepts the decision of the family council, he/she will be immediately replaced.

Article 239 – **Appeal against the decision of the council –** If the interested party appeals from the decision of the council, the appeal will be paid for by the minor. The council may only be

ordered to pay the costs in the case of manifest slander/libel.

- Appeals from decisions of the family council are mentioned in Art.1442 of Portuguese Civil Procedure Code of 1939.

Article 240 – **Provisional measure in the case of exclusion –** In the case of exclusion, the council shall temporarily decide, as it sees fit, regarding the person and property of the minor, while the appeal is not finally decided.

Article 241 – **Provisional measure in case of removal –** In the case of removal, if the removed person was exercising his/her functions, and if there is grave inconvenience in the continuance of this management, while the appeal is not decided, the curator may request the judge to decree the provisional measures deemed indispensable.

- Curator means Law Officer of the Public Ministry attached to the concerned Court.

Article 242 – **Prohibition for the office for member of family council –** The removed guardian or pro-guardian will simultaneously be prohibited from being a member of the family council.

SECTION XIII

RIGHTS AND DUTIES OF THE GUARDIAN

Article 243 – **Functions of the guardian –** The guardian shall:

1. Govern and protect the person of the minor, administer his/her assets, as a good head of family, and represent him/her in all civil acts, except in marriage and in the expression of the last will and testament;

2. Educate, or make arrangements for the education, feed and take care of the minor, in accordance with his/her condition, in the manner ordered by the family council;

3. Rebuke and moderately correct the minor with regard to his flaws, resorting, if the minor does not correct these flaws, to the family council who shall act in accordance with article 143; 4. Apply for inventory of the property of the minor at the latest eight days after he/she takes the oath, and diligently promote its prosecution;

5. Request the summoning and the authorisation of the family council, in all cases in which such authorisation is required;

6. Lease the immovable property of the minor for a period not exceeding three years;

7. Provide for the repair and normal expenses of the immovable property, and to have the agricultural land cultivated, if it has not been leased;

8. Collect the rents, pensions, fees shares and interest belonging to the minor, and procure and receive the payment of any debts, except for what is foreseen in number 15 of article 224; 9. Institute legal proceedings to preserve rights, and those to obtain something in the possession of another person, if they are authorized by the family council, and to defend the minor in all legal proceedings instituted against him/her;

10. Pay the minor's debts, if he/she is authorized to do so;

11. Accept inheritances accruing to the minor, subject to the inventory proceedings;

12. Procure the sale of the minor's movable assets, in the cases in which these cannot be kept, and the sale of immovable assets, in the cases in which this is permissible.

- Art.243(5): Procedure is laid down by Art.1490 onwards of Portuguese Civil Procedure Code of 1939.

- Art.243(9): See also Art.12 of Portuguese Civil Procedure Code of 1939.

Article 244 – **Acts prohibited to the guardian –** The guardian is absolutely prohibited from: 1. Gratuitously disposing of the minor's assets;
2. Renting, acquiring and auctioning the minor's assets;
3. Becoming the transferee of rights or of credit against his/her ward, except in the cases of legal subrogation;
4. Receiving donations from the minor, *inter vivos* or through a will, or from a former ward who has become emancipated or has reached the age of majority, unless it occurs after he/she has accounted for his/her administration and obtained full acquittance;

5. Enter into contracts in the name of the ward, that personally oblige the latter to carry out certain acts, except when such an obligation is necessary to provide for the ward's education, establishment or occupation.

Article 245 – **Restriction to clause 4 of preceding article –** The provisions of clause 4 of the preceding article is not applicable to guardians who are ascendants or siblings of the minor.

Article 246 – **Amount payable to the guardian by the minor prior to the guardianship –** The guardian is obliged to declare in the inventory whatever the minor owes him/her; failing to do so, he/she shall not request the payment of the debt, during the guardianship; and, if the guardian later requests the said payment, he/she must prove that he/she was unaware of the debt before that moment.

Article 247 – **Remuneration to the guardian –** The guardian has the right to be remunerated, and this remuneration, if it has not been established by the parents of the minor in their will, shall be decided by the family council, as long as it does not exceed one twentieth of the net income of the minor's assets.

Article 248 – **Responsibilities of the guardian –** The guardian is liable for the damage that he/she has caused the ward, as a result of fraud, default or negligence.

SECTION XIV

ACCOUNTS OF THE GUARDIANSHIP

Article 249 – **Accounts by the guardian –** The guardian is obliged to furnish accounts for his/her management, either to the family council or to the former ward, if he is emancipated or has attained the age of majority.

- Procedure is laid down in Arts.1019 to 1021 of Portuguese Civil Procedure Code, 1939.

Article 250 – **Examination and approval of the accounts -** The accounts presented to the family council shall be examined by one or two knowledgeable persons, appointed by the same council from among its members, if possible, and shall be approved or rejected, in whole or in part, as may seem right.

- For procedural instances see Arts.1019 & 1016 of Portuguese Civil Procedure Code of 1939.

Article 251 – **Documentation of the accounts -** The accounts must be accompanied by supporting documents, except expenses for which a receipt is not usually requested.

- For procedural instances see Art.1015(1) of Portuguese Civil Procedure Code of 1939.

Article 252 – **Assurance as the expenses incurred by the guardian -** All expenses lawfully carried out by the guardian shall be assured to him, even if they did not benefit the minor, as long as the guardian is not faulted for this fact.

Article 253 – **Interest payable in case of deficit by the guardian -** If, upon the verification of the accounts, the guardian is indebted, the amount of the debt shall be subject to legal interest from the time of the approval of the said accounts.

Article 254 – **Balance in favour of guardian** -The balance in favour of the guardian shall be settled from the first income of the minor received by the guardian; however, if there are urgent expenses, so that the guardian cannot be paid, the balance shall be subject to legal interest, when it is due, unless the family council otherwise provides for the timely payment of the debt.

Article 255 – **Liability of the guardian in debt -** A guardian in debt not having assets with which to compensate the minor, is subject to the penalties foreseen in criminal law, notwithstanding the obligation to pay the said compensation if such payment becomes possible.

Article 256 – **Rendering of accounts by heirs or representatives of the guardian -** In the cases of death, absence or interdiction of the guardian the accounts shall be rendered by his heirs or representatives.

Article 257 – **Rendering of accounts toward former wards major or emancipated -** Where the minor is emancipated or attains the age of majority, accounts shall be presented to him/her, with the assistance of the curator and of the pro-guardian.

§ Sole paragraph - The balance resulting from these accounts shall be subject to legal interest in favour or against the guardian; in the first case, from the time the payment is requested from the former ward, preceded by the surrendering of his property, and in the second case, from the time of the approval of the accounts.

- For procedural instances see Arts.1021 & 1012 of Portuguese Civil Procedure Code of 1939.

SECTION XV
RIGHTS AND DUTIES OF THE PRO-GUARDIAN

Article 258 – **Functions of pro-guardian –** In addition to the other powers specifically set out this Code, the pro-guardian shall:-

1. Uphold and defend the rights of the minor in or out of court, whenever these are opposed to the interests of the guardian;
2. Oversee the administration by the guardian and inform the curator and the family council of anything he/she deems detrimental to the person or interests of the minor;
3. Assist in the pursuit of the inventory and the sale of the minor's assets;
4. Promote the summoning of the family council, in case of abandonment or vacancy of the guardianship, and in all cases where the guardian should be excluded or removed.

- For procedural instances see Art.10 of Portuguese Civil Procedure Code of 1939.

Article 259 – **Attendance at meetings of the family council -** The pro-guardian may attend the deliberations of the family council, as well as take part in them, but without the right to vote.

Article 260 – **Supervision over the administration by the guardian -** The pro-guardian may require from the guardian, in January of each year, a report on the state of affairs of the administration of the minor's assets, and he/she may at all times require the guardian to show him/her the records of the management and to provide the clarifications that he/she may need in this regard.

Article 261 – **Delegation by guardian to pro guardian -** The pro-guardian shall not accept a power of attorney from the guardian regarding the guardian's management.

Article 262 – **Acts prohibited to the pro-guardian and his responsibility -** The provisions of clauses 2, 3 and 4 of article 244 and those of article 248 are applicable to the pro-guardian.

SECTION XVI

LEASE AND SALE OF THE MINOR'S ASSETS

Article 263 – **Lease of the assets of the minors -** The immovable assets of the minor will be leased if the family council does not decide finding this more convenient that they should be administered by the guardian.

Article 264 – **Lease upto 3 years -** Leases, up to three years, shall be executed by the guardian, in the manner deemed most convenient to the interests of the minors.

Article 265 – **Leases for a period exceeding 3 years -** Leases exceeding three years shall always be made through public auction, with the assistance of the pro-guardian and of the curator.

- Modified by Art.1438 of Portuguese Civil Procedure Code of 1939.

Article 266 – **Leases left to the discretion of the father -** The provisions of the three preceding articles are not applicable to leases of minors' assets subject to paternal authority, which should be carried out in accordance with the father's considered decision, except with regard to the time limit laid down in clause 14 of article 224.

Article 267 – **Sale of movable assets -** The sale of movable assets, in cases in which it needs to be done, shall be through public auction, with the assistance of the pro-guardian and of the curator, except if, due to their little value, the family council instructs the guardian to effect the sale privately.

- Modified by Art.1438 of Portuguese Civil Procedure Code of 1939.

Article 268 – **Sale of the immovable assets of the minor -** The sale of the minors' immovable assets shall always be through public auction, in the manner mentioned above.

- For procedure see Art.1438 of Portuguese Civil Procedure Code of 1939. Also see Arts.886, 889 to 894 thereof.

Article 269 – **Sale of the assets outside the jurisdiction of the inventory -** If the movable or immovable assets are located in a jurisdiction different from that in which the inventory is proceeding, their sale shall be through public auction in the jurisdiction in which they are located,

by request from the judge of the guardianship jurisdiction, with the assistance of the respective curator, and of the person authorised by the family council, if it so deems fit, to request in this act all that may be for the benefit of the minors.

§ Sole paragraph - This article does not derogate from the exception foreseen in article 267.

- Modified by Art.1438 of Portuguese Civil Procedure Code of 1939.

Article 270 – **Fixing of value of assets -** Whenever minors' assets are to be sold at auction, the value of the said assets shall be previously evaluated, and the family council shall determine the minimum selling price, which shall not be inferior to the above mentioned value.

- For procedure see Art.1438 of Portuguese Civil Procedure Code of 1939. See also Art.896 thereof.

Article 271 – **Value in case of second auction -** If the assets are put on auction at a price higher than that of the valuation, and there is no bidder, a second auction shall be held for the price corresponding to the valuation.

- Now regulated by Art.901 of Portuguese Civil Procedure Code, 1939.

Article 272 – **Second auction or forgoing of alienation -** If the assets are straight away put on auction for the price corresponding to the valuation, and there is no bidder, there will not be a

second auction for the same price, and the family council shall decide whether it will not proceed with the sale or whether the assets shall again be put to auction at a lower price, which in this case may be determined by the said council.

- For procedure see also Art.1438 of Portuguese Civil Procedure Code of 1939.

Article 273 – **Formalities to be observed in case of auction -** All other matters shall be governed by the usual auction procedures.

- For procedure see also Art.1438 of Portuguese Civil Procedure Code of 1939.

Article 274 – **Alienation of assets of the minor subject to the paternal power -** The provisions of the preceding articles are applicable to the sale of the minors' assets subject to parental authority, except that, in this case, the powers of the family council are exercised by the judge, with the assistance of the curator of orphans.

- Procedure is laid down by Art.1488 of Portuguese Civil Procedure Code of 1939.

SECTION XVII

GUARDIANSHIP OF LEGITIMATED CHILDREN

Article 275 – **General rule in respect of guardianship of the children legitimated by recognition -** The guardianship of children legitimated by recognition is governed by the same rules as the guardianship of legitimate children, with the following differences.

Article 276 – **Council of neighbours -** The family council shall be replaced by a special council, made up of five neighbours, appointed by the judge of orphans from among the friends or relatives of the father or mother who has acknowledged the minor child.

Article 277 – **Appointment of the guardian by the acknowledging parent -** If the father or the mother who has acknowledged the illegitimate child appoints a guardian for him/her, this appointment shall come into force, even if the child is later on been acknowledged by the other parent.

Article 278 – **No legal guardianship -** There shall be no legal guardianship in the case of legitimated children.

SECTION XVIII

GUARDIANSHIP OF ILLEGITIMATE CHILDREN

Article 279 – **Appointment of the guardian by the father or mother -** The father or the mother of a minor illegitimate child may appoint a guardian for it by an act *inter vivos*, or in his/her will, in the cases where he/she is bound to provide maintenance to the child.

Article 280 – **Appointment of the guardian by the Court -** In the absence of both father and mother, the respective judge of orphans shall appoint a suitable person to take responsibility of the minor and provide for his/her education and future, with the means that the parents have provided for that purpose.

Article 281 – **Suits for maintenance -** If the parents have not provided any means for the

maintenance of the child, the guardian, who, in this case shall be appointed by the judge, shall, with the assistance of the curator of orphans, initiate the necessary legal proceedings against the parents or their heirs.

Article 282 – **Composition and regime of guardianship -** In this kind of guardianship, the judge exercises all the powers of the family council, and the curator of orphans exercises those of the proguardian. The decisions of the judge may be appealed, when so deemed fit, to the High Court of the judicial district.

Article 283 – **Minor deemed as abandoned -** If the father or the mother of the minor pass away in a state of insolvency, the minor shall be considered abandoned, and the provisions of the next section, concerning foundlings, shall be observed in respect of him/her.

SECTION XIX

GUARDIANSHIP OF ABANDONED MINORS

Article 284 – **Guardianship of foundlings and abandoned minors -** Foundlings and abandoned minors, whose parents are not known, until they reach the age of seven, shall be placed under the guardianship and administration of the respective municipalities, or of the persons who have voluntary and gratuitously taken charge of their upbringing.

§ Sole paragraph - The provisions of this article do not prevent the application of special regulations of any legally authorized public establishment for child care.

- See also Code of Civil Registration, 1912, Arts.150 to 153 and 286.

Article 285 – **Destination of the children after attaining 7 years of age -** As soon as the foundlings or abandoned minors reach the age of seven, they shall be placed at the disposition of the council for the welfare of children, or of any other judicial authority entrusted with this function by law.

Article 286 – **Career of the child -** The council for the welfare of children, or the judicial authority in place of the same it, shall provide the foundling or abandoned minors the course of life which it deems most advantageous to them, having them join any establishment, or surrendering them by contract to persons willing to take charge of their education and training.

Article 287 – **Guardian of foundlings or abandoned children -** Persons who take charge of foundlings or abandoned children become their guardians, subject to the supervision of the council, or of the judicial authority replacing it, which can rescind the contract and determine a new destination for the minor, in case of abuse or violation of stipulated obligations.

Article 288 – **Outer limit to impose restrictions -** The council for the welfare of children, or the judicial authority substituting it, shall not impose on the foundling or abandoned minor, nor shall it stipulate in the name of the said minor, obligations lasting beyond the minor's age of fifteen.

Article 289 – **Optional emancipation -** When the foundling or abandoned minor has reached the age of fifteen, he/ she may be emancipated by the aforementioned council, or by the judicial authority substituting it, if he/she demonstrates he/she has the necessary ability to govern him/herself.

Article 290 – **Property rights of a foundling or of an abandoned child –** A foundling or an

abandoned child shall have the ownership and usufruct of all that he/she acquires by any title whatsoever, during his/her minority.

Article 291 – **Legal emancipation -** As soon as the foundling or abandoned child reaches the age of eighteen, he/she will be emancipated by operation of law, and his/ her name will be removed from the respective book.

- For procedure see Art.1461 of Portuguese Civil Procedure Code of 1939.

Article 292 – **Legal succession of the foundling or the abandoned child -** If the foundling or abandoned child dies intestate and without descendants, the child care establishment shall inherit his/her property.

Article 293 – **Provisions applicable to the foundling or abandoned child in other circumstances -** In all else concerning the rights of foundling or abandoned children, the provisions relating to other minors shall be applied, to the extent applicable.

SECTION XX

GUARDIANSHIP OF THE CHILDREN OF INDIGENTS

Article 294 – **Protection to the children of indigent persons -** Minor children of indigent persons who, due to the death, old age or illness of their parents, or for any other justified reason, may not be fed and assisted by them or by their relatives, shall be handed over to the care and protection of the respective municipalities, which will raise, feed and educate them at the municipality's expense, up to the age when they are able to make a living for themselves.

Article 295 – **Right of the parents to get back the children -** If the parents' condition improves, and they acquire sufficient means, they shall pay the expenses incurred by the municipality and, if they request for their children, these shall be returned to them.

Article 296 – **Restrictions of the guardianship vesting on the municipalities -** The municipalities are considered as the legal guardian of the aforementioned minors, for as long as they are under their charge, for anything relating to their upbringing and education, notwithstanding parental rights which shall persist in accordance with general law.

SECTION XXI

RESCISSION OF ACTS CARRIED OUT BY MINORS

Article 297 – **Abolition of the privilege of restitution in full -** Minors do not enjoy the benefit of full restitution.

Article 298 – **Acts of the minor which are not valid -** The acts and contracts which the minor may lawfully execute, as well as those executed with due permission, either by the minor or by the guardian, shall not be revoked by the minors, except in the cases in which general or special law so allows.

Article 299 – **Voidable Acts -** The acts carried out by the minor without due permission are null and void, with the exception of what is foreseen in articles 1058 and 1059, but the minor shall not invoke this fact in the following cases:

1. In the obligations contracted in relation to matters of art or in a profession of which he/she is an expert;
2. If he/she deceitfully presented him/herself as having reached the age of majority.

§ Sole paragraph - A simple statement or suggestion of majority or emancipation is not sufficient, in this case, to constitute deceit.

SECTION XXII

REGISTRATION OF GUARDIANSHIPS

Article 300 – **Register of guardianship –** In every orphanological jurisdiction there shall be a numbered book, initialled and sealed by the respective judge, for registration of guardianships of minors and of interdicted persons.

§ Sole paragraph - The clerk in the first office shall be in charge of this book, in which he will enter not only the guardianships in his section but also those of the others for which the respective clerks shall send him the necessary notes.

Article 301 – **Contents of the book -** The pages of this book shall be divided into columns, or portions, in which there shall be declared:
1. The filiation, age and domicile of the minor or of the interdicted person;
2. The value of his property in movable and immovable assets;
3. The dates on which the inventory was started and concluded;
4. Name, occupation, age, status and domicile of the guardian, and if he is testamentary, statutory or appointed by Court;
5. If the guardian has entered into mortgage or furnished any other security;
6. The dates in which the guardian's management has started and ended;
7. The dates of the accounts rendered by him, if there was misappropriation of funds and how much;
8. Any remarks that may be made.

Article 302 – **Alphabetical index -** The book mentioned in preceding article shall be accompanied by an alphabetical index of the names of the guardians and wards.

Article 303 – **Responsibility of the clerk or of the judge -** The clerk or judge who, on his part fails to carry out the provisions of this section, incurs liability for failure to discharge duty of office, and losses and damages which he may occasion.

SECTION XXIII

EMANCIPATION

Article 304 – **Modes of emancipation -** A minor may be emancipated:
1. Through marriage;
2. By concession made by the father, by mother in absence of the father or by family council in the absence of both.

- See Code of Civil Registration, 1912, Arts.175 and 177.
- For procedure see also Art.1461 of Portuguese Civil Procedure Code of 1939.
- For procedure see Art.60 of Law of Divorce dated 03/11/1910

Article 305 – **Effects of emancipation-** Emancipation qualifies the minor to look after his own person and assets, as if he was a major.

- See Art.8 of Portuguese Commercial Code.

Article 306 – **Requisites for validity of emancipation by marriage -** Emancipation by marriage

shall only produce its effects when the male has completed eighteen years of age and the female sixteen, and the marriage had been duly authorized.

§ Sole paragraph - If the case the minor gets married without necessary permission, he/she shall be continued to be regarded as minor, as regards the administration of his/her assets till majority; but out of the income of the assets he shall be allotted the maintenance necessary for his/her state.

Article 307 – **Requisites for validity of emancipation by grant -** The type of emancipation mentioned in the second number of article 304 may only take place with the agreement of the minor, and after he/she has reached the age of eighteen.

Article 308 – **Formalities of the emancipation -** The emancipation granted by the father or mother shall consist of a mere record or document, signed before the judge of the residence of the person granting the emancipation; the emancipation granted by the family council shall consist of a record of the deliberation taken in the usual manner.

§ Sole paragraph - The judge shall subsequently order the respective title to be drawn up, which will only be binding on third partiesafter it has been registered in the book of guardianships.

- See Code of Civil Registration, 1912, Art.175(4) - note 96.

Article 309 – **Proceeding for the emancipated person to get administration of his assets -** In the case of the first number of article 304, the emancipated minor may request the competent judge, enclosing all the documents proving to his/her marriage, age and respective license, to allow him/her to administer his/her own assets; and the judge shall decide, as may be just, without previously hearing any parties.

§ Sole paragraph - The order which directs the handing over of the administration shall produce effect, in relation to third parties, after it has been registered in the book of guardianships.

Article 310 – **Irrevocability of emancipation -** Emancipation once granted cannot be revoked.

SECTION XXIV

AGE OF MAJORITY

Article 311 – **Age for attaining majority and its effect -** A person reaches the age of majority, regardless of gender, having completed twenty one full years. The person who has reached the age of majority is empowered to freely govern his person and assets.

- The Indian Majority Act, 1875, fixing majority at 18 years, was extended to Goa by Goa, Daman and Diu Act 4 of 1966 from 01/07/1966.

Article 312 – **Application for delivery of assets -** A person who has attained the age of majority shall apply with the certificate of his/her age, that his/her assets until then subject to administration be delivered to him/her, and that he/she be removed from the guardianship registry.

Article 313 – **Cases in which the judge should withhold the delivery of the assets -** However, the judge will always withhold the delivery of the assets, if there is a judgment interdicting the person in question, or a case for this purpose pending before the Court.

TITLE – X
LEGAL INCAPACITY ON ACCOUNT OF INSANITY

Article 314 – **Juridical concept of insanity and its modalities** - Idiots and those, who, by the abnormal state of their mental faculties, are found to be incapable of administering their person or their assets, shall be interdicted of their exercise of rights.

1. If the individual, on account of mental infirmity or weakness of mind, is found to be incapable of doing certain acts, he may equally be interdicted, however, the interdiction will be confined only to those acts. The extent and the limits of the curatorship shall be specified in the judgement of interdiction.

2. Such interdictions may be applicable to majors or minors, provided that in the last case may be applied within one year immediately next to the majority:

- See Arts.944, 946 & 954 of Portuguese Civil Procedure Code of 1939. See Mental Health Act, 1987.

Note: Arts.314-336:-

- The Indian Lunacy Act, 1912 was extended to Goa by the Goa, Daman and Diu (Laws) No.2 Regulation, 1963, of which S.4(1) reads as follows:-

Repeal and saving. "4.(1) Any law in force in Goa, Daman and Diu or any area thereof corresponding to any Act referred to in Section 3 or any part thereof shall stand repealed as from the coming into force of such Act or part in Goa, Daman and Diu or such area, as the case may be."

- From 11/01/1993 the Mental Health Act, 1987 has repealed and replaced the Indian Lunacy Act, 1912, vide its Sec.98(1).

Article 315 – **Who can apply for interdiction** - The interdiction may be petitioned by any relative who will succeed or by spouse of the insane.

§ Sole paragraph - In such case the Public Ministry shall defend the insane person.

Article 316 – **Cases in which the Public Ministry may petition** - The interdiction shall be petitioned by the Public Ministry:-

1. In the absence of persons mentioned in the preceding Article:
2. In case of insanity accompanied by violence or where the insane has minor issues, if the aforesaid persons do not petition for the same.

§ Sole Paragraph - In such case the judge shall appoint counsel for the insane.

Article 317 – **Steps to be observed in the proceedings of interdiction** - The petition for interdiction shall be filed and shall follow the procedure prescribed in the Law of Procedure.

- See Art.944 of Portuguese Civil Procedure Code of 1939.

Article 318 – **Formation of Family Council** - The family council shall be formed in accordance with the provisions in the preceding title, Article 207 onwards; but the persons who had petitioned for interdiction shall be debarred from being members thereof, however they may remain present for the meetings of the council merely as observers.

Article 319 – **Registration and publication of the judgement** - After the judgement of interdiction is pronounced, either by the Trial Court or by Appellate Court, the same shall be registered in the Book of Guardianships of the domicile of the interdicted and published by extract in the first case in some of the newspapers of the divisions, and by notice affixed at the place of aforesaid domicile and in the second case in the gazette of the respective High Court.

§ Sole Paragraph - This registration and publication shall be prosecuted by the dealing Clerk of the file.

- See Art.945 of Portuguese Civil Procedure Code of 1939.
- See also Code of Civil Registration, 1912, Art.175(4) - note 96.

Article 320 – **Priorities according to which the guardianship is granted** - The guardianship of the interdicted shall be granted in the following order:
1. To the other spouse in the event the interdicted person is married except, if there is a separation of persons and assets judicially declared and/or they are de facto separated on account of differences or being legally incapable for any other reason;
2. To the father, or to the mother in the absence of father;
3. To the major children, if he has, the eldest being preferable, except, if the judge, after hearing the Public Ministry is of the opinion that some others are in a better position to hold the charge; 4. To the person who is appointed by family council. In this case however, the care or guardianship of the interdicted shall not be entrusted to the person who is likely to succeed in it.§ Sole paragraph - The persons who have given cause to the insanity, by their criminal acts or merely objectionable acts committed to the prejudice of the interdicted persons, cannot be appointed as guardians.

- See Art.945 of Portuguese Civil Procedure Code of 1939.

Article 321 – **Effects of interdiction** - An interdicted person is equated to a minor and all the rules which regulate the incapacity on account of minority are applicable to him save and except the provisions of subsequent articles.

- See Arts.10, 11, 12, 15 & 1373 as well as 1488 of Portuguese Civil Procedure Code of 1939.

Article 322 – Regime of Guardianship granted in favour of father or mother of the interdicted - In case the Guardianship falls on the father or mother; they shall exercise the paternal control, as provided in Articles 101 onwards.

Article 323 – **Regime of Guardianship granted in favour of other spouse** - In case the Guardianship falls on the husband or on the wife, the following provision, shall be observed.

Article 324 – **Cases in which there is no room for inventory** - There shall not be inventory where the marriage is by communion of assets, nor even in case of separation of the assets, in case the assets of the interdicted are listed in an authentic document.

- See Arts.956 and also 431(2) of Portuguese Civil Procedure Code of 1939.

Article 325 – **Exemption to render the accounts** - The spouse is not bound to render the accounts.

Article 326 - **Powers of husband - guardian** - Where the husband is the guardian, he shall continue to exercise over his interdicted wife, the conjugal rights save following modifications:§ 1 - In cases where the acts of the husband depend upon consent of the wife, the consent shall be made up by the judge after hearing of the Public Ministry and of her nearest relative.
§ 2 - In cases where the wife may prefer an application against acts of the husband or sue him to secure her violated or threatened rights, she shall be represented by her proguardian or any of her relations.

- See Art.1478 of Portuguese Civil Procedure Code of 1939.

Article 327 - **Power of wife as guardian** - In cases where the guardianship is entrusted to the

wife of the interdicted, she shall exercise the rights to which he was entitled to, as head of the family, save following exceptions:

§ 1 - She shall not alienate the immovable assets of the interdicted without the permission, in the manner indicated in para 1 of the preceding article.

§ 2 - In cases of ill-treatment, of the negligence in the care required by the state of the interdicted person or wasteful administration of the assets, the wife may be removed from the guardianship on the application of the proguardian or any of the relative of the interdicted person or with the prior hearing of the family council.

Article 328 - **Powers of other guardians** - In case the guardian or the interdicted is any of the persons indicated in Article 320, No.3 and 4, the rules which govern the guardianship of the minors shall be applicable to the extent applicable to them.

Article 329 - **Expansion of guardianship of interdicted in respect of minor issues** - If the interdicted is a bachelor or widower, and he has minor children, legitimate or legitimated by recognition, their guardian shall be the guardian of the interdicted.

Article 330 - **Appointment of proguardian** - In all cases of interdiction, except where the interdicted person is entrusted to the care of his parents, the family council shall appoint one proguardian who looks after his/her rights and well being and informs the Public Ministry in order that it may take steps in the interest of the interdicted person within the legal limits.

Article 331 - **Duration of guardianship** - The guardianship of the spouses, their ascendants or their descendants shall last till the interdiction lasts.

Article 332 - **Main purpose of the guardianship** - The income of the interdicted person and even his assets, if necessary, shall preferably be applied for the improvement of his state.

Article 333 - **Need of judicial permission for restrictive measures against personal liberty** - The interdicted person shall not be deprived of his personal liberty, nor detained in any private house or establishment of any nature or removed outside the kingdom or even of province without prior judicial permission after hearing the Public Ministry and family council.

§ Sole paragraph – The provisions of this article shall be understood in such a way that there is no objection to make use of force whenever necessary to control the violent insane but such a step shall be restricted till the minimum necessary time in order to report the matter to the competent authority.

Article 334 - **Annulment of act subsequent to judgement** - All the acts and contracts performed by interdicted person from the time of the judgement of interdiction is registered and published shall be null and void, if the judgement has become final for want of appeal.

§ Sole paragraph - If the interdiction is done as provided in Article 314, para 1, the nullity is restricted to the acts from which the interdicted is restrained.

Article 335 - **Nullities of acts prior to judgement** - The acts and contracts performed by the interdicted before the judgement, may be avoided only if it is proved that at the relevant time there was cause for interdiction and the same was notorious or the same was known by the other party.

§ Sole paragraph - The acts and contracts performed by an insane person who was never declared interdicted may only be annulled if it is proved that on the date they were performed there was insanity, the same was notorious and it was known to the other party.

- See Art.945 of Portuguese Civil Procedure Code of 1939.

Article 336 - **Vacating of the Interdiction** - When the cause of interdiction ends the interdiction shall be vacated by the order of the Court and all the formalities followed for granting the order of interdiction shall be followed.

- See Art.958 and also 1012 of Portuguese Civil Procedure Code of 1939.

TITLE XI
INCAPACITY OF THE DEAF-DUMB

Article 337 - **Guardianship of deaf-dumb** - The deaf-dumb who do not have capacity necessary to administer their properties shall be put under guardianship.

Article 338 - **Extent & limits of the Interdiction** - The extent and bounds of this guardianship shall be specified in judgment granting the same in accordance with degree of incapacity of the deaf-dumb.

- For procedure see Art.959 of Portuguese Civil Procedure Code of 1939.

Article 339 - **Who can apply for Interdiction** - This guardianship may be applied for by the persons designated in Articles 315 & 316 No. 1 and in all other matters, to the extent applicable the provisions of the preceding title shall be followed.

- For procedure see Art.959 of Portuguese Civil Procedure Code of 1939.

TITLE XII
INCAPACITY OF THE PRODIGALS

Article 340 - **Legal concept of prodigality** - The persons who are majors or emancipated, who, by their habitual prodigality, show themselves to be incapable of administering their assets may be interdicted from the administration of the said assets, when they are married or when there exist legitimate heirs.

§ Sole paragraph - It shall be the judicious discretion of the judge to evaluate, depending on the circumstances, whether the facts alleged are or are not sufficient to declare the prodigality.

- For procedure see Art.960 of Portuguese Civil Procedure Code of 1939.

Article 341 - **Who can apply for interdiction** - This interdiction may be applied for by the ascendants or the descendants of the prodigal, by his wife, by any relative of the latter, or by the Public Ministry, when the prodigal has descendants who are minors or under interdiction.

Article 342 - **Competent Court for the suit** - The interdiction shall be applied for before the Civil Judge of the judicial division, wherein the prodigal has his domicile.

- For procedure see Art.85 of Portuguese Civil Procedure Code of 1939.

Article 343 - **Form of the proceedings of interdiction** - The suit for interdiction for prodigality shall follow the terms prescribed in the respective procedural law.

- For procedure see Art.960 of Portuguese Civil Procedure Code of 1939.

Article 344 - **Extension of the interdiction. Registration of the order** - Depending on the seriousness of the facts that may be proved by evidence, the judge, by his order, shall deprive the

prodigal of the general administration of his assets, or shall maintain the same to him while merely prohibiting him from certain acts which may not be performed without the previous approval of the curator.

§ Sole paragraph - This order shall be registered in the Book of Guardianship and an extract thereof published in any of the newspaper of the judicial division, or, when there is no such newspaper, by public notice at the place of the domicile of the interdicted person.

- For procedure see Art.960 of Portuguese Civil Procedure Code of 1939.

Article 345 - **Capacity of the prodigal** - The prodigal retains at all times his personal freedom and all other civil rights, and may object to the order that has deprived him of the administration of his assets, or of performing certain acts without permission from the curator as also to appeal against the said order.

§ 1 - The objection shall not suspend the execution of the order and the appeal shall be admitted only with prospective effect.

§ 2 - From the order rejecting the objection the prodigal may also file an appeal.

- As to consent also see Arts.7, 9 & 17 of Law of Civil Marriage dated 25/12/1910 and on legal capacity of prodigals see Arts.10, 11, 12, 13, 15 & 1373 as also 1019(2), 1443(1), 1478(1) & 1491(2) of Portuguese Civil Procedure Code of 1939.
- Part of this article is modified by Art.960 of Portuguese Civil Procedure Code of 1939.

Article 346 - Administration of the assets of the prodigal and of his children under disability

- Once the order is final for want of appeal, if the administration has been ordered, it shall be given to the father of the prodigal, or to his mother, if the father does not exist, with the consent of the family council. If he has neither father nor mother who may be given charge of the same, the judge shall appoint an administrator after hearing the family council and the Public Ministry. § Sole paragraph - If the prodigal administers the assets of his minor or interdicted children, these assets shall be included in the above mentioned administration.

- On appointment of a provisional guardian see Art.960 & 945(1) of Portuguese Civil Procedure Code of 1939.

Article 347 - **Patrimonial capacity of the wife of the prodigal** - If the prodigal is married, with separation of assets, the wife shall retain the administration of her own assets, which she shall not alienate without judicial authorisation, in the cases where the consent of the husband is necessary.

- Procedure is laid down by Art.1478 of Portuguese Civil Procedure Code of 1939.

Article 348 - **Fixation of the quantum for ordinary expenses** - In the case of general

interdiction, the interdicted person shall have access to some amount of money which may be deemed to be necessary for his ordinary expenses, in conformity with his status and means. § 1 - These amounts shall be calculated by the judicious discretion of the judge, after hearing the Public Ministry and the family council.

§ 2 - The person under interdiction may however, when an unforeseen necessity arises, take recourse anew to the judge who shall grant the same in the above terms as may be deemed to be just.

Article 349 - **Appointment of provisional curator** - After publication of the judgement of interdiction, whether it be general or special, the person under interdiction shall be given a provisional curator who will authorize him the acts of which he may be prohibited, and which may become necessary, however, the person under interdiction shall be able to, in case of refusal of permission from the curator, to appeal to the judge, who will decide finally after hearing the Public Ministry. The

acts which are performed by the person under interdiction without proper authorisation shall be null in terms of law, once the order has become final for want of appeal.

- For procedure see Arts.960(1) & 945 of Portuguese Civil Procedure Code of 1939. See Art.7, 15 & 52 of Law of Civil Marriage dated 25/12/1910.

Article 350 - **Appeal against the acts of the curator** - The person under interdiction may have recourse to the judge of the interdiction proceedings, when he believes that his curators have abused their duties in any form. The judge shall decide in terms of the law, after hearing the Public Ministry, and if required, the family council. An appeal from his decision shall lie to the High Court which shall decide it finally.

Article 351 - **Rights and obligations of the administrators of the assets** - The administrators of the assets of the prodigal shall have the same rights and be subject to the same obligations as are applicable to the provisional curators of the assets of absentees, except for the following modifications:

1. When the curatorship is in the charge of the father or the mother, there shall be no security kept.
2. The annual accounts shall be rendered with the assistance of the person under interdiction.

- See Arts.12, 1019, 956 & 960 of Portuguese Civil Procedure Code of 1939.

Article 352 - **Lifting of the interdiction** - After five years, the prodigal may apply for the lifting of the interdiction and this shall be so ordered if it is not objected by the family council and the Public Ministry.

§ Sole paragraph - If the prodigal does not obtain the lifting of the interdiction, he may apply for it again, until the same is granted to him; as long as between each refusal that he may have and a new application that he makes, there has elapsed an interval of at least five years.

- See Art.961 of Portuguese Civil Procedure Code of 1939.

TITLE XIII
ACCIDENTAL INCAPACITY

Article 353 - **Rescission of acts performed in a state of accidental incapacity** - The acts and contracts performed by persons who at the time thereof are accidentally deprived of making use of their reason, by any bout of delirium, inebriation or any other similar cause, may be rescinded, if, within the ten days immediately after the re-establishment of reason, the said persons file an objection before any Notary, in the presence of two witnesses, and file the competent suit within the twenty days that follow.

§ Sole paragraph - This suit may only benefit the heirs of the above-mentioned persons, if the same should die without recovering their reason, or before the expiry of the ten days within which they had to file objections, provided however that it be filed within the twenty days subsequent to the death.

- See Art.261 & 455 of Portuguese Civil Procedure Code of 1939.

Article 354 - **Possibility of filing other suits** - The provision of the preceding article does not bar any other legal proceedings which may lie against the validity of the acts and contracts mentioned in the same article.

TITLE XIV
INCAPACITY AS A RESULT OF BEING AWARDED A PENAL SENTENCE

Article 355 - **Incapacity resulting from a penal sentence** - Criminals cannot be interdicted of any of their civil rights except by virtue of a sentence which has become final for want of appeal.

Now governed by Arts.74 & 83 of Portuguese Penal Code.

Article 356 - **Notification of curator** - The one who is interdicted of his civil rights by a sentence passed in an ordinary criminal case which has become final for want of appeal, shall be given a curator.

§ Sole paragraph - The curatorship shall be governed by the regulations of curatorship of the insane.

- Now governed by Arts.74 & 83 of Portuguese Penal Code.

Article 357 - **Extension and effects of curatorship** - The extension and effects of this curatorship shall depend upon the nature of the rights which are interdicted.

- Now governed by Arts.74 & 83 of Portuguese Penal Code.

Article 358 - **Duration of curatorship** - The above mentioned curatorship shall remain in force only as long as the term of imprisonment is in force.

§ Sole paragraph - If the term of imprisonment is set aside as a result of revision and annulment of the sentence, the acts which the accused may have performed during the time when he was interdicted from the same, shall be valid, as long as this validity does not adversely effect rights which may have been acquired.

- Now governed by Arts.74 & 83 of Portuguese Penal Code.

PART II
ACQUISITION OF RIGHTS
(Arts.359 – 2166)
BOOK I

ORIGINAL RIGHTS AND RIGHTS ACQUIRED BY FACTUM AND ONE'S OWN WILL, INDEPENDENTLY OF THE COOPERATION OF ANOTHER

PART II
ACQUISITION OF RIGHTS

BOOK I
Original rights and rights acquired by factum and one's own will, independently of the cooperation of another

TITLE I
ORIGINAL RIGHTS

Article 359 – **Original rights** – Original rights are those which result from the very nature of man, and which the Civil Law recognizes and protects as source and origin of all the others. Such rights are:
1. The right to existence;
2. The right to liberty;
3. The right of association;
4. The right of appropriation;
5. The right of defence.

- These provisions (Arts.359-368) correspond broadly to the fundamental rights in the Indian Constitution, Arts.12 to 35.

Article 360 – **Right to existence** – The right to existence covers not only in the right to life and personal integrity of man, but also includes his good name and reputation, which constitute his moral dignity.

Article 361 – **Right to liberty** – The right to liberty consists in the free exercise of physical and intellectual faculties, and includes thought, expression and action.

Article 362 – **Inviolability of thought** – The thought of man is inviolable.

Article 363 – **Right to expression** – The right to expression is free, like thought; but whoever abuses it, to the detriment of society or of other persons, shall be answerable in accordance with the law.

Article 364 – **Right of action** – The right of action consists of the faculty to freely do any act; but whoever abuses this right, invading the rights of others or of society, shall be liable, in accordance with the law.

Article 365 – **Right of association** – The right of association consists in putting together individual means or efforts, for any lawful purpose, which does not prejudice the rights of another or of society.

Article 366 – **Right of appropriation** – The right of appropriation consists of the faculty to acquire whatever is conducive to the preservation of existence, and to the maintenance and the improvement of one's own condition. Such right, considered objectively, is called "property".§ Sole paragraph - Civil law recognizes appropriation, only when it is done by lawful title or lawful means.

Article 367 – **Right of defence** – The right of defence consists of the faculty to resist any violation of natural or acquired rights.

Article 368 – **Characteristics of Original rights** – Original rights are inalienable and may be restricted only by express provision of law duly enacted. Their violation gives rise to the liability to make good the damages incurred.

TITLE II

THINGS WHICH CAN BE OBJECT OF APPROPRIATION AND THEIR DIFFERENT KINDS IN RELATION TO THEIR OWN NATURE AND TO THE PERSONS TO WHOM THEY BELONG

Article 369 – **Juridical notion of a thing** –Thing, in law means all that does not have personality.

Article 370 – **Things susceptible to appropriation** –All things which are not outside commerce may be appropriated.

Article 371 – **Things outside commerce** – Things may be outside commerce, by their nature, or by provision of law.

Article 372 – **Criteria for exclusion of things from commerce** – Those things which by their nature, cannot be possessed by any individual exclusively, and, those which by operation of law are declared incapable of being owned privately, are excluded from commerce.

Article 373 – **Movable and immovable things** – Things are immovable or movable.

Article 374 – **Immovables by nature and by human act** – Rustic and Urban properties are immovable, either by their nature or by human act.

§ Sole Paragraph - "Rustic property" means the land or the ground, and Urban property means any building built on the soil.

Article 375 – **Immovables by operation of law** – The following are immovables by operation of law:

1. The produce and integral parts of Rustic properties, and integral parts of the Urban properties

which cannot be separated without prejudice to the useful purpose to which they may be put, unless separated by the owner of the property himself.

2. Rights inherent to the immovables mentioned in the preceding article; 3. Consolidated funds, which are found immobilized perpetually or temporarily.

§ Sole paragraph – The provision of this article do not exclude immobilization prescribed by special law for certain and specific purposes.

Article 376 – **Movables by nature or by operation of law** –All material objects not covered by the two preceding articles, are movables by nature and all rights not covered by sub-clause 2 of the preceding article are movables by operation of law.

- In Portuguese Law, ships, automobiles and aeroplanes, though movables, are capable of being mortgaged.
- The word '*hipoteca'* in Portuguese means mortgage.

Article 377 – **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 378 – **Movables of a house or building** – Whenever in an act or contract the expression- movables of a house or a building – is used, it shall include only what is called furniture, utensils or tools except where the known intention of the parties is otherwise.

Article 379 – **Public, common or private things** – Things, in relation to the persons to whom their ownership belongs or who may freely use them are known as public, common and private.

Article 380 – **Enumeration of public things** – Public things are natural or artificial, appropriated or produced by the State and public corporations and maintained under their administration, which may be lawfully used by all, individually or collectively, subject to the restrictions laid down by law or by administrative regulations.

The following come under this category:-

1. Roads, bridges and viaducts constructed and maintained at public, municipal and parochial expense;

2. Salty water of the coasts, creeks, bays, river mouths, estuaries and creeks and the water beds of the same;

3. Lakes and ponds, sweet water canals and watercourses, navigable or able to bear floating craft, along with respective beds, basins and the public fountains.

§ 1 - By navigable current is meant one, which for the whole year is suitable for navigation, for commercial purposes, of boats of any type, construction and dimension; and by floating current that over which by custom effectively at the time of enactment of this Code, floating objects are carried for the whole year for commercial purposes or that which is declared as such in future by the competent authorities.

§ 2 - When the whole river is not navigable or floatable but only part thereof is, only this part shall be described as such;

§ 3 - By bed or basin is meant the portion of the surface which the current covers without overflowing to its natural bank or land which is normally dry.

§ 4 - The surfaces of the banks or ramps and the elevations, the hedges, fences, embankments of mud or stone and cement raised artificially over the natural surface of the soil on the banks, do not belong

to the river bed or basin of the current nor are they in the public domain if on the date of enactment of this Code, they have not been included in this domain by law.

Article 381 – **List of common things** – Common things are those things, natural or artificial, not individually appropriated of which benefit can be taken only on observing administrative regulations by individuals within certain administrative areas or who are part of a specific public corporation.

This category includes:

1. Fallow lands of municipalities or parishes;
2. Watercourses which are not navigable, nor floatable, which crossing the municipal or parish or private properties flow into the sea, in any navigable or floatable current, the lakes or ponds, situated in municipal or parish land and the reservoirs, springs or wells constructed at the cost of the local or parish administration.

§ 1 - A navigable current which for five consecutive years cannot be used for navigation, shall pass on to the category of floatable current.

§ 2 - A floatable current, which during five consecutive years does not serve for the purpose of floating shall be included in the category of currents of common use.

§ 3 - The bank or basin of any waterfall or current of common use, which crosses a private property or is gathered or originates in the same, shall

form integral part of the said property.§ 4 - The ownership of the bed or basin of any waterfall or current of common use, which passes between two or more properties, shall appertain to the said properties with the limitation and easements laid down in this Code.

§ 5 - To each property belongs, by law, the tract of the bed or river bed, comprised between the marginal line and middle line of the same bed or river bed, ending above and below, in relation to the course of the current, by two lines, drawn vertically from the extremity of the marginal line of the property over the middle line.

§ 6 - The tracts of the beds or basins of the waterfalls or currents in common use relating to the properties on the banks thereof shall be subject to all easements which general administrative regulations have imposed on them for the preservation, clearance and cleaning of the said beds or basins.

§ 7 - All the provisions of the preceding paragraphs which are compatible with the still nature of their waters shall apply to natural lakes of sweet water surrounded by private properties and fallow, public, municipal or parish properties.

Article 382 – **Private things** – Private things are those, the ownership of which belong to natural or legal persons and of which, no one can take advantage except these persons or others with their consent.

§ Sole paragraph - The State, the municipalities and parishes considered as legal persons are capable of private ownership.

TITLE III
OCCUPATION*

CHAPTER I
GENERAL PROVISION

Article 383 – **Occupation as a means of acquisition** – It is lawful for any person to appropriate himself through occupation animals and other things, which never had an owner or which were abandoned and lost, save the provisions and restrictions contained in the following chapters.

*** Here the word occupation means taking possession**

CHAPTER II
OCCUPATION OF ANIMALS

SECTION I
HUNTING[3]

Article 384 – **Hunting** - It is lawful for anyone, without distinction of persons, to hunt wild animals in accordance with the administrative regulations, which prescribe the manner and time of hunting :-

1. In his own lands, cultivated and uncultivated;
2. In public lands or lands of local authorities, neither cultivated nor fenced, or not excluded by administrative means;
3. In private lands, neither cultivated nor fenced.

§ Sole paragraph: The provision of no.1 includes the owner of the land as well as those who obtain permission from him.

[3] ***Arts.384-394 – Hunting and Wild Animals***

This subject will now be regulated by:-

(i) The Indian Wildlife (Protection) Act, 1972

(ii) Prevention of Cruelty to Animals Act, 1960

Article 385 – **Hunting in cultivated lands** - In cultivated, open lands, whether they be public, or belonging to the local authorities or private individuals, which are sown with cereals or have any other crop or annual plantation, the hunting is lawful only after the harvesting of the crop.

Article 386 – **Hunting in plantation lands** - In the lands, which are cultivated as vineyard or with other fruit bearing trees, perennial or of small capacity, it is lawful to hunt only within the period falling between plucking of the fruits till the time the tree starts budding. The municipal councils shall fix the time limit for each year within which the liberty granted for hunting shall cease.

Article 387 – **Hunting in orchard lands** - In the open lands, cultivated with olive trees or other fruit bearing trees of big capacity, it is lawful to do the hunting at any time, except that falling between the beginning of ripening of the fruits and their plucking.

Article 388 – **Right to the wounded prey** - A hunter has the right to appropriate an animal by mere fact of its seizure, but he has a right to the animal that he has wounded, whilst in its pursuit, except as provided in the following article.

§ Sole paragraph: The animal which is killed by the hunter, is considered as seized by him as long as the injurious act lasts, or until it is detained by him, by hunting devices.

Article 389 – **Right to the kill** - If the injured animal takes shelter in any property which is enclosed by trenches, or by compound wall or fencing, the hunter is not entitled to pursue the animal within the said property without the permission of the owner thereof. However, if the animal dies therein, the hunter may demand, that the owner or his representative, if present, hand over the animal to him, or may permit him to search for the animal, but without any escort.

Article 390 – **Duties of the hunter** - In any event, the hunter is liable for payment of any damage caused, which damages shall be paid in double, when the act is committed in the absence of the owner or his representative.

§ 1 - If there is more than one hunter, all of them shall be jointly liable for the damages caused.

§ 2 - The entry of hunting dogs into an enclosed property, in pursuit of animal, which had entered into the property, without such entry being attributable to the hunter, shall make the hunter merely liable to make good the damage caused.

§ 3 - The suit for recovery of damages prescribes within 30 days, from the date on which the damage was caused.

Article 391 – **Hunting in enclosed properties** - Within properties which are fenced or closed, in such a manner that exit and entry of animals is not permitted, the owner or possessor thereof may do the hunting freely in any manner and at any time.

Article 392 – **Animals prejudicial to cultivation** - It is lawful to the owners and cultivators to kill, at any time, within their own lands, the wild animals which cause damage to their crop or plantations.

§ Sole paragraph - Similar right is given to the owners and cultivators in respect of domestic birds which cause damages to the lands when they have been sown or having cereals or other fruits pending harvest.

Article 393 – **Protection of fledglings** - It is absolutely prohibited to destroy in the properties of another the nests, eggs, or fledglings of birds of any species.

Article 394 – **Regulation of hunting** - Administrative Laws and regulations, besides municipal regulations, shall fix the time in which hunting in general, or specific hunting, shall be absolutely prohibited, or in certain manner, as well as the imposition of fines, either for contravention of the laws or regulations, or for the violation of the rights declared in this title.

SECTION II

FISHING[4]

Article 395 – **Fishing in public waters** - It is lawful for anyone without distinction of persons, to

fish in public and common waters, save for restrictions laid down by administrative regulations.

Article 396 – **Prohibition of encroachment in lands on river banks** - It is not lawful to encroach upon lands on river banks for exercising his right of fishing, except in cases where hunting is permitted on them, in accordance with articles 384, 385, 386 and 387.

Article 397 – **Fishing in private waters** - The right of fishing within private waters belong solely to the owners of the property, where such waters are located or through which they flow.

Article 398 – **Regulation of fishing** - As to the manner, time and imposition of fines, fishing shall be regulated by administrative regulations in respect of public waters; and in respect of waters of local authorities or private waters, by the municipal councils.

Article 399 – **Fishing in private nurseries** - Fishing in private tanks and nurseries, where there is no free entry and exit for fish, is not subject to any administrative or municipal regulations.

SECTION III

[4]***Arts.395-399*** – ***Fishing*** **-** *This subject will now be regulated by:-*

The Indian Fisheries Act, 1897 (Central Act 4 of 1897)

(i) ***The Goa, Daman and Diu Fisheries Rules, 1981****; (Published in the Official Gazette, Series I No.18 dated 30-7-1981 and came into force at once).*

(ii) ***The Goa, Daman and Diu Fisheries (Amendment) Rules, 1983****; (Published in the Official Gazette, Series I No.15 dated 14-7-1983 and came into force at once).*

(iii) ***The Goa, Daman and Diu Fisheries (Amendment) Rules, 1993;*** *(Published in the Official Gazette, Series I No.46 dated 11-2-1993 and came into force at once).*

(iv) ***The Goa, Daman and Diu Fisheries (Amendment) Rules, 1996****; (Published in the Official Gazette, Series I No.1 dated 08-4-1996 and came into force at once).*

OCCUPANCY OF WILD ANIMALS, WHICH HAD AN OWNER[5]

Article 400 – **Occupancy of wild animals** - It is lawful for anyone to occupy any wild animals which having had an owner, were later released into their natural liberty, without prejudice to the provisions of articles 384 onwards, and with restrictions and provisions contained in the present section.

Article 401 – **Right to the occupied animal** - Wild animals accustomed to a certain shelter, provided by human labour, which go to a shelter of a different owner, shall belong to the latter, if they cannot be individually recognized; if not, they can be recovered by the former owner, provided he does not cause any damage to the other.

§ Sole paragraph - However, if it is proved that the animals were taken, by use of fraud or by use of a device used by the owner of the shelter, where they have been lodged, the latter shall be bound to hand them over to the former owner or pay to him double of the value if the restitution is not possible; and this liability will be without prejudice to the imposition of fines which may be attracted.

Article 402 – **Occupation of swarms of bees** - It is lawful for anyone to take possession of swarms of bees, which he found first:

1. If it is not being pursued by the owner of the bee-hive who had created the swarm; 2. If it is not found resting in the property of the owner of the said bee-hive, or in any building, or within the property in which it is not lawful to do hunting.

§ Sole paragraph - But if the bee-hive is pursued by the owner of the swarm, the owner of the property shall be bound to permit him that he may collect it or to pay the value thereof.

[5]***Arts.400-403 –Hunting and Wild Animals***

This subject will now be regulated by:-

(i)The Indian Wildlife (Protection) Act, 1972

(ii)Prevention of Cruelty to Animals Act, 1960

Article 403 – Escaped ferocious animals - Ferocious and harmful animals, which escape from the enclosure wherein they were kept by the owner thereof, may be killed or occupied freely by any person who captures them.

SECTION IV

OCCUPATION OF DOMESTIC ANIMALS ABANDONED, LOST OR STRAY

Article 404 – **Occupation of domestic animals** –Domestic animals who are abandoned by their master may be taken by the first person who finds them.

Article 405 – **Lost animals** –Lost or stray animals may only be taken on the following terms.

Article 406 – **Duties of the finder** –If the person who finds any lost or stray animal, knows whose it is, he shall return it or inform the owner, the circumstances in which it is found within three days at the latest, if the owner is domiciled or resident in the same taluka where the animal is found.

Article 407 – **Communication to the owner** –If the owner is not domiciled or residing in the same Taluka, and if the finder is not able to comply with the provisions of the preceding article, he shall inform the Administrative authority of the Taluka, within the period of three days, the circumstances in which the animal is found, in order that this may be informed to the owner.

Article 408 – **Unknown owner** –If he who finds any lost or stray animal, does not know whose it is, shall without delay present the same to the Administrative Authority of the parish where it is found.

§ 1 - The Administrative Authority shall direct the quality, characteristics, state and apparent value of the animal and the place where it was found, and shall have the same kept in the possession of the person who found it or any other, if the former declines;

§ 2 - If the animal found is foul, the said authority shall have the fact announced in the first consecutive Sunday at the door of the parish Church while the convening mass is coming; and if within fifteen days the owner does not turn up, the animal shall belong to the person who has found it;

§ 3 - If the animal found is a sheep, goat, pig or any other four footed animal of the smaller size, and even if of other types, if the value does not increase 6000 reis, the provisions of the preceding paragraph shall be observed, with the difference that the time limit allotted shall be thirty days, and the announcement shall be made every eight days;

§ 4 - If the animal found is big cattle or quadruped of big size the value of which exceeds 6000 reis, the provisions of paragraphs 1 & 2 shall be observed with the following indications:- i) Besides the announcements, the finder shall have a notice inserted in the gazette of respective High Court;

ii) The animal shall come to belong to the finder after three months;

§ 5 - The time limits shall be counted from the day of the first announcement;

§ 6 - The prescribed procedure shall always be gratuitous, except the announcement, which will be paid for by the owner or finder, if the former does not appear at the appropriate time.

§ 7 - If the person in whose possession the animal is kept does not have the means to support the same, or he is under the risk of suffering decline in health, he may apply that the same be auctioned and the amount deposited;

§ 8 - In such cases the provisions of the preceding paragraphs shall apply to the amount deposited;

Article 409 – **Expenses with the animal found** –The owner of the lost or strayed animal shall be bound to pay the expenses incurred on the animal, subject to the provision of the preceding article, if he doesn't opt to abandon it.

Article 410 – **Responsibility of the finder** –The finder who does not follow the obligations imposed shall be bound in addition to civil and personal liability, to restore the animal or its value to the owner

at all times at such time as the latter turns up, without any compensation for what he has done with the animal.

CHAPTER III
OCCUPANCY OF INANIMATE THINGS

SECTION I
OF OCCUPANCY OF ABANDONED MOVABLES

Article 411 – **Occupancy of movables** –Abandoned movables may be freely occupied by any person, who finds them first.

Article 412 – **Things abandoned at transport stations** –In the occupation or the delivery of movables, abandoned at transport or traffic stations or at customs, or any other fiscal houses, the provisions contained in the respective regulations of the railways, postal services, delivery of posts, customs, and other authorities shall be observed.

SECTION II
OF OCCUPANCY OF LOST MOVABLES

Article 413 – **Lost things** –Lost movables may be taken possession of in the cases and on the terms laid down in the following articles.

Article 414 – **Obligation of finder** –Whoever finds a lost thing, and knowing whose it is shall comply with the provisions of articles 406 and 407.

Article 415 – **Unknown owner** –Whoever finds a lost thing, and does not know whose it is, shall, within three days, inform the administrative authority of the parish, within whose jurisdiction the thing was found, declaring the nature of the thing, its approximate value and the day and place where it was found, in order that the said authority may affix on the door of the Parish Church the notice of the fact.

§ Sole paragraph - The said authority shall keep one book duly numbered, initialed with opening and closing remarks, in which the aforesaid notices shall be copied, declaring on which day they were so affixed, and the authority shall affix its signature and note of the compliance report.

Article 416 – **Publicity as to the thing found** –If the value of the thing exceeds 3000 reis$_6$, the administrative authority of the Parish, shall simultaneously with the affixation of the notice mentioned in the preceding article, send one copy thereof to the gazette, of the High Court of the respective judicial district, for its publication.

Article 417 – **Notices to be free of cost** –The notices mentioned in the preceding two articles shall be issued officially and free of cost.

Article 418 – **Expenses in preserving the thing** –The owner of the thing shall pay all expenses incurred on its preservation by its finder, if he does not desire to forfeit the same.

Article 419 – **Rights of the finder** –The finder shall appropriate a thing found, on the following terms.

§ 1 - Where the value of the thing does not exceed 3000 reis, in the event the owner does not turn up within 45 days from the date of the affixation of the notice.

§ 2 - Where the value of the thing exceeds 3000 reis but does not exceed 6000 reis, if the owner does not appear within 3 months from the date of publication of the notice in the Gazette of the respective High Court.

§ 3 - Where the value of the thing exceeds 6000 reis but does not exceed 12000 reis, if the owner does not appear within half year reckoned from the same date.

§ 4 - If the value of the thing exceeds 12000 reis, the thing shall belong to the finder after the passage of one year, reckoned from the same date, but with a reservation of 1/3$_{rd}$ of its net value, after

deducting the expenditure incurred, and this 1/3rd shall be assigned to the Council for the welfare of the juveniles of the respective judicial division, where the thing was found, or the Magistracy who substitutes it.

Article 420 – **Liability of the finder** –Those who find any lost things, and do not comply with the steps which they are bound to follow, shall be bound to restore to the owner the thing found or its value, without being entitled to any expenses incurred therein, and shall also, be subject to civil and criminal liability.

6 *A "real" is the coin of smallest denomination. Plural of "real" is "reis".*

Article 421 – **Presumption of loss of thing** –When it is not possible to know with certainty whether a thing is lost or abandoned, it shall be presumed to be lost.

SECTION III

OCCUPANCY OF TREASURES AND HIDDEN THINGS[7]

Article 422 – Meaning of treasure - Whoever finds buried or hidden any deposit of gold, silver or any other object of value, whose owner is not known shall follow the provisions of articles 406 and 407.

Article 423 – Duty to inform and announce the finding - Whoever finds the aforesaid deposit and does not know who the owner thereof is, and it is not evidently known that the deposit is more than 30 years old, he shall announce the find in the Gazette of the High Court of the respective district, and if the owner thereof does not appear within 2 years, the finder shall be the owner of the find, in full or in part, as provided in the following article.

§ Sole paragraph - Besides the obligation established by this Article, the finder is also bound to inform the fact of the find to the administrative authority of the parish, within a period of 3 days from the day of the event. The administrative authority to whom notice was given, shall immediately give the notice thereof by way of publication and also notices in any periodical, in order that any person, who has a right to it, may collect it within two years, failing which he will lose the right over the same, in accordance with the present article.

Article 424 – Ownership of treasure - If the owner of the thing is unknown, and from the deposit itself it is evident, that it was made more than 30 years earlier, the find shall belong entirely to the owner of the property where the thing was buried or hidden, provided he has found

7 ***Arts.422-433*** *– Cf. The Indian Treasure Trove Act, 1878 has been extended to Goa, Daman and Diu by the Goa, Daman and Diu (Laws) No.2 Regulation, 1963, of which S.4(1) reads as follows:-*

> *Repeal and saving. "4.(1) Any law in force in Goa, Daman and Diu or any area thereof corresponding to any Act referred to in section 3 or any part thereof shall stand repealed as from the coming into force of such Act or part in Goa, Daman and Diu or such area, as the case may be."*

it personally; and, if the same was found by any other person, it shall belong 2/3rd to the owner of the property and 1/3rd to the finder.

§ Sole Paragraph - If the property, where the deposit was found, is of the nature of emphyteusis or sub-emphyteusis, the holder or sub-holder shall be treated on par with the owner with full ownership for the purposes of this Article.

Article 425 – Search of treasures in the property of another – No one is allowed to search for treasures in private property of another, without the permission of the owner thereof; the offender shall forfeit, in favour of the owner, whatever he found, and he shall also be liable for losses and damages.

Article 426 – Search in public property – No one is permitted to search for treasures in municipal or government properties, in such a manner that damage will be caused to them, without permission

from municipal council or respective government office, default being subject to the penalty of the preceding article.

Article 427 – Unlawful appropriation - Whoever appropriates a treasure or hidden thing, to the prejudice of the rights of a third party, as provided in the preceding articles, shall forfeit the part which otherwise would have belonged to him, which shall be applied for the benefit of the establishments meant for safeguarding children in the judicial division wherein the treasure was found.

SECTION IV

OCCUPANCY OF VESSELS AND OTHER SHIPWRECKED OBJECTS

Article 428 – Shipwrecked vessels - Any matter concerning ship wrecks, their cargo, their goods or objects of private ownership which the sea throws to the shore, or which are seized on the high seas, shall be regulated by the provisions of the Commercial Code and of the administrative laws.

CHAPTER IV

OCCUPANCY OF COMMON OBJECTS AND PRODUCTS OF NATURE NOT APPROPRIATED

SECTION I

GENERAL PROVISION

Article 429 – **Animals washed ashore** - The occupation of animal substances of any nature, grown in public or common waters, which are thrown to the banks or to the shores, shall be regulated by the provisions of Articles 468 and 469, in respect of vegetable substances from the waters.

Article 430 – **Natural products not appropriated** - It is lawful for anyone to occupy any object or natural product, which is not the exclusive property of another, without prejudice to the provisions and restrictions provided in the present Code.

SECTION II

WATERS

SUB-SECTION I

PUBLIC WATERS, AND PARTICULARLY NAVIGABLE AND FLOATABLE WATERS

Article 431 –Use of public waters - It is lawful for anyone to use public waters in conformity with the administrative regulations.

§ 1 - If the said waters are navigable or floatable, such use should be made without prejudice to the interests of navigation or floating operations.

§ 2 - The conflicts, which may arise between the general interests of navigation or floating operations, and the interests of agriculture or of industry shall be resolved administratively.

Article 432 –Permanent construction or work - Where the use, which is intended to be made of public waters, navigable or floatable, depends upon permanent work or construction, the latter shall not be made without the prior permission of the competent administrative authority.

Article 433 – Lapse of right due to abandonment of work - Where in order to make the right of occupation effective, it is necessary to undertake works of permanent character, if the use of the latter is thereafter abandoned for more than 5 years, such right will prescribe in favour of one who does similar works, incompatible with the former.

SUB-SECTION II

WATER COURSES WHICH ARE NEITHER NAVIGABLE NOR FLOATABLE[8]

Article 434 – **Use of waters which are neither navigable nor floatable** - The owners or possessors of properties, which are crossed by any watercourses, which are neither navigable nor floatable, have the right to use the said waters for the benefit of their properties, provided that from the back flow of the said waters no damage is caused to the properties which are situated at a higher level, and on lower level the point of exit of the remaining waters does not get altered.

§ Sole Paragraph - By point of exit is meant, that at which one of the marginal sides of river bed ceases to belong to the property for the first time.

Article 435 –**Alteration of the water bed** - The owner of a property, crossed by a watercourse, has the right to alter or change the riverbed or channel thereof, under the same conditions established in the preceding article for the purposes of the use of the waters.

[8]***Arts.434-464*** – ***Waters*** – *Indicative cognate provisions, see:-*

***The Indian Easements Act, 1882*:-**

S. 2,
S.4 illustrations (c) (f)
S.5 ill. (c)
S.7 ill. (f) (g), (h), (i) (j) Expl.,
S.23 ill. (d),
S.24 ill. (a), (b) (g),
S.27 ill. (a),
S.28 (d),
S.29 ill. (a)(b),
S.30 ill. (b),
S.44 (a),
S.48 ill. and S.50 ill.

Article 436 – **Sharing of waters amongst adjoining properties** - When the watercourses pass through two or more properties, the use of the waters shall be regulated in the following manner:§ 1 - Where the water is in excess, each of the owners or possessors of the properties adjacent to the watercourse on both the sides, may use the portion of the water which he deems fit.

§ 2 - Where the water is not in excess, each of the owners or possessors of the properties fronting the same, shall have right to use one part of the waters, proportionate to the extent and needs of his property.

§ 3 - Each of the owners or possessors of the properties, referred to in preceding paragraph, may tap the portion of water which he is entitled to from any of the points of his border line, without the other, on the pretext of tapping it from a higher level, being allowed to deprive him of such portion, in full or in part.

§ 4 - To the exit of the remaining waters, if there are any, the provisions of article 434 shall apply.

Article 437 – **Rights of adjoining owners** - The owners or possessors of adjacent properties or properties crossed by watercourses, when joined to other properties, which do not have the same right, are not entitled to use in those properties the aforesaid waters to the detriment of the right which their neighbours have over them.

Article 438 – **Saving of acquired rights** - What is provided in the preceding articles will not prejudice the rights acquired at the time of promulgation of this Code, over certain and specified waters by law, usage and custom, express grant, decree or prescription.

§ Sole paragraph. Prescription, however, can be looked into for the consequences of this article only when it has ripened after opposition which is not pursued, or involving construction of works in the property at higher level, from which an inference can be drawn of the abandonment of the original right.

Article 439 – **Regulation of future use** - The right, however, which the owners have to the use of the waters, which cross or wash their properties, cannot henceforth be acquired by way of prescription, and may be transferred only by way of public deed or public proceeding.

Article 440 – **Domestic use** - The land owners along any watercourses cannot prevent their neighbours from the use of the waters, for their domestic purposes, provided that they are compensated for the damages that may arise from passage through their properties.

§ 1 - Such servitude can only take effect, upon verification, that the said neighbours cannot have water from another part, without great inconvenience or difficulty.

§ 2 - The conflicts, which may arise in this connection, except those relating to compensation, shall be decided administratively.

§ 3 - The right to use the waters, referred to in this article, is not acquired by way of prescription, but ceases as soon as, by way of construction of any public fountain, the persons, to whom the right is accorded, have the water they need without much difficulty and inconvenience.

Article 441 – **Duty not to pollute excess waters** - Those who have the right to utilize any flowing waters, shall not alter or pollute those which they do not consume, so as to make them unpotable, unusable or prejudicial to those who have equal rights to their use.

Article 442 –**Free flow of water** - The owners or possessors of properties, crossed by or adjacent to any watercourses, shall abstain from doing any act, which may obstruct the free flow of those waters, and shall remove any obstacles to such free course when such watercourses have their source in their properties, in such manner that from such acts and obstacles no damage is caused to their neighbours, either on account of stagnation or back flow of waters, or on account of their delayed flow or loss, except, in the last two cases, on account of their lawful utilization. § Sole Paragraph. When the obstacle to the free course of water does not arise in a certain marginal property or is not attributable to the owner thereof, the manner of its removal shall be regulated by administrative legislation.

Article 443 – **Liability of defaulters** - When the owners, to the detriment of a third party, fail to comply with the obligations cast on them in the preceding two articles, the works of cleansing as well as of conservation shall be executed at their cost, and they will also be liable for damages, besides, fines, which may be imposed on them as per municipal regulations.

SUB-SECTION III

SPRINGS AND WATER SOURCES

Article 444 – **Springs and water sources** - The owner of a property where there may be any spring or source of water may use the same and dispose freely of its use, except where any third party has acquired a right to this use by just title.

§ Sole paragraph - The provisions of Articles 438 & 439 shall apply to the waters referred to in this article.

Article 445 – **Medicinal waters** - If the abovementioned waters are medicinal, its use may be regulated administratively, as may be required by the public interest, so long as the owner is compensated for the damage, that may arise from this.

Article 446 – **Flow of falling waters** - The owner who through his effort discovers any new spring in his property, may direct the flow of those waters over the properties of others, against the wish of

those owners, only if permitted by decree of the Court and upon payment of compensation for damages.

Article 447 –**Use by local residents or families** - The owner of any source of water is not entitled to change its customary course, if the inhabitants of any locality or group of houses are making use thereof.

Article 448 – **Compensation to owner of water sources** - If the inhabitants mentioned in the preceding article have not acquired, by just title, the use of the waters, referred to above, the owner may demand the due compensation.

§ Sole Paragraph: Such compensation shall be proportionate to the damage which may accrue to the owner, on being deprived of the free use of the waters, regardless of the benefit which accrue to the said locality.

Article 449 –**Change of water course** - If the owner of the property, where the waters originate, changes the course taken by them during the last five years, causing them to flow over the properties of other neighbours, the latter may compel him to restore the waters to their original course.

§ Sole Paragraph: Such a suit can be filed only within two years from the date of the change.

Article 450 – **Subterranean waters** - It is lawful for anyone to search for waters in his property by means of wells, mines or other excavations, provided no prejudice is caused to the rights, which third party may have acquired, by just title, over the waters of such property.

Article 451 – **Fountain or public reservoir** - He who, in any manner alters or decreases the waters of a spring or of any reservoir, meant for public use, shall be compelled to restore the things to their previous state.

Article 452 – Underground water in public land - It is lawful for anyone to open mines or wells in public, municipal or parish lands in order to search for subterranean water, with prior license of the respective administrative or municipal authority.

SUB-SECTION IV

RAIN WATERS

Article 453 – **Rain waters from falls and floods** - Torrents and floods of rain waters which flow over lands, highways or public roads may be occupied, during their passage, by any adjacent owner, in accordance with administrative regulations.

§ Sole Paragraph: Such right can be acquired by prescription only in accordance with article 438.

Article 454 – **Rain waters falling over private property** - Rain waters which fall directly over any land or building, may be freely occupied and enjoyed by the owners of the said properties; but they have no right to divert such waters from their normal course and cause them to follow another, without the express consent of the owners of the properties to whom such change may cause damage.

Article 455 – **No prescription on rain waters** - The owners of servient properties are not entitled to acquire by prescription the right to receive the said waters.

SUB-SECTION V

CANALS, PRIVATE AQUEDUCTS AND OTHER WORKS RELATING TO THE USE OF WATER

Article 456 –**Legal easement of aqueducts** - It is lawful for anyone to canalize underground or over ground the flow of waters to which they have a right, for the benefit of agriculture or industry, through the agricultural lands of others, when they are not enclosed farms or orchards, gardens, kitchen gardens, or courtyards adjacent to buildings, after payment of compensation for the damage that may result from this, to the said properties.

§ Sole Paragraph - The owners of servient properties also have the right to be compensated for the damages which may arise in future, from the infiltration or eruption of the waters, or on account of deterioration of the works done to carry the said waters.

- Procedure is laid down under Art.1051 of Portuguese Civil Procedure Code of 1939.

Article 457 –Legal procedure - The questions relating to the direction, nature and form of the aqueduct and to the amount of compensation, shall be summarily decided by the Court, if the parties do not arrive at an amicable settlement.

- Procedure is laid down under Art.1051 of Portuguese Civil Procedure Code of 1939.

Article 458 – **Maintenance of aqueduct** - Owners of servient properties have right to whatever grows naturally on the embankments or mounds. The said owners are only bound to allow passage for inspection of the aqueduct, or for carrying out the necessary repairs, and also not to do anything which in any manner may cause damage to the aqueduct, or to the course of waters.

Article 459 – **Change of aqueduct** - The owners of servient properties may, equally, at any time, ask for relocation of the aqueduct to some other part of the same property, if such relocation is beneficial for them, and does not cause damage to the interests of the owner of the aqueduct, provided such change is done at their own cost.

- Procedure is laid down under Art.1051 of Portuguese Civil Procedure Code of 1939.

Article 460 – **Compulsory sharing of aqueduct** - Where, once the aqueduct is constructed, all the water is not necessary for the owners of the aqueduct, and the owner of another property desires to have share in the excess waters, he will be allowed such share upon prior payment of compensation, and in addition he shall have to bear a proportionate share of the expenditure incurred on channelizing the waters upto the spot from where the waters are intended to be used. § Sole Paragraph: If there are different claimants for such excess share, preference will be given to the owners of servient properties.

- Procedure is laid down under Art.1051 of Portuguese Civil Procedure Code of 1939.

Article 461 – **Easement for water flow** - The owners of the properties, at a level lower than the one to which the aqueduct is taken, are bound to receive the flowing waters, or to give them way, provided they are compensated for the damages arising to them therefrom.

§ Sole paragraph - Provisions of sole paragraph of Article 456, are also applicable to these properties.

- Procedure is laid down under Art.1051 of Portuguese Civil Procedure Code of 1939.

Article 462 – **Draining of properties** - The provisions of the preceding articles are applicable to the waters flowing from ditches, artificial conduits, trenches, drains, furrows or from any other mode of drainage of the properties, when such waters have to cross a property or properties of different owners, to reach any water course or any other route of discharge.

Article 463 –Legal easement for water gates - When the possessor of a property situated on the banks of any water course, to the waters of which he is entitled, is able to take advantage of the same only by erecting catchment works, dams, or similar works, which may encroach upon the property of the other neighbour, the latter will not be entitled to object to the said work, once he is compensated in advance for any damage arising from such work.

§ Sole paragraph - Buildings are excluded from the servitude mentioned in this article.

- Procedure is laid down under Art.1051 of Portuguese Civil Procedure Code of 1939.

Article 464 –Compulsory sharing of water gates - But, where the neighbour who is subject to the servitude mentioned in preceding article, wishes to take benefit of the said work, he may

acquire joint interest therein, upon payment of a part of the expenditure in proportion to the

benefit that he may receive.

SECTION III

MINERALS[9]

Article 465 – **Search for minerals** - All have the right to prospect and explore the mines in the lands possessed by them without permission from the Government.

Article 466 – **Search and extraction of minerals in the property of another** - It is lawful for anyone to prospect on the land of others, with consent of its owner; which consent can, in the event of refusal, be made good lawfully. However the exploration, in such case, shall be dependent on the previous grant.

Article 467 – **Regulation of mining** - The specification of substances, which are to be considered as minerals, in order that their prospecting and exploration be regulated by special legislation; the restrictions over the rights mentioned in the preceding articles; the laying down of the prior formalities and the conditions and manner in which the said rights may be exercised; as well as the specification of the rights of the surface owners and of the discoverers of the mines, in case of a grant, are reserved for special legislation.

SECTION IV

[9]***Arts.465-467- Minerals*** *are now regulated by:-*

1.Mines Act, 1952

2.Mines and Minerals (Development and Regulation) Act, 1957

3.The Goa, Daman and Diu Minor Minerals Extraction and Removal Rules, 1974; [Published in the Official Gazette, Series I No.47 dated 21-2-1974]. Also incorporated:-

(i) The Goa, Daman and Diu Minor Minerals Extraction and Removal (Amendment) Rules, 1978*; [Published in the Official Gazette, Series I No.23 dated 8-9-1978].*

(ii) The Goa, Daman and Diu Minor Minerals Extraction and Removal (Amendment) Rules, 1979*; [Published in the Official Gazette, Series I No.37 dated 13-12-1979].*

(iv) The Goa, Daman and Diu Minor Minerals Extraction and Removal (Amendment) Rules, 1981*; [Published in the Official Gazette, Series I No.49 dated 4-3-1982].*

VEGETABLE MATTER IN WATER OR LAND

SUB-SECTION I

VEGETABLES IN WATER OR LAND[10]

Article 468 –**Occupancy of vegetable matter in water** - Vegetable substances of any nature grown in public waters, whether such substances are found within the waters, or are washed to the banks or beaches, may be freely occupied by the person, who desires to use them, subject to administrative regulations.

Article 469 – **Vegetable substances in common waters** - Vegetable substances grown in the common waters, whether they are found in the body of the said waters or are washed up to their banks, may only be occupied by the neighbours in the respective municipality or parish, except with the permission from the municipal council, or unless there is old usage and custom to the contrary.

Article 470 – **Vegetable substances dumped on private land** - Vegetable substances mentioned in the previous two articles which are washed up or thrown by the waters over any private property, shall belong to the owner of the said property.

Article 471 – **Regulation of right to occupancy** - The government or the municipal councils shall make necessary regulations for the waters in public or common domain, as the case may be, so that

the right of occupation is exercised in such a manner that the said vegetable substances are utilized conveniently and that there is no adverse effect to the propagation, generation and breeding of fish, or to any other public interest.

10***Arts.468 – 473*** *– Indicative cognate laws:-*

(i) The Environment (Protection) Act, 1986
(ii) Coastal Regulation Zone (CRZ) Notification Act, 2011
(iii)The Island Protection Zone Notification, 2011
(iv) National Green Tribunal Act, 2010
(v) National Green Tribunal (Practices and Procedure) Rules, 2011

SUB-SECTION II

VEGETABLE MATTER ON LAND

Article 472 – **Vegetable substances belonging to the State** - The pastures, woods, firewood and other vegetable substances grown on the land belonging to the State may only be occupied with the permission of the government, in accordance with regulations relating to the subject.

Article 473 – **Vegetable substances on Municipal or village land** - The pastures, bushes, firewood and other vegetable substances grown on common lands or lands of municipalities or parishes belong exclusively to the inhabitants of the respective administrative sub division, or parishes, but they may be occupied in conformity with the old usages and customs, or in accordance with regulations that may be framed by the municipal councils.

TITLE IV

RIGHTS WHICH ARE ACQUIRED BY MERE POSSESSION AND PRESCRIPTION

CHAPTER I

POSSESSION11

Article 474 – **Concept of possession** – Possession is the retention or enjoyment of any thing or right.

§ 1 - Permissive acts or acts of mere tolerance do not constitute possession.
§ 2 - Possession continues so long as the retention or enjoyment of a thing or right lasts, or the possibility of continuing the same exists.

Article 475 – **Kinds of possession** – Possession, as means of the acquisition, may be in good faith or in bad faith.

11***Arts.474-504*** *–* ***Possession****: It is peculiar to this Code. We have no statutory law on the subject, only dispersed case law.*

Article 476 – **Meaning of Good Faith and Bad Faith** – Possession in good faith is that which arises from title, the defects of which are not known to the possessor. Possession in bad faith is that which occurs in the inverse case.

Article 477 – **Presumption of ownership** – Possession produces in favour of the possessor the presumption of ownership, which may be taken into greater or lesser consideration, depending upon the circumstances.

Article 478 – **Presumption of good faith** – Possession is presumed to be in good faith as long as the contrary is not proved, except in the cases, where the law expressly does not admit such presumption.

Article 479 – **Objects of possession** – Only things and rights which are certain and specific, and which can be appropriated, can be the objects of possession.

Article 480 – **Capacity to possess** – Possession can be acquired by all those who have the faculty of reason, and even by those who do not have it, in those things which can be the objects of free occupation.

§ Sole paragraph - In respect of things which are appropriated, those who have no faculty of reason may, nevertheless, acquire possession through persons, who legally represent them.

Article 481 – **Mode of exercise of possession** – Possession may be acquired and exercised, in one's own name, as well as in the name of another.

§ 1 - In case of doubt, it is presumed, that the possessor possesses in his own name.
§ 2 - It is presumed, that the possession continues in the name of the person with whom it commenced.

Article 482 – **Loss of possession** – A possessor may lose his possession: 1. By abandonment;
2. By transfer in favour of another, under a title with or without consideration;

3. By destruction or loss of the thing or when the same is excluded from commerce;
4. By possession of another, even against the wishes of the former possessor, if the new possession has lasted for more than one year.

§ Sole paragraph - The year starts from the time when new possession was taken openly, or, if it is taken clandestinely, from the time it comes to the knowledge of the dispossessed.

Article 483 – **Heritability of possession** – On the death of the possessor, his possession passes, by operation of law, to his heirs or successors, from the time of his death, with the same effects of effective possession.

Article 484 – **Protection and restoration of possession** – A possessor has right to be retained in, or be restored to his possession, against any disturbance or dispossession, on the following terms.

Article 485 – **Suit to protect possession** – A possessor, who has apprehension that he is likely to be disturbed or dispossessed by another, may pray for the intervention of the Court, to intimate the person who threatens him, to be restrained from invading his rights, on penalty of 10,000 to 30,000 reis besides losses and damages.

Article 486 – **Restoration and preservation of possession by party himself or through Court**– A possessor, who is disturbed or dispossessed, may by use of his own force and authority, maintain himself in or get himself restored to the possession, provided he does so immediately, or he may take recourse to the Court to maintain himself in possession or to recover possession.

Article 487 – **Suit for recovery of possession** – If the possessor is dispossessed by force, he has a right to be restored to possession, whenever he sues for it, within a period of one year; the encroacher shall not be heard in the Court, before the restoration is effected.

Article 488 – **Possession for a period of less than one year** – If the possession is of less than one year, no one shall be entitled to be maintained in or be restored to the possession through the Court, except against those not having a better possession.

§ Sole paragraph - Better possession, is that which is founded on lawful title; in the absence of title or in the presence of equal titles, better possession is that which is earlier in time; if the possessions are equal, the actual possession is preferable; if both possessions are doubtful, the property shall be put under receivership, as long as it is not decided to whom it belongs.

Article 489 – **Possession for a period exceeding one year** – If the possession has lasted for more than a year, the possessor shall be summarily maintained in or be restored to possession, as long as the question of ownership is not decided.

Article 490 – **Scope of possessory suits** – The suits mentioned in the preceding articles are not applicable to continuous non-apparent servitudes, nor to discontinuous ones, except where the possession is based on a title originating from the owner of the servient property, or from those from whom the latter acquired it.

Article 491 – **Consequences of preservation and recovery of possession by legal means** – Whenever an individual is maintained in or restored to the possession through the Court, it shall be deemed that he was never disturbed nor evicted from the possession.

Article 492 – **Compensation for disturbing possession** – He who is maintained in possession or restored to possession shall be compensated for the damages, which have arisen on account of disturbance or dispossession, in accordance with the following articles.

Article 493 – **Place of restoration** – Restoration of possession shall be done at the place of dispossession, and at the cost of the trespasser.

Article 494 – **Damage to or loss of thing possessed in good faith** – A possessor in good faith is not answerable for deteriorations or loss of the thing, if he has not given cause for the same.

Article 495 – **Enjoyment by possessor in good faith** – A possessor in good faith may appropriate the fruits, natural and industrial, which the thing has produced, and which were collected till the day his possession ceased to be in good faith, and the civil fruits corresponding

to the duration of the same possession in good faith; but if, at the time when his possession ceased to be in good faith, there are some fruits, natural or industrial, not yet collected, the possessor shall have the right to be reimbursed the expenses incurred in connection with their production and, in addition, a part in the net income proportionate to the duration of his possession in relation to the plucking / gathering operations.

§ 1 - The liabilities shall be shared in the same manner between the two possessors.

§ 2 - The owner of the thing may, if he so desires, concede to the possessor in good faith the liberty to conclude the operation of the cultivation and collection of the ungathered fruits, as compensation towards expenses of cultivation and of net income to which he has a right; the possessor in good faith, who, for any reason, does not desire to accept such concession, shall lose the right to be indemnified in any manner.

§ 3 - Natural fruits are those which the thing produces spontaneously; industrial are those which are produced through human labour; civil fruits are the rents or interest arising from the said thing.

§ 4 - Good faith is deemed to cease from the time the defects in possession are made known to the possessor through the Court by filing of a suit or in one where it is proved that the defects were known to the same possessor.

§ 5 - A forcible trespasser is always presumed to be in bad faith.

Article 496 – **Liability of possessor in bad faith** – The possessor in bad faith is liable to pay compensation for damages, except on proof that such damages are not attributable to his fault or negligence, and he shall also be liable for accidental damages, if it is proved, that the same would not have occurred, if the thing would have been in possession of the successful party.

Article 497 – **Return of produce** – A possessor in bad faith is liable to restore the fruits produced by the thing or which it could have produced during its detention.

Article 498 – **Expenses for conservation** – The possessor in good faith, as well as possessor in bad faith, have the right to be reimbursed of all the expenditure incurred in the preservation of the property; however only the possessor in good faith is entitled to retain the thing, so long as he is not paid.

§ 1 - The amount of such expenditure shall be set against with the net income of the fruits received.

§ 2 - If the restitution is of different things, the retention is admissible only relating to those in which improvements were carried out.

Article 499 – **Valuable improvements** – The possessor in good faith, as well as the possessor in bad faith, have the right to remove the useful improvements, which they have made in the thing, provided that they do so without detriment to the same.

§ 1 - Useful improvements are those which, though not indispensable for the preservation of the thing, nevertheless enhance its value.

§ 2 - When there is likelihood of causing detriment to the thing at the time of separation of the improvements, the successful party shall give to the evicted person at the time of delivery of the thing, the value thereof; if that is not done, the person evicted shall have the right to retain the thing as if he had possessed it in good faith.

§ 3 - The possibility of the detriment shall be at the discretion of the successful party.

§ 4 - The value of the improvements shall be calculated as per their cost, if the same does not exceed the value of the benefit at the time of delivery. If not, the evicted person cannot have more than that value.

Article 500 – **Unnecessary improvements** – A possessor in good faith may take away the luxurious improvements made by him, if it does not cause detriment to the thing. If it does, he has no right to separate them nor is he entitled to their value.

§ 1 - Luxurious improvements are those which do not increase the value of the thing to which they are added, but are only for the pleasure of the possessor.

§ 2 - The possibility of the damage shall be assessed by the experts chosen by the parties.

Article 501 – **Set off of improvements and deteriorations** – The improvements are set off against the deteriorations.

Article 502 – **Unnecessary improvements** – The possessor in bad faith loses, in favour of the successful party, the luxurious improvements which he has made to the thing of which he was evicted.

Article 503 – **Improvements not attributable to the possessor** – Improvements which are not due to the intervention of the evicted person shall revert in favour of the successful party.

Article 504 – **Rights to sue for possession – limitation** – The suits for maintaining in possession, and for the restoration of possession, may be instituted by the person disturbed in possession or by the dispossessed person, or by his heirs or representatives, the first only against the trespasser, except a suit for damages against the heirs and representatives; the second, not only against the trespasser, but also against his heirs, and representatives, or against a third party, to whom the thing may have been transferred by any title.

§ Sole paragraph - The suit to be maintained in possession prescribes on the expiry of one year from the date when disturbance was started; the suit for possession prescribes by the same period from the date of dispossession, or from the date of knowledge thereof to the aggrieved party, in case encroachment has been done clandestinely.

CHAPTER II
PRESCRIPTION[12]

[12] ***Arts.505-566:*** *Also special to this Code; in our law we have limited provisions on prescription like:-*

SECTION I

PRESCRIPTION IN GENERAL

Article 505 – **Concept of prescription –** Things and rights are acquired by virtue of possession, just as obligations are extinguished by the fact of their fulfillment not being demanded. The law lays down conditions and the period of time, that are necessary, for one, as well as for the other.

This is called prescription.

§ Sole paragraph - The acquisition of things or rights by possession is known as positive prescription; the discharge of obligations by reason of their fulfillment not being demanded is known as negative prescription.

Article 506 – **Object of prescription –** All things, rights and obligations which are marketable and which are not excepted by law, may be the objects of prescription.

Article 507 – **Benefit of prescription –** Anyone who has capacity to acquire may avail of prescription, and even persons without such capacity may avail of it, if the prescription is negative.

§ Sole paragraph - Persons under disability may acquire by way of positive prescription through the persons who legally represent them.

Article 508 – **Bar on relinquishment of rights through prescription –** It is not permissible to renounce in anticipation the right to acquire by prescription, or to get exonerated from an

***The Limitation Act, 1963**: Part IV – Acquisition of ownership by possession*
Sec.25 – Acquisition of easement by prescription;
Sec.26 – Exclusion in favour of reversioner of servient tenement &
Sec.27 – Extinguishment of right to property; and in
The Indian Easements Act, 1882
Sec.15 – Acquisition by prescription;
Sec.16 – Exclusion in favour of reversioner of servient heritage;
Sec.17 – Rights which cannot be acquired by prescription &
Sec.28(c) – Prescriptive right to light or air;
(d) – Prescriptive right to pollute air or water; and
(e) – Other prescriptive rights.

obligation by prescription; however, it is permissible to renounce a right already accrued by way of prescription.

Article 509 – **Enforcement of prescription by interested parties** – Creditors, and all those who have a legitimate interest to see that the prescription becomes effective, may enforce it, even though the debtor or the owner may have renounced his right acquired through the prescription.

Article 510 – **Acquisition of title by prescription –** Whoever possesses in the name of another cannot acquire by way of prescription the thing possessed, except where there is an adverse claim of title of possession, either arising from a third party, or arising from an objection raised by the possessor which is adverse to the right of the owner, in whose name the possession was being exercised, and not repealed by the latter; but in such case, prescription will start from the date of the said adverse claim of title.

§ Sole paragraph - It is said that there is an adverse claim of title when the title is substituted by another title capable of transferring the possession or ownership.

Article 511 – **Prescription by joint possessor –** Prescription acquired by one co-possessor in relation to the principal object of possession, and to the acts connected with possession, shall benefit the others.

Article 512 – **Prescription acquired by co-owner –** In the same manner, prescription acquired by one co-owner can be availed of by others in relation to acts connected with the property.

Article 513 – **Prescription by joint debtor –** The prescription by a joint co-debtor can be availed of by others, except by those in respect of whom all the conditions necessary to operate prescription are not fulfilled. The creditor, however, may demand from the latter the fulfillment of the obligation, with the exclusion of the part which would have fallen on to the debtor who has been exonerated by prescription, if the debt was divided proportionately.

§ Sole paragraph - Prescription acquired by a principal debtor always benefits the sureties. **Article 514** – **Prescription as defence –** The prescription as a means of defence, can only be raised by way of pleadings in a statement in defence, in accordance with Code of Procedure.

Article 515 – **Need to plead prescription –** The Court cannot suo moto take cognizance, of prescription, unless it is specifically pleaded by the parties.

Article 516 – **Prescription against the State and legal persons –** The State, municipalities, any public establishments or other legal entities, are considered as private persons, in relation to prescription of assets and rights which are capable of private ownership.

SECTION II

POSITIVE PRESCRIPTION

SUB-SECTION I

PRESCRIPTION OF IMMOVABLE THINGS AND INCORPOREAL IMMOVABLES

Article 517 – **Ingredients of prescriptive possession –** Possession for the purpose of prescription should be:

1. Founded on title;
2. In good faith;
3. Peaceful;
4. Continuous;
5. Open and Public.

§ Sole paragraph - The provisions of this article admit of no exception which is not expressly laid down by law.

Article 518 – **Possession based on title –** Possession with title is one which is supported by just title; just title is the acquisition in any legitimate manner, regardless of the right of the transferor.

Article 519 – **Proof of title –** Existence of title is not to be presumed: its existence must be proved by the one who so pleads.

Article 520 – **Good faith** – Good faith is necessary only at the time of acquisition.

Article 521 – **Peaceful possession** – Peaceful possession is that which is acquired without use of force.

Article 522 – **Continuous possession** – Continuous possession is that which is not interrupted in accordance with Article 552 onwards.

Article 523 – **Public possession** – Open possession is that which is duly registered, or which is exercised in such a manner that it can be known by the interested parties.

Article 524 – **Registration of possession –** Simple possession may be registered only on the basis of a decree become final for want of appeal, after hearing the Public Ministry, and unascertained interested parties summoned by way of public notice, through which it is made known, that the possessor has possessed the property peacefully, openly and continuously for a period of 5 years.

Article 525 – **Provisional registration –** Registration of simple possession may be made provisionally, when the application is made to prove the possession, and the same is converted into

final by endorsement of the decree, the effects of which will be from the date of provisional registration.

Article 526 – **Time limits for prescription** – Immovables and immobile rights may be acquired by prescription:

1. In case of registration of simple possession, by a lapse of 5 years;
2. In case of registration of title of acquisition, by lapse of 10 years, counted in both the cases from the date of the registration.

Article 527 – **Bad faith and absence of title –** In each of the two cases specified in the preceding article, if the possession has lasted for ten years or more, besides the periods established in the same article, the prescription shall operate, regardless of bad faith, or lack of title, save for the provisions of Article 510.

Article 528 – **Absence of registration –** Immovables or immobile rights, in the absence of registration of possession or of the document of title of acquisition may be acquired through prescription only by possession for 15 years.

Article 529 – **Absence of registration, bad faith and absence of title –** When, however the possession of immovables or immobile rights mentioned in the preceding article, has lasted for 30 years, prescription shall operate, regardless of bad faith or lack of title, save for the provisions of Article 510.

Article 530 – **Variation from the preceding provisions –** Exceptions to the provisions of the preceding articles, relating to prescription of immobile rights can arise only in cases expressly laid down by the law.

Article 531 – **Rights rarely exercised –** Rights which, by their nature, are exercised rarely, may be acquired by prescription, in the manner and within the time laid down for the prescription, on proof that during this time they were exercised without objection, whenever it was necessary for the normal and complete enjoyment of that for which, according to its nature or character the thing was useable.

SUB-SECTION II

PRESCRIPTION OF MOVABLES

Article 532 – **Time limit for prescription of movables** – Movable things may be acquired by prescription by possession for a period of 3 years, the possession being continuous, peaceful, and accompanied by just title and in good faith, or by the possession for a period of 10 years, regardless of good faith and just title.

§ Sole paragraph - Just title and good faith are always presumed.

Article 533 – **Prescription of lost or stolen movables –** If a movable is lost by its owner, or obtained by way of a crime or offence, and it is passed to a bonafide third party, prescription shall operate in favour of the latter, only after the passage of 6 years.

Article 534 – **Return of object purchased by third party in good faith** – Whoever demands the thing, within the period within which he can put up the claim, from the one who has purchased it from the market or in public auction, or from a merchant who deals with things of the same type or similar items, is bound to pay to the bonafide third party the price which the latter had paid for it, except the right of reversion against author of the theft or of violence or against the finder.

SECTION III

NEGATIVE PRESCRIPTION

Article 535 – **General period for negative prescription –** Whoever, is bound to another by an obligation to perform, or to do something, may stand relieved of the obligation, if its performance is

not demanded for a period of 20 years, and the obligant stands in good faith, at the end of the prescription period, or when the performance is not demanded for a period of 30 years, regardless of good faith or bad faith, except where special prescriptions are provided in law.

§ Sole paragraph - Good faith, in the case of negative prescription, consists in the ignorance of the obligation. This ignorance is not presumed in case of persons who originally contracted the obligation.

Article 536 – **Counting of time limit for prescription –** The time of the prescription, is counted from the moment the obligation becomes enforceable, except where another date is specially assigned by law for the commencement of the period.

Article 537 – **Obligations not subject to prescription –** Obligations which correspond to inalienable rights or which are not subject to limitation of time, cannot be discharged by way of prescription.

Article 538 – **Prescriptions of 6 months** - The following prescribe by lapse of six months:

1. Debts of lodging houses, guest houses, restaurants, slaughter houses or of any grocery or wine shops arising from lodging, from food or drinks taken on credit;
2. Salaries of workers and of any technical staff, who work on daily wages;
3. Wage of servants who work on monthly wages.

Article 539 – **Prescriptions of one year** - The following prescribe by lapse of one year:

1. Remuneration of teachers and private tutors of arts or sciences, who teach on monthly basis;
2. Remuneration of doctors and surgeons for their calls or surgeries;
3. Emoluments of public officials;
4. Debts of retail businessmen, towards goods sold by them to persons who are not merchants;
5. Salaries of servants who work on a yearly basis;
6. Obligation to pay civil damages for defamation done orally, or in writing, or for any damage caused by animal, or by any person for whom the debtor is answerable;
7. Obligation to make good the damage for simple breach of municipal regulations.

§ 1 - The prescription in relation to visits of doctors and surgeons, which are continuous and in relation to the same person and illness, starts from the date of the last visit, and the prescription for casual visits from the day on which each visit is made.

§ 2 - Prescription in relation to the emoluments of public officials starts from the final decree or decision, or from the respective act being separate.

§ 3 - Prescription of the wages of servants, who work on yearly basis, starts from the day the servant leaves the house of the master.

Article 540 – **Prescriptions of two years** - The remuneration of lawyers, the salaries of judicial attorneys and advances made by them prescribe by a lapse of two years.

§ Sole paragraph: Such prescription starts as against advocates and attorneys from the day their power of attorney ceases to operate.

Article 541 – **Prescriptions of three years** - The following prescribe by lapse of three years:

1. Salaries of teachers, private tutors, of any art or science, who teach on yearly basis;
2. Salaries or other annual remunerations, for rendering any services, save those cases where there is special prescription.

Article 542 – **Acknowledgement on oath as proof of payment –** A person, against whom any of the prescriptions mentioned in these articles is pleaded, may apply, that the objector declares on oath

whether the debt was or not paid, and in this case a decision be passed as per the oath, without making mention thereof.

Article 543 – **Prescription of five years** – The following prescribe by lapse of five years.

1. Pensions relating to emphyteusis, sub-emphyteusis, census, rents, hire, interest or any installments due, which are paid in certain and prescribed times;
2. Accrued monthly installments of alimony;
3. Obligation to make good losses arising from criminal offences of correctional nature and payment of fines imposed by the court.

Article 544 – **Bad faith** – As against prescriptions provided by Article 538 onwards, the plea of bad faith cannot be raised if, in addition to the period specified in those Articles, one third of the same time periods had already lapsed.

Article 545 – **Obligations bearing interest or rent –** In obligations which carry payment of interest or rent, the time of prescription of the principal amount starts from the date of the last payment.

Article 546 – **Duty to furnish accounts –** The prescription of the obligation to render accounts starts from the day the debtors cease their administration, and the prescription about the net result of such accounts starts from the date of settlement of accounts by agreement or by a court decree become final for want of appeal.

Article 547 – **Special prescriptions –** What is provided in this section is to be understood without prejudice to any other special prescriptions established by the law.

SECTION IV
PROVISIONS RELATING TO BOTH TYPES OF PRESCRIPTION

SUB SECTION I
SUSPENSION OF PRESCRIPTION

Article 548 – **Against whom prescriptions may run –** The prescription may start, and run, against all and any person, save with the following restrictions.

Article 549 – **Suspension of prescription** – Prescription cannot start, nor run, against minors or insane persons, until they have someone who represents them, or administers their assets.

Article 550 – **Prescription against minors –** Prescription runs against minors only on the following terms:

§ 1 - Positive prescription does not get complete before the lapse of one year after the impediment of incapacity by minority ceases.

§ 2 - Negative prescription does not get complete except in the cases of Article 538, 539, 540, 541 & 543 before the passing of one year after the impediment of incapacity by minority ceases.§ 3 - What is provided in the preceding paragraphs is applicable to the insane, with a difference that, the impediment is deemed as ended, for the purpose of prescription, upon the lapse of three years, after its ordinary period, if the said impediment has not ceased earlier.

Article 551 – **Causes of suspension –** Prescription cannot start nor run:

1. Between spouses;
2. Between wards and persons under administrators, and their guardians and administrators, while the guardianship and the administration lasts; nor when parental authority subsists, in cases where suit by the minor reverts against his parents;
3. Between a third party and a married woman: (1), in relation: to dotal assets, if prescription has not started before the marriage; (2), in relation to immovable assets of the couple, transferred by the husband without consent of the wife, but only to the extent of her share in the assets; (3), in case

where the suit by the wife against third party reverts against the husband;
4. Against those who are absent from the kingdom in service of the nation;

5. Against military personnel in active service at the time of war, both outside and within the kingdom except in the cases mentioned in Articles 538, 539, 540, 541 & 543.

6. Between the inheritance and an heir under benefit of inventory, who is in actual possession of the same inheritance, until the said inventory does not come to an end.

- See also Art.290 of Portuguese Civil Procedure Code of 1939.

SUB SECTION II

INTERRUPTION OF PRESCRIPTION

Article 552 – **Causes of interruption of prescription –** Prescription is interrupted:

1. If the possessor is deprived of the possession of the thing or of the right for the period of one year;
2. By service of summons made to the possessor or debtor except where the plaintiff withdraws the suit or the suit is dismissed at the outset or where there is non prosecution of the suit; 3. By attachment, summons for conciliation, judicial protest, counted from the date of occurrence, where within one month from the date of the event, the plaintiff files the suit in the court;
4. By express acknowledgement, either by words or by writing, of the right of the person who may be adversely affected by prescription, or by facts from which such recognition is necessarily implied.

- Art.552(2) See arts.253, 267 and 485; also see Art.290 and 294 of Portuguese Civil Procedure Code of 1939.
- Art.552(3) is modified by Art.387 of Portuguese Civil Procedure Code of 1939.
- See also Arts.409 onwards, 476 onwards, 455 and 390 of Portuguese Civil Procedure Code of 1939.

Article 553 – **Survival of the effects of a nullified notice –** If the notice mentioned in the preceding Article, is declared null and void for absence of jurisdiction or procedural error, the summons will not be without effect, if the defect is remedied within one month, from the day the existence of the defect was legally declared.

- See Art.486 of Portuguese Civil Procedure Code of 1939.

Article 554 – **Interruption against sole debtor –** The grounds, which cause interruption of prescription in relation to one of the joint debtors, causes interruption in respect of other co-debtors.

§ Sole paragraph - But if the creditor, agrees to have the debt shared in relation to one of the joint debtors, and demands from him only his share, interruption of the prescription shall not operate in relation to other co-debtors.

Article 555 – **Interruption against heirs of the debtor –** The provision of the preceding article is applicable to heirs of the debtor, regardless whether he is joint or sole.

Article 556 – **Interruption which benefits the surety –** The interruption of the prescription against the principal debtor has the same effects against the surety.

Article 557 – **Interruption in joint liabilities –** In order that the prescription of any obligation is interrupted in relation to all the debtors where the liability is not joint, acknowledgement or summons to all of them is necessary.

Article 558 – **Interruption in favour of joint creditor –** The interruption of prescription, in favour of any of the joint creditors, can be availed by all.

Article 559 – **Effects of interruption –** The effect of interruption is to render ineffective for the purpose of prescription the entire period which has run before the date of interruption.

SUB-SECTION III

COUNTING OF THE PERIOD FOR PURPOSE OF PRESCRIPTION

Article 560 – **Counting of time –** The period of prescription is counted by years, months and days and not by one moment to the other except where the law otherwise provides.

§ 1 - The year is regulated by the Gregorian calendar.

§ 2 - The month is always computed at 30 days.

Article 561 – **Prescription counted by days –** When the prescription is counted by days, it is understood that the days are of 24 hours beginning with the first hour after midnight.

Article 562 – **Beginning and end of prescriptive period –** The day on which prescription starts is counted in full even though it is not complete, but the day on which the prescription ends must be complete.

- See Art.148 of Portuguese Civil Procedure Code of 1939.

Article 563 – **Term ending on a holiday –** If the last day of the prescription is a holiday, the same is considered as ending on the first subsequent day which is not a holiday.

SUB-SECTION IV

TRANSITORY PROVISIONS

Article 564 – **Prescriptions which commence before the Code -** The prescriptions, which have started to run before the promulgation of this Code, shall be regulated by the previous laws with the following modifications.

Article 565 – **Rights not affected by prescription –** No prescription shall operate when the right against which prescription has started has been declared imprescriptible.

Article 566 – **Transitory provisions regarding counting of time periods** - Where, in order to be completed, the prescriptions prior to the promulgation of this Code, require respectively, period longer than that assigned in this Code, they will be considered as completed in accordance with its provisions.

§ Sole paragraph – If the prescriptions commenced require less time, they may in no case be concluded, unless the time of, at least, three months lapses, counted from the promulgation of this Code.

TITLE V

WORK AND LABOUR

CHAPTER I

GENERAL PROVISIONS

Article 567– Work as a means of acquisition - It is lawful for anyone to utilize his effort and labour for the production, the transformation and commerce of any objects.

§ Sole paragraph – Such right may be restricted by express law, or by administrative regulations authorized by the law.

- Arts.567 to 569: These are now regulated by specific legislations.

Article 568 – **Liability in the exercise of right to work** - If however, anyone in exercise of his right to work and labour, infringes on the rights of another, he shall be liable for the damage caused in accordance with the law.

Article 569 – **Ownership of the produce of labour** - The produce or value of lawful work and labour, of any person is his own property, and is governed by the laws regulating property in general, there being no express provision to the contrary.

CHAPTER II
LITERARY AND ARTISTIC WORK[13]

SECTION I
LITERARY WORK IN GENERAL

[13] ***Arts.570-612*** *– Now governed by The Copyright Act, 1957.*

Article 570 – **Right to publish literary work** - It is lawful for anyone to publish by printing, lithography, scenic art, or other similar art, any literary work of his own, independently of any prior sanction, of precaution, or any other restriction, which directly or indirectly obstructs the free exercise of such right, without prejudice to the liability, which they will incur in accordance with the law.

§ Sole paragraph – The provision of this article is applicable to the right to translation.

Article 571 –**Publication of statutory instruments** - It is lawful for anyone to publish laws and regulations, and any other pubic official acts, in exact conformity with the authentic editions, if such acts have already been published by the government.

Article 572 – **Publication of official speeches** - Speeches made in the legislative chambers, are included in the provisions or any other speeches made officially. The collection, however, of the speeches, or of a part of the speeches, of a certain or specific speaker, can be done only by him, or with his permission.

Article 573 – **Publication of lectures and sermons** - The lectures of the government teachers and professors, and the sermons, cannot be reproduced by anyone, other than its author, except in a form of an extract, but never in full, except with his permission.

Article 574 – **Ownership of manuscripts** - The author of a handwritten work has copyright on it and in no case can it be published without his consent.

Article 575 – **Letters sent** – Letters sent shall not be published without permission of their authors or of those who represent them, except for their production in any legal proceedings.

Article 576 – **Copyright** - A Portuguese author of a writing published by printing, lithography or by any other similar method, within the Portuguese territory, enjoys during his lifetime, the copyright and the exclusive right to reproduce and negotiate his work.

§ 1 - The authors of any writings have, however, right to cite each other reciprocally, the articles, or passages, for the furtherance of their purpose, provided they indicate the author, the book, or the periodical to which the citations or articles belong.

§ 2 - The articles published originally in the periodicals, or as part of any work or collection, may be printed by the authors, there being no stipulation to the contrary.

Article 577 – **Rights of foreign author** - In the rights of the author, referred to in the preceding article, the right of translation is also included. But, if the author is a foreigner, he will not enjoy such right in Portugal beyond 10 years, counted from the date of publication of the work and once the use of such work starts before the expiry of third year from the date of publication.

§ 1 - In case of transfer, all the copyrights stand transferred to the translator, save as otherwise provided.

§ 2 - The translator, either Portuguese or foreigner, of a work which has come into public domain, enjoys for a period of 30 years, the exclusive right to reproduce its translation, except if right is given to any other individual to translate again the same work.

Article 578 – **Principle of reciprocity** - A foreign writer is equated to Portuguese authors, if in his country a Portuguese author is equated to the authors of that country.

Article 579 – **Devolution of the rights of a writer** - After the death of any author, his heirs, transferees or representatives are entitled to the copyright, referred to in Art.576, for a period of 50 years.

Article 580 – **Copyright by the State** - The State, or any public establishment, who publish on their account any literary work, enjoy the aforesaid right for a period of 50 years, counted from the date of publication of volume or fascicle which completes the work.

§ Sole paragraph - Where such work consist of collection of writings or notings on different subjects, the period of 50 years shall be counted from the date of publication of each volume.

Article 581 – **Co authorship** - When a work has more than one author, and each one of them collaborates in it under the same conditions, and in his own name, the copyright in the work shall vest in the person of all its co-authors, and the first period of duration of such copyright shall extend till the death of the last co-authors, to survive the others, provided, however, the profits of the said copyright are shared with the heirs of the deceased co-authors, and the second period shall start when the said last collaborator dies.

§ Sole paragraph - Where a collective work, in the production of which more than on writer is engaged, is undertaken, drafted and published by only one person and in his name, only upon his death, the second period referred to in this article shall start.

Article 582 – **Copyright of editors** - What is provided in the preceding articles, in respect of authors, is applicable to editors, to whom they have transferred the copyright in their works, in accordance with the respective contracts.

§ Sole paragraph – In such case, however, the period, to which article 579 refers, shall start from the date of the death of the author.

Article 583 – **Anonymous and pseudonymous works** - The provisions, which govern the works published with the name of the Author, shall be applicable not only to anonymous works, but also to the pseudonymous ones, as soon as the existence of the author is recognized and proved, or that of his heirs and representatives.

Article 584 –**Transitory provision regarding copyright** - The increase given by Article 579 to the duration of the copyright after the death of the author, the duration which was less in the legislation previous to the present Code, shall revert to the benefit of the heirs of the same author, even though the copyright of his writings may have been transferred to another either in part or in whole.

Article 585 – **Copyright in posthumous work** - The editor of a posthumous work of a known author enjoys copyright for a period of 50 years, counted from the date of publication of the work.

Article 586 – **Work of unidentified author** - The editor of any unpublished work, the author of which is no longer known, nor has been legally acknowledged, enjoys the copyright for a period of 30 years, counted from the date of complete publication of the work.

Article 587 – **Acquisition of copyright through expropriation** - It is lawful to expropriate any work which has been published, edition of which is exhausted, and which the author and his heirs do not desire to reprint, when the same work has not yet fallen in the public domain.

§ Sole paragraph - Only the government may expropriate a writing preceded by a law which authorizes the expropriation, after paying compensation to the author, and in conformity in all the rest with the general principles of expropriation for public purpose.

Article 588 – **Duties of editor** - The editor of a work, whether unpublished or printed, but which yet has not fallen in the public domain, is not permitted to change or modify the text, during the lifetime of the author or of his heirs, and shall maintain the title of the work which the author has given to it and the name of the author, except if otherwise provided.

Article 589 – **Commencement of publication** - The editor, who has contracted the publication of a work, is bound, in the absence of a stipulation to the contrary, to commence the publication within one year, counted from the date of the contract, and to pursue the same regularly, on the penalty of being liable to pay damages, to the person, with whom he has contracted.

§ Sole paragraph - The editor, who has contracted successive editions of a work, cannot interrupt their publication, except when it is proved, that there is an unsurmountable difficulty for the production of the work.

Article 590 – **Nature of copyright** - Copyright is viewed and regulated like any other movable property, with the modifications, due to its special nature, which law expressly imposes on it.

Article 591 – **Work in public domain** - In cases of vacant succession, the State is not the successor of the copyright and anybody can publish and reprint them, except for the right of the creditors of the inheritance.

Article 592 – **Copyright not subject to prescription** - Copyright is not subject to prescription.

Article 593 – **Writings prohibited by law** - No copyright is recognized in the writings prohibited by law, and which have been directed by the order of the Court to be removed from circulation.

SECTION II

COPYRIGHT IN DRAMATIC WORKS

Article 594 – **Copyright in dramatic works** - Drama writers enjoy the following rights, besides the copyright in their writings, in accordance with the provisions of the preceding section.

Article 595 – **Performance of drama** - No dramatic work may be performed in a public theatre where tickets are sold, without consent, in writing, of the author or of his heirs, transferees, or representatives, in the following manner:-

§ 1 - Where the work is printed, such consent is necessary only, if the author is dead, during the period in which his heirs, transferees or representatives, enjoy the copyright thereof.

§ 2 - Where the work is posthumous, it cannot be performed without the consent of any heir, or other person to whom the copyright of the manuscript belongs.

§ 3 - The consent to perform a dramatic work can be unrestricted or restricted to a certain period, a certain place or places or a certain number of theatres.

Article 596 – **Unauthorized performance** - When, the consent being restricted, the dramatic work is performed in an unauthorized theatre, the net profit of theatrical performance or performances shall revert to the one or the ones whose permission was necessary.

Article 597 – **Share of the author cannot be encumbered** - The share in the profit of the theatrical performance which belongs to the authors, cannot be attached by the creditors of any theatre enterprise.

Article 598 – **Modifications to the play during performance** - The dramatic author of the drama, who contracted the performance of his work, enjoys the following rights, if the same have not been expressly renounced:

1.Of effecting in his work the alterations and corrections which he deems necessary, provided that without consent of owner of the undertaking, an essential part of the same is not altered; 2.To require that the work if handwritten, is not communicated to persons who are strangers to the theatrical performance.

Article 599 – **Legal force of a performance contract** - The author, who contracts, with any undertaking, the performance of his work, is debarred from transferring the same or any imitation thereof in the same locality, to any other undertaking, while the contract subsists.

Article 600 –**Rescission of the contract** - Where the performance is not staged during the agreed period or in the absence of express agreement, within one year, the author may freely withdraw his work.

Article 601 – **Jurisdiction** - All the disputes arising between the authors and the owners of the undertakings shall be decided by the Civil Court.

SECTION III

COPYRIGHT IN ARTISTIC WORK

Article 602 – **Copyright in artistic works** – The author of any work of music, drawing, painting, sculpture or carving has exclusive right to effect the reproduction of his work by carving, lithography, moulding, or by any other method, in accordance with what is provided for literary copyright.

§ Sole paragraph – The provisions in favour of authors of dramas, contained in the preceding section, are entirely applicable to the authors of musical works, in respect of their performance in the theatres or in any other places where the public is admitted on payment.

SECTION IV

REGULATIONS COMMON TO COPYRIGHT IN LITERARY, DRAMATIC AND ARTISTIC WORKS

Article 603 – Pre-requisites for legal protection - In order to enjoy the benefit granted by this chapter, the author or the owner of any work reproduced by printing, lithography, carving, moulding, or any other manner, is bound to conform the following provisions.

Article 604 – **Compulsory deposit and registration** - Before the publication of any literary work by distribution of copies thereof, two copies of the same shall be deposited in the public library in Lisbon; the librarian shall issue the receipt of the acknowledgement, which shall the recorded in the register kept for this purpose, however without payment of any emolument for this reason.

§ 1 - Where the work is drama or music or deals with dramatic literature or with the musical art, the delivery of the copies and the registration shall be made before the Royal Conservatory of Lisbon, in the aforesaid manner.

§ 2 - Where the work is of lithography, carving or moulding, or is related to some of those arts, the delivery and the registration shall be made in the same manner in the academy of the fine arts of Lisbon. In this case, however, the author may instead of deposit of two copies, may make two of the original drawings.

Article 605 – **Registration of works** - The public library of Lisbon and other establishment, mentioned in the preceding article, shall be bound to publish every month in the official gazette their respective registrations.

Article 606 – **Evidentiary value of works** - The certified copy issued from the registers mentioned in this section, create presumption of the copyright of the work with the effects which arise from such copyright unless the contrary is proved.

SECTION V

LIABILITY OF COUNTERFEITERS AND THOSE INFRINGING LITERARY OR ARTISTIC COPYRIGHT

Article 607 – **Infringement of literary or artistic copyright** - Those who infringe the rights recognized and maintained in this chapter are liable, on the following terms for the usurpation of literary and artistic work perpetrated.

Article 608 – **Fraudulent printing or reproduction -** Whoever publishes an unpublished work, or reproduces work in the stage of publication, or already published, belonging to another, without his authorization or consent, shall forfeit, in favour of the author or owner of the work, all the copies of

the fraudulent reproduction, which may be seized, and he shall pay in addition the value of the entire edition minus the said copies, for the price by which the legal copies are sold or at which they are valued.

§ Sole paragraph - If the number of copies printed fraudulently and distributed, is not known, the counterfeiter shall pay the value of one thousand copies, beside the ones seized.

Article 609 – **Sale of fraudulent work** - Whoever sells or puts for sale any fraudulently printed work, shall be jointly responsible with the editor on terms laid down in the preceding article; and if the work is printed outside the kingdom, the seller shall be liable as if he was editor.

Article 610 – **Unauthorized publication of manuscript -** Whoever publishes any manuscript, which includes private letters, without permission of the author, during his lifetime or lifetime of heirs or representatives, shall be responsible for losses and damages.

§ Sole paragraph: The provision of the article does not come in the way of the right granted under article 575 in respect of private letters.

Article 611 –Injunction on fraudulent work - The author or owner whose work is fraudulently reproduced, may, as soon as he gets knowledge of the fact, apply for Injunction on the reproduced copies, without prejudice to the action for damages, to which he is entitled, even though no copies were found.

Article 612 – **Criminal liability of counterfeiter -** Provisions in this section, in respect of civil liability, do not prevent criminal action, which the author or owner may initiate against the counterfeiter or usurper.

CHAPTER III
PATENTS[14]

SECTION I
GENERAL PROVISIONS

Article 613 – **Patents** - Whoever invents any appliance or any saleable product, refines or improves any known product or appliance of the same nature, or discovers any easier and less expensive means, to obtain the same, enjoys the patent over his invention or discovery for a period of fifteen years on the terms set out in this chapter.

§ Sole paragraph - Any inventor, who in a foreign country obtains a patent, cannot obtain the same in the kingdom, except in accordance with this Code and for the period which in that country remains for the invention to come into public dominion.

Article 614 – **Grant of patent** - From the patent derives exclusive right to produce or to manufacture the objects, which constitute the said invention, or in which it is manifested.

Article 615 – **Inventions not susceptible to patent** - The invention or discoveries related to industries or objects which are unlawful fall outside the subject of authentication.

Article 616 – **Commencement of patent** - The duration of exclusive patent over the invention shall start from the date of grant of the privilege.

14***Arts.613-640*** *– Now governed by The Patents Act, 1970.*

Article 617 – **Scope of patent** - The scope of the exclusive patent is restricted to the specific object, and shall never be applicable to others on the pretext of close relation or connection.

Article 618 – **Expropriation of patent** - The expropriation of the inventions may be decreed by the law in cases in which the public utility demands.

SECTION II
ADDITION TO INVENTIONS

Article 619 – **Addition to inventions** - The grantee or his representatives may during the subsistence of the grant, add to their inventions the improvements and modifications which they deem fit.

Article 620 – **Additional privilege** - He who effects the additions enjoys to the extent of additional improvement, the same rights as are granted in respect of the main grant but so long as the latter subsists.

Article 621 – **Patent for improvements** - He who effects the addition, however, may apply for new grant for the improvement conforming to the provisions which regulate the main grant.

Article 622 – **Concession of privilege for improvements** - The concession of benefit of an improvement cannot be granted during the first year of the grant conferred to the corresponding invention except to the person who obtained such privilege.

Article 623 – **Preference amongst third parties as regards improvements** - The third party who asks for similar privilege, may, before the end of the year, present his application, closed and sealed in the competent office where he shall take note of delivery.

§ Sole paragraph - The deposit, mentioned in this article can be availed by the depositor to get the preference as against any other person who may present it later except the privileged person who is always preferred provided he applies within the same year.

Article 624 – **Rights of third party applying for patents for improvements -** The third party who applies for a patent of improvement, is deemed for the purposes of grant of patent as the principal inventor.

Article 625 – **Regulations of patents** - It is the function of the laws and administrative regulations to authenticate and secure exclusive ownership of the inventions.

SECTION III

TRANSFER OF PATENTS

Article 626 – **Regulation of Patents** – Patents are governed by general laws which regulate movable property except for the following provisions.

Article 627 – **External form of transfer of privilege** - The transfer of the privilege either without consideration or with consideration may be effected only by public deed.

Article 628 – **Rights of cessionary** - The transferees of any principal privilege enjoy additional privilege, granted to the author or to his representative and reciprocally in cases in which this is possible unless there is a stipulation to the contrary.

SECTION IV

PUBLICATION OF INVENTIONS

Article 629 – **Information of the proceedings of patents** - The descriptions, drawings, models and specifications required for concession of certificate shall be shown without fees to any person who desires them, as well as they will be given any copies, on payment of the fees. It is the duty of the Government to make necessary regulations for the purpose.

Article 630 – **Publication of invention** - After the end of the second year of the privilege the drawings and descriptions shall be published either fully or by extract.

Article 631 – **Lapse of patent** - It is the duty of the Government to declare officially the inventions which have fallen within the public dominion.

SECTION V

NULLITY AND LOSS OF PRIVILEGE

Article 632 - **Nullity of patent -** The privileges granted in the following cases are null and void; 1. Where the inventions or discoveries are known to the public in practice or theory, by any technical description published in national or foreign writings or by any other method; 2. Where there is certificate already granted over the same object;

3. Where the inventions or discovery is found prejudicial to the security or public health or is contrary to the laws;
4. Where the title given to the invention fraudulently includes a different object;
5. Where the description given does not indicate all that is necessary for the execution of the invention or true means of the inventor;
6. Where the privilege is obtained in breach of formalities prescribed by law;
7. Where the privilege of refinement or improvement does not consist in the thing which facilitates the work and amplifies its utility but simply in the change of the form or proportion or in mere decorations.

Article 633 – **Loss of patent** - Whoever dose not give effect to his invention within the period of two years from the date of grant of privilege or stops using the same for two consecutive years, without justified cause, shall lose the said privilege.

SECTION VI

SUITS FOR NULLITY AND RESCISSION OF PRIVILEGE

Article 634 – **Locus standi in suits for annulment of patent** - The Public Ministry as well as the persons having direct interest in the rescission of the privilege may institute competent suits. If the suit is instituted by the Public Ministry, the interested person shall be allowed to intervene as co-plaintiff; but the Public Ministry shall always intervene in the suits which the interested parties may institute.

Article 635 – **Limitation for filing suit** - The suit for nullity in case of article 632 becomes barred by limitation by the lapse of one year without objection from the interested parties; in other cases it lasts until exclusive rights to the invention subsists.

SECTION VII

LIABILITY OF COUNTERFEITERS

Article 636 – **Liability of counterfeiters** - Whoever during the subsistence of the exclusive rights to the invention, violates the rights of the holder of the Patent, reproducing without his authorization, the object of the same invention or by selling, concealing or deliberately introducing work of the same type, manufactured outside the kingdom, is liable for compensation for the damages caused besides being criminally liable for penalty as per provisions of the Penal Code.

Article 637 – **Seizure of counterfeited objects -** The holders of certificates or their representatives, may apply in case of suspicion of counterfeit, for seizure of counterfeited objects or of instruments which may only be utilized for their fabrication upon furnishing prior security.§ Sole paragraph - In this case, however, if the applicant does not file a suit within fifteen days, the seizure shall stand vacated and the opponent may sue the applicant for losses and damages.

Article 638 –**Disposal of seized objects** - Where the action for counterfeit is decided in favour of the applicant, the seized objects will be given to the applicant either in a criminal case or civil case,

towards compensation payable to him; but if the adjudication is done in criminal case the complainant may put forward his claim for balance of full compensation only by a civil suit.

Article 639 – **Criminal prosecution** - The aggrieved party on account of counterfeit may use either criminal action or simple civil action for damages; in either case the Public Ministry shall be heard.

Article 640 – **Jurisdiction of criminal court -** The criminal court which takes cognizance of the counterfeit, shall pass decision on all the defences raised by the defendant on the ground of nullity or loss of the right of the complainant.

BOOK II

RIGHTS WHICH ARE ACQUIRED BY OWN ACT AND WILL, ALONG WITH ACT AND WILL OF ANOTHER

BOOK II

RIGHTS WHICH ARE ACQUIRED BY OWN ACT AND WILL, ALONG WITH ACT AND WILL OF ANOTHER

TITLE I

CONTRACTS[15] AND OBLIGATIONS IN GENERAL

CHAPTER I

PRELIMINARY PROVISIONS

Article 641 – **Definition of contract** - Contract is an agreement by which two or more persons transfer between them some right or subject themselves to some obligation.

- See Indian Contract Act, 1872, Sec.10 - What agreements are contracts and Sec.2 – Interpretation-clause.

Article 642 – **Unilateral and bilateral contract** - A contract is unilateral or gratuitous, bilateral or with consideration. It is unilateral or gratuitous, when one party promises and the other accepts; it is bilateral or with consideration, when the parties mutually transfer some rights and mutually accept them.

- Unilateral contract is an anomaly in Indian law.

Article 643 – **Requisites of contract** - In order that the contract may be valid the following conditions should obtain:

[15] *Part II- Book II – This book covers **bilateral acts.***

***CONTRACTS and Obligations** – Its contents are as follows:-*
In general – Arts.641-817; Guarantees – Arts.818 – 854; Pledge – Arts.855 – 872;
In general – Arts.873-877; Privileges in credits and Mortgages – Arts.878-948; Registration – Arts.949-1004;
In general – Arts.1005-1045; Eviction – Arts.1046-1055; Marriage – Arts.1056-1239; Society – Arts.1240-1317;
Mandate or Attorneyship – Arts.1318-1369; Domestic Service and School – Arts.1370-1395; Works contract – Arts.1396-1408; Liberal profession – Art.1049; Carriage by land, boat or animals – Arts.1410-1418; Lodging – Arts.1419-1430; Deposit – Arts.1431-145; Gifts – Arts.1452-1505; Loan – Arts.1506-1536; Aleatory contracts – Arts.1537-1543; Sale – Arts.1544-1591; Exchange – Arts.1592-1594; Contract of letting – Arts.1595-1643; "Censo Consignativo" in future –Arts.1644-1652; Emphyteusis – Arts.1653-1705; Census – Arts.1706-1709; Compromise – Arts.1710-1721; Registration of transfer of immobile assets and rights – Arts.1722
Much of this is now governed by Indian Contract Act, 1872. But there is no section to section equivalence in every case. Many provisions of the Civil Code on Contract are subject matter of case law in the Indian legal system. The provisions of Portuguese Civil Code on contracts are more in number and detail. For example, those roughly dealing with areas covered by Indian Contract Act, 1872 are as follows:

- *Civil Code :-Arts.641 - 877: 236 articles; Arts.1318 - 1417: 99 articles; Arts.1431 - 1543: 112 articles; total 447 articles.*
- *Indian Contract Act, 1872 :- Secs.1-75, 75 sections; Secs.124-181, 57 articles; total 132 sections.*

1.Capacity of the contracting parties;
2.Mutual consent
3.Possible object.

- Article 643(1) See Indian Contract Act, 1872, Sec.11 – Who are competent to contract and Sec.12 – Sound mind.
- Article 643(2) See Indian Contract Act, 1872, Sec.13 – Consent and Sec.14 – Free Consent.

CHAPTER II
CAPACITY OF CONTRACTING PARTIES

Article 644 – **Who can enter into contract -** All persons who are not excepted by law have capacity to contract.

- See Indian Contract Act, 1872, Sec.11 - Who are competent to contract.

Article 645 – **Formal representation** - The contracts may be made by the parties in person or through another person duly authorized.

- See Indian Contract Act, 1872, Secs. 226 to 238 - Contracts through agent.

Article 646 – **Efficacy of ratification** - The contracts made in the name of another, without due authority, produce their effect, if they are ratified before the other party retracts.

§ Sole paragraph - The performance of the contracts entered into for the benefit of third parties may be demanded by the beneficiaries.

- See Indian Contract Act, 1872, Secs. 197 to 200 – Ratification.

CHAPTER III

MUTUAL CONSENT

Article 647 – **Expression of will** - The consent of the contracting parties should be clearly expressed.

- *Chapter III - **Articles 647 & 648** – See Indian Contract Act, 1872:-*
  - *Sec.2(a) to (d) Interpretation-clause;*
  - *Sec.3 - Communication, acceptance and revocation of proposals;*
  - *Sec.4 - Communication when complete;*
  - *Sec.5 - Revocation of proposals and acceptances;*
  - *Sec.6 - Revocation how made;*
  - *Sec.7 - Acceptance must be absolute;*
  - *Sec.8 - Acceptance by performing conditions;*
  - *Sec.9 – Promises, express and implied.*

Article 648 – **Modes of expression** - The expression of consent may be done orally or in writing, or by facts from which it is necessarily inferred.

Article 649 – **Time of formation of contract** - As soon as the proposal is accepted, the contract is finalised, except in cases where the law demands some other formality.

- See Indian Contract Act, 1872, Sec.2 - Interpretation-clause, (b) Promise (e) Agreement and (h) Contract.

Article 650 – **Contract amongst persons present** - Where the contracting parties are present, the acceptance shall be done in the same act of the proposal except if they agree otherwise between themselves.

- Articles **650 to 655** – Is subject matter of case law.

Article 651 – **Contract amongst absent persons** - Where the contracting parties are not present, the acceptance shall be done within the time fixed by the proposer.

Article 652 – **Presumed refusal of proposal** – If a time has not been fixed, the proposal is

deemed as not accepted, if the other party does not respond within eight days in addition to the

time normally required for postal service to go and come, or, where there is no postal service,

within the time which is found reasonable considering the distances, the facility or difficulty of communications.

Article 653 – **Maintenance of proposal** - The proposer is bound to maintain his proposal whilst he does not receive an answer from other side on terms laid down in the preceding article, otherwise he will be liable for losses and damages which may result from his retraction.

Article 654 – **Counter proposal** - When the reply involves modification of the proposal, such modification shall be considered as a new proposal.

Article 655 – **Liability of the heirs of the proposers** - Where at the time of the acceptance the proposer is dead, without the accepter having knowledge of his death, the heirs of the proposer shall be bound to maintain the proposal in accordance with the terms of article 653 unless the contrary follows from nature of the contract.

Article 656 – **Consent given by mistake or coercion** - The consent given by mistake or coercion makes the contract null on the following terms.

- Articles **656 to 658 –** Mistake – See Indian Contract Act, 1872:-
  - Sec.20 – Agreement void where both parties are under mistake as to matter of fact,
  - Sec.21 – Effect of mistakes as to law; and
  - Sec.22 – Contract caused by mistake of one party as to matter of fact.

Article 657 – **Kinds of relevant errors** - An error of consent may turn:

1. On the cause of the contract;
2. On the object of the contract or the qualities of the object of the contract;
3. On the person with whom the contract is entered into or in consideration for whom the contract is made.

Article 658 –Error as to cause - The error relating to the cause of the contract may be of law or of fact.

Article 659 – **Error of law as regards cause** - The error of law relating to the cause results in nullity, save in cases where law provides to the contrary.

- See Indian Contract Act, 1872, Sec.21 – Effect of mistakes as to law.

Article 660 – **Error of fact as to cause** - Where the error relating to cause is of one fact, it will render the contract null if the party who is misled has declared expressly that he entered into the contract only for this reason and this declaration is expressly accepted by the other side. See Indian Contract Act, 1872, Sec.22 – Contract caused by mistake of one party as to matter of fact.

Article 661 – **Error as to object of contract** - An error relating to object of the contract or to the qualities of the same object may make the contract null only if the party who is misled has declared, or it is proved by the circumstances of the same contract, equally known to the other party, that, only for this reason and not for any other, the party has contracted.

- See Indian Contract Act, 1872, Sec. 22 - Contract caused by mistake of one party as to matter of fact.

Article 662 –Mistake as to the other party - Where the mistake is in relation to the person with whom the contract is entered into, the provisions of the preceding article, in respect of the object of the contract, shall be applicable; but if the mistake is in relation to the person who is not party to the contract, the provisions of article 660 shall be applicable.

- See Indian Contract Act, 1872, Sec. 22 - Contract caused by mistake of one party as to matter of fact.

Article 663 – **Error arising from fraud or bad faith** - The error which proceeds from fraud or bad faith of one of the contracting parties or of the third party which has direct interest in the contract, render the contract null.

§ Sole paragraph - Fraud in the contract, means any suggestion or deceit, which is used to lead or keep the other party in error; and by bad faith the dissimulation of the mistake of other contracting party, after same being known.

- See Indian Contract Act, 1872, Sec.17-Fraud; Sec.18 - Misrepresentation.

Article 664 – **Error of common and general nature** – An error of common or general nature does not render the contract null.

- See Indian Contract Act, 1872, Sec.22 - Contract caused by mistake of one party as to matter of fact.

Article 665 – **Error of calculation or writing** - A simple error of arithmetic calculation, or of writing only gives right to rectification.

- See Indian Contract Act, 1872, Sec.22 - Contract caused by mistake of one party as to matter of fact.

Article 666 – **Coercion -** A contract is null, when consent is obtained through coercion, either by contracting parties or by third party.

§ Sole paragraph - Coercion consists in use of physical force, or of any means, which produce damage, or serious apprehensions of the same in relation to person, honour, or property of the contracting party or third parties.

- See Indian Contract Act, 1872, Sec.15 -Coercion.

Article 667 – **Considerations which are not relevant in ascertaining fraud or coercion** -Vague or general considerations, which the contracting parties make among themselves about the advantages or disadvantages which naturally may result from the execution or non-execution of the contract, are not taken into consideration, to qualify as fraud or coercion.

- See Indian Contract Act, 1872, Sec.18 – Misrepresentation.

Article 668 – **Relinquishment of right of annulment arising from fraud or coercion** - In future it will not be open to give up in anticipation the nullity, arising from fraud or coercion. But if coercion having ceased, or the fraud having become known, the contract is ratified by the coerced or deceived party, the latter is not permitted to challenge it for such vices.

CHAPTER IV
OBJECT OF CONTRACTS

Article 669 – **Requirements of object of contract** - The contract, object of which is not physically or legally possible is null.

- See Indian Contract Act, 1872:-
  - Sec.23 – What consideration and objects are lawful, and what not;
  - Sec.56 – Agreement to do impossible act.

Article 670 – Physical impossibility - In contracts only that is considered physically impossible, which is absolutely impossible in relation to object of the contract, but not in relation to the person who is bound by the same.

- See Indian Contract Act, 1872, Sec.56 – Agreement to do impossible act.

Article 671 – **Legal impossibility** – The following cannot legally be the object of a contract:-

1. Things, which are outside commerce by provision of the law;
2. Things or acts, which cannot be converted into a demandable value;
3. Things or acts of which is not or cannot be, ascertained;
4. Acts which are contrary to public morality or to the obligations imposed by the law.

- Article 671(1), (2) and (3) – See Indian Contract Act, 1872, Sec.56 – Agreement to do impossible act.
- Article 671 (4) – See Indian Contract Act, 1872, Sec.23 – What consideration and objects are lawful, and what not.

CHAPTER V
CONDITIONS AND CLAUSES OF CONTRACTS

Article 672 – **Freedom to contract** - The contracting parties may add to their contracts the conditions or clauses, which they deem fit. Such conditions and clauses

form integral part of the same contract, and are governed by the same rules, except where the law provides to the contrary.§ Sole paragraph - The case foreseen in Article 1671 is excluded from this category.

Article 673 – **Penal clause** - Where the contracting parties stipulate certain amounts as a penalty for non-fulfillment of the contract, such stipulation will have no effect if the contract is null, but the nullity of the penal clause will not result in the nullity of the contract.

Article 674 – **Relevance of penal clause** - The importance of the condition, or of the penal clause, is dependent on the agreement between the parties, save for what is provided in the sole paragraph of Article 672.

Article 675 – **Reduction of agreed penalty** - Where the obligation is fulfilled in part, the penalty shall be modified proportionately.

Article 676 –**Tacit stipulations as to performance** - The contracting party, who performs whatever he was bound to, may demand from the other side who has not performed its obligation, not only what he was bound to fulfill, or corresponding damages, but also the stipulated penalty, and, in the absence of such clause also the compensation for losses and damages.

§ 1 - If none of the parties have fulfilled the contract and only one party is ready to perform it, the latter may demand from the other, either the performance of the contract alone or only the agreed penalty or in the absence thereof, the due compensation but in no case both simultaneously.§ 2 - The right to demand the penalty or the said damages arises from the simple delay in the performance of the contract.

Article 677 – **Cases in which the penalty does not apply** - The penalty may become ineffective, if he who contracted the obligation was prevented from complying with it due to an act of the creditor, for unforeseen cause or *force majeure*.

Article 678 –**Condition precedent** - Where the contract was dependent on any condition of fact or of time; when the condition is satisfied, the contract is considered perfect from the date of its celebration; but as soon as there is certainty that the condition cannot be satisfied, it will be deemed as not satisfied.

- See Transfer of Property Act, 1882, Sec.26 - Condition precedent.

Article 679 – **Fulfillment of condition precedent** - A condition which is not satisfied due to an act of the party who agreed to fulfill it, is deemed to be fulfilled, unless the latter has acted within the limits of his right.

Article 680 – **Condition subsequent** - Where the contract was made on the condition that upon the happening of a certain fact or event, the contract will be taken as terminated; upon fulfillment of the condition, each party shall be restored the rights which it had at the time of the contract, if nothing else is stipulated.

- See Transfer of Property Act, 1882, Sec.29 - Condition subsequent.

Article 681 – **Termination due to fraud** - Where the determination of the contract depends upon a third party and the latter is fraudulently induced to determine it, the contract shall be deemed as not terminated.

Article 682 – **Protection of rights in conditional contracts** - The parties, whose contracts depend on some condition, may, even before the condition is fulfilled, do all the lawful acts, and necessary for the preservation of their right.

Article 683 – **Impossibility of performance** - The nullity of the condition, because of physical or legal impossibility, produces nullity of the obligation, which depended on such condition.

- See Indian Contract Act, 1872:-
  - Sec.56 – Agreement to do impossible act;
  - Sec.23 – What consideration and objects are lawful, and what not.

CHAPTER VI
INTERPRETATION OF CONTRACTS

Article 684 – **Interpretation of contracts** - A contract is null, when from its terms, nature and circumstances, or of the usage, custom or law, it is not possible to know, what was the intention or wish the contracting parties in respect of the principal object of same contract.

- Interpretation of contract is subject matter of case law in our system.

Article 685 – **Doubts as to secondary clauses of the contracts** - Where the doubt is as to secondary clauses of the contract and the doubt cannot be resolved by application of the rules is as laid down in the preceding article, the following rules shall be observed:

1. Where the contract is without consideration, the doubt is resolved by lesser transmission of rights and interests;
2. Where the contract is with consideration the doubt is resolved by the greater reciprocity of interests.

- Interpretation of contract is subject matter of case law in our system.

CHAPTER VII
EXTERNAL FORM OF CONTRACTS

Article 686 – **External form of contracts** - The validity of contracts does not depend on any external formality, except those which are prescribed by law for the proof thereof, or which the law, by special provision declares to be substantial.

CHAPTER VIII
RECISSION OF CONTRACTS

Article 687 –**Annulment on account of legal incapacity** - The suit for rescission on account of nullity, arising from incapacity of the contracting parties, in cases it is permitted in the titles of this Code relating to the said legally incapable persons, is admissible in the

form declared in the following article.

- Articles **687 to 701** – Rescission of contract – Secs.27 to 30 of Specific Relief Act, 1963, though not in detail as in Portuguese Civil Code. Cancellation of instruments (Secs.31-33 of Specific Relief Act, 1963)

Article 688 – **Limitation of suit for annulment** - The suit for rescission on account of incapacity becomes barred, against the legally disabled person, by lapse of five years, which are counted from:

1. In case of incapacity, by minority from the date from which the incapable attains majority or is emancipated;
2. In case of incapacity by interdiction, from the day on which it ceases.

Article 689 – **Annulment by reason of mistake** - The suit for rescission on account of mistake is barred by lapse of one year, from the day from which the person deceived got knowledge of the mistake.

Article 690 – **Coercion** - The suit for rescission on account of coercion is barred, if the coerced person has not filed it within one year, from the date from which the coercion has ceased.

Article 691 – **Rescission for object being outside commerce** – The suit for rescission for nullity on the ground that the thing, which is object of the contract, is found outside commerce is not subject to prescription, except where the law expressly provides to the contrary.

Article 692 – **Contract for criminal or unlawful purposes** - Where the cause or purpose of the contract is any criminal or legally impermissible act, in which both the contracting parties are conniving, none of them shall be heard in the Court with reference to the same contract; but if only one of the contracting parties is in bad faith, the other is not bound to fulfill his promise, nor to restore what he has received, but he can demand from the other what he has fulfilled.

§ Sole paragraph - In the case of first part of this Article and if the cause or purpose of the contract is an act any payment given or promised shall be forfeited in favour of establishments of charity.

Article 693 – **Nullity as means of defence** - Nullity of the contract may be raised as a defence, at any time, in a suit for enforcement of the said contract.

Article 694 – **Locus standi in suit for annulment -** The suit can be filed or the defence of the nullity can be raised, not only by the complainant and his representatives, but also by their sureties except in cases where law expressly provides to the contrary.

Article 695 – **Who can avail of nullity** - None of the contracting parties is permitted to take advantage of nullity, arising from incapacity of the other contracting party, nor plead the mistake or coercion to which he has contributed.

Article 696 – **Ratification of void contract** - The contract which is null, on account of the incapacity, mistake or coercion may be ratified, if the vice or ground or nullity has ceased, and if there is no other ground which invalidates the same ratification.

Article 697 –Effects of annulment - After the contract is rescinded, each of the contracting parties shall get back whatever has been given by him, or its value, if the restoration in kind is not possible.

§ 1 - In the cases of mistake, which does not arise from fraud or bad faith, there is no obligation to restore fruits or benefits.

§ 2 - In the cases where there is fraud or bad faith, there is an obligation to pay compensation.

Article 698 – **Recovery of part payment made to legally disabled party** - Where nullity of the contract arises from the incapacity of one of the contracting parties, such contracting party is not bound to restore, except whatever he has in his possession, or whatever benefit he has received.

Article 699 – **Irregularity in representation of disabled party** - Where the contract is rescinded, because the representative of the legally disabled person was not authorized, action can be taken only

against the contracting party who is in good faith, when the incapable person cannot be compensated from the properties of his representative but, even in such case, the contracting party may opt for compensation or restoration of the thing.

§ Sole paragraph - This remedy is not available against the subsequent acquirers, unless malafides are proved.

Article 700 – **Annulment not extensible to capable parties -** The rescission on account of incapacity cannot be availed of by the other parties jointly interested, who have the legal capacity, except if the object is indivisible.

Article 701 – **Lack of consent of one of the spouses** - In case of rescission of the contract, made by one of the spouse without the consent of the other, provisions of Articles 1189 onwards shall be observed.

CHAPTER IX
CONSEQUENCES AND PERFORMANCE[16] OF CONTRACTS

SECTION I
GENERAL PROVISIONS

Article 702 – **General principles as to performance** - Contracts, legally executed, should be fulfilled punctually; they cannot be revoked or altered, without mutual consent of the contracting parties, save the exceptions specified by law.

- See Indian Contract Act, 1872, Sec. 37 – Obligation of parties to contracts.

Article 703 – **Assignment of contract** - Rights and obligations, arising from contracts, may be transferred intervivos or by death, except if such rights and obligations are purely personal, by their nature, as a result of the contract, or by operation of law.

- See Indian Contract Act, 1872 - Devolution of rights Sec.37 – 2nd part.

Article 704 – **Contract to be performed alongwith consequences -** The contracts have binding effect not only in respect of whatever is expressly provided therein, but also in respect of usual and legal consequences arising therefrom.

Article 705 – **Legitimate clauses for non-performance** - A contracting party, who does not perform the contract, is liable for the damages caused to other contracting party, except if he was prevented by the act of the same contracting party, by force major, or by unforeseen circumstances, for which he has not given cause in any manner.

- See Indian Contract Act, 1872;
  - Sec.73, 1st part – Compensation for loss or damage caused by breach of contract
  - Sec.56 – 2nd part – Compensation for loss through non-performance of act known to be impossible or unlawful.

Article 706 – **Compensation for losses and damages** - The compensation may consist in restitution of the thing, or of the value substantially due; the restoration of such thing, or of such

16*Corresponds to Chp.IV, Secs.37-67 of Indian Contract Act, 1872.*

value, and of profits which the contracting party would have earned, if the contract was performed; in this last case it is called compensation for losses and damages.

- See Indian Contract Act, 1872, Sec.73 – Compensation for loss or damage caused by breach of contract.

Article 707 – **Quantum of compensation** - For the purpose of calculating the losses and damages, only the losses and damages necessarily arising from the non-performance of the contract, can be taken into consideration.

- See Indian Contract Act, 1872, Sec.73, 2nd part – Compensation for failure to discharge obligation resembling those created by contract.

Article 708 – **Stipulation of civil liability** - The civil liability may be stipulated by agreement between the parties, except where the law expressly lays down otherwise.

- See Indian Contract Act, 1872, Sec.74 – Compensation for breach of contract where penalty stipulated for.

Article 709 – **Rescission of bilateral contract** - Where the contract is bi-lateral and one of the contracting party fails to perform his obligation, the other contracting party may equally get exonerated, or demand that the defaulter be compelled, by judicial means to perform whatever he was bound to perform or to compensate him for the losses and damages.

§ Sole paragraph - In the same manner, one of the contracting parties may get exonerated, if the other is legally or physically disabled from performing the contract.

- See Indian Contract Act, 1872:-
  - Sec.75 – Party rightfully rescinding contract, entitled to compensation
  - Sec.53 – Liability of party preventing event on which contract is to take effect;

Article 710 – **Mode of performance** - A contract consists in the performance of acts or in the delivery of things.

SECTION II
PERFORMANCE

Article 711 – **Failure to perform agreed act** - Whoever bound himself to perform some act, and failed to perform it, or did not perform it in the agreed manner, is liable to pay compensation for losses and damages, on the following terms:

1. Where the obligation was to be performed within a specified period and a specified date, the liability starts from the time of expiry of the period, or the specified date;
2. Where the obligation was not dependent on certain time, the liability starts only from the date when the demand was made on the person who was to perform the obligation.

§ 1 - The notice issued or ordered to be issued by the creditor to the person bound by the obligation to perform the same is called demand.

§ 2 - Such as notice can be given through court, or by the creditor himself in presence of two witnesses.

Article 712 – **Option to obtain performance through another** - The creditor of an obligation to perform some act, instead of asking compensation for losses and damages, may apply that he may be permitted to get the act done through another person, at the cost of the person who was liable to do the same, if such thing is possible except where a different thing is stipulated in this regard.

Article 713 – **Negative stipulation** - Whoever has assumed obligation not to do some act, incurs liability to pay damages from the time of contravention, and the creditor may demand, that the work already done, if work has been done, be demolished at the cost of the person who had undertaken not to do it.

SECTION III
DELIVERY OF THINGS

Article 714 – **Mode of delivery of things** - The delivery of things pursuant to contract may consist:-

1. In the alienation of the property in a certain thing;
2. In the temporary alienation of the use, or enjoyment of a certain thing;
3. In the restitution of a thing of another, or payment of a thing due place thereof.

Article 715 – **Alienation of specified things** - Where alienation is of certain and specified things, the transfer of property operates between the contracting parties, by mere operation of the contract, without need of actual delivery or of possession, either physical, or symbolic, except when otherwise agreed between the parties.

Article 716 – **Alienation of generic things** - Where the alienation is of unspecified things of particular type, the property is transferred, only from the time the thing is made certain and specific, with the knowledge of the creditor.

§ Sole paragraph - If the quality is not indicated, the debtor is not bound to give a better thing, nor can he give a worse thing.

Article 717 – **Liability for loss or damages** - Where the thing transferred by operation of the contract is damaged or lost while in possession of the transferor, the risk is on account of the transferee, except where the thing is deteriorated or lost on account of fault or negligence of the transferor.

§ 1 - The loss can take place:-

1. Where the thing perishes;
2. Where the thing is put out of commerce;
3. Where the thing disappears in such a manner that it is not possible to recover it, or its whereabouts are not known.

§ 2 - There is fault or negligence when the obligor does some acts which are adverse to the conservation of the thing.

§ 3 - As to whether there is fault or negligence it depends upon the prudent discretion of the Court, according to the circumstances of the case, of the contract and of the persons.

Article 718 – **Successive alienation** - Where the thing, transferred by contract is alienated again by the transferor, the aggrieved party may recover it back on terms declared in the articles 1578, 1579 and 1580.

Article 719 – **Liability for the subject matter** - In contracts in which delivery of the thing does not involve transfer of property, the risk is always of the owner, except where there is default or negligence of other party.

Article 720 – **Losses and damages in financial obligations** - Where the performance is limited to the payment of a certain amount of money, the losses and damages resulting from the non-performance of the contract cannot exceed the interest agreed upon or laid down by the law, except in the case of guarantee, as provided in article 838.

§ Sole paragraph - Legal interest is 6 percent, both for debts of civil as well as commercial nature.

Now, Interest Act, 1978 operates in this area.

Article 721 – **Bar on part performance** - Performance should be in full and not in part, if other thing is not stipulated, or laid down by the law.

Article 722 – **Installment made up of ascertained and unascertained parts -** Where the performance is partly ascertained and partly unascertained, the creditor may demand and receive the ascertained part until the balance cannot be ascertained.

Article 723 – **Stipulation of financial obligations** - The payment of money shall be done in the manner agreed.

Article 724 – **Payment in cash** - Whenever it is agreed that the payment be made in the coins of certain and specified type, the payment shall be done in the manner agreed if the coin legally exists, even though there is variation in the value from the time of contract to the date of payment and even though such variation has resulted by operation of law.

§ 1 - Where the stipulated coin is not available in sufficient quantity, the payment can be made in the equivalent current coin as per the quotation in the exchange market on the date when payment is due.
§ 2 - When it is stipulated that the payment shall be made in coins of gold or silver, without mentioning the proportion of the ones and the others, such a proportion shall be regulated by the original debt, and if this is not possible, the debtor shall pay half in gold and half in silver. § 3 - The

compulsory circulation of bank notes does not affect the validity of the agreement to effect payment in metallic coin national or foreign.

Article 725 – **Where the stipulated currency has ceased to exist** - Where the type of coin in which the payment was agreed, no longer exists the payment shall be made in the coin circulating at the time, when the payment is to be made, and for this purpose the value of the kind of coin stipulated shall be calculated by that which it had at the time when it ceased to circulate.

Article 726 – **Supplementary nature of preceding provisions** – The provisions of the preceding two articles shall not apply when over the objects regulated by them, the parties stipulate another thing; because in such case, the stipulation has to be observed.

Article 727 – **Nominal nature of cash transactions** - Where the payment is to be done as per coin in circulation, the debtor shall pay the same numerical sum, even if the value of the currency has changed after the contract, except if agreed otherwise.

§ 1 - Where in addition to the stipulation for payment in escudos there is a provision to effect payment in coin, without mentioning the type thereof, the debtor shall effect the payment in the coin in circulation at the time of payment, provided it is of the metal already stipulated.
§ 2 - Stipulations made in any contract with agreed penalties or on account of damages for non-performance or rescission of the same contracts, shall be satisfied in accordance with rate of valuation or devaluation at the time of its payment.

Article 728 – **Choice of debts by debtor** - Where the debtor, owes many debts to the same creditor, proposes to pay some of them, it is for the debtor to decide, to which the payment refers.

- See Indian Contract Act, 1872 – Sec.59 – Application of payment where debt to be discharged is indicated.

Article 729 – **Appropriation of payments** - Where the debtor does not declare, what is his intention, it is presumed that the payment is on account of the debt which is more onerous; in case of equal circumstances, whichever is older; and, all being of the same date, the payment will be distributed proportionately on account of all of them.

- See Indian Contract Act, 1872 – Sec.60 – Application of payment where debt to be discharged is not indicated.

Article 730 – **Payment on account of debt with interest** - Wherever payment is done towards a debt with interest, it will not be presumed that the payment is done towards the principal, where there is accrued interest.

Article 731 – **Joint debtors** - Whenever there are different debtors obliged to deliver the same thing, they will be liable proportionately, except;

1. Where each of them has assumed joint liability;
2. Where the performance is relating to certain and specified thing which is in possession of one of them and which is dependent on action which only he can satisfy;
3. Where the agreement provides differently.

- See Indian Contract Act, 1872:
  - Sec.42 – Devolution of joint liabilities;
  - Sec.43 – Any one of joint promisors may be compelled to perform.

Article 732 – **Default in delivery of things** – Provisions of Article 711, are applicable to the obligation to deliver things, except in respect of payments in money without interest and without a certain time, in which case the compensation for damages will accrue, in the form provided in Article 720, from the date demand is made to the debtor.

SECTION IV
ALTERNATIVE PERFORMANCE

Article 733 – **Performance in the alternative** - Where the debtor is bound to perform one of the two acts, or deliver one out of two things, at his option, he will perform the obligation by doing either of

the acts or one of the things, but shall not against the wish of the creditor, perform part of one and part of the other.

Article 734 – **Loss of one of the objects** - Where one of the things has perished, and the option is of the creditor, it is to be found, whether the thing is lost on account of fault or negligence of the debtor, or without his fault or negligence. In the first case the creditor may choose the remaining or the value of the other; in the second case, he is bound to accept the remaining.

Article 735 – **Loss of both the objects by default of the debtor** - Where both things are lost on account of the fault or negligence of the debtor, the creditor may demand the value of either of them with losses and damages or rescission of the contract.

Article 736 – **Loss of both the objects due to no fault of the debtor** - Where both the things are lost without fault or negligence of the debtor, following distinction shall be made:

1. Where the option is exercised or specification is done, the loss shall be on account of the creditor;
2. If the option is not exercised, the contract will be of no effect.

Article 737 – **Loss of one of the things due to fault of the creditor** - Where one of the thing is lost on account of fault or negligence of creditor, it will be considered that he has been paid.

Article 738 – Performance in the alternative - The provision of this section are also applicable to the performance of the acts in the alternative.

SECTION V

PLACE AND TIME OF PERFORMANCE

Article 739 – **Place and time of performance** - The performance shall be done at the place and within the time specified in the contract, except in cases where law expressly permits another course.

- See Indian Contract Act, 1872, Secs.46 to 50 – Time and place for performance.

Article 740 – **Benefit of stipulation of time** - The time for payment is always presumed to be in favour of the debtor, except where from the terms of the contract, or accompanying circumstances, it flows that stipulation of time also was made in favour of the creditor.

Article 741 – **Anticipated demand** - The performance of an obligation, even though time is stipulated, can be demanded when the debtor becomes bankrupt, or there be reasonable apprehension of his insolvency, or where by reason of the same, the securities provided under the contract in favour of the creditor have decreased in value.

Article 742 – **Default in payment of debt in installments** - In debts, which are to be paid in instalments, the failure to pay one of these gives the creditor the right to demand the payment of all those which are still due.

Article 743 – **Demand where time is not stipulated** - Where the time for performance is not specified, the same shall be performed upon the demand by the creditor, except for the lapse of time which depends on the nature of the contract.

§ Sole paragraph - Where the time for performance was left to the possibility of the debtor, the creditor shall not make coercive demand, except upon the proof of such possibility.

Article 744 - **Place of performance** - Where the place for performance has not been specified and the performance consists of a specified moveable object, the performance shall be done at the place where the said object exists at the time of the contract.

In any other case it shall be done at the domicile of the debtor, at the time of performance, except where, after the contract, he is absent being outside the continental territory, because in such event it shall be done at the domicile of the creditor.

§ Sole paragraph - Where, after the contract, the debtor changes his domicile, within the continental territory, he shall indemnify the creditor of the expenses which the creditor had to incur on account of such change.

Article 745 – **Mode of delivery of immovables** - The delivery of the immovables is deemed as done by the delivery of the respective title deeds.

Article 746 – **Expenses of delivery** - The expenses of the delivery are on account of the debtor, if not otherwise stipulated.

SECTION VI

PERSONS WHO CAN PERFORM AND PERSONS IN WHOSE FAVOUR PERFORMANCE IS TO BE MADE

Article 747 – **Who should perform** - The performance may be done by the debtor himself and by his representatives, or by any other person interested therein or not interested therein. But in the last case when made without consent of the debtor, the latter does not incur any liability towards the person who did the performance, except when the debtor is absent and he gets evident benefit by such payment, save for the provisions in Title –I of Book No. III.

§ Sole paragraph - The creditor however cannot, be compelled to take the performance from a third party where there is express provision to the contrary in the contract, or he is adversely affected by it.

- See Indian Contract Act, 1872 – Sec. 40 – Person by whom promise is to be performed.

Article 748 – **To whom should payment be made** - The performance may be done to the creditor himself or to his legal representative.

Article 749 – **Payment to third party** - The performance made in favour of the third party does not extinguish the obligation, except:

1. Where such a thing is stipulated or is consented by the creditor;
2. In cases specified by law.

- See Indian Contract Act, 1872 – Sec. 51 – Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

Article 750– Joint creditors - Where there are different creditors with equal right to get the performance in full, the debtor may satisfy any of them, where there is no demand through the Court by the other.

Article 751 – **Rights and liabilities of joint creditor** - The joint creditor may exonerate the debtor, not only upon the payment which the latter may make of his debt as well as through set-off, novation or remission, except for his liability towards the other creditors.

- See Indian Contract Act, 1872 – Sec. 62 – Effect of novation, rescission and alteration of contract.

Article 752 – **Joint debtors** - The creditor of an obligation, undertaken by several joint debtors, may demand it from all of them jointly or from some of them without the debtor having right to seek partition.

- See Indian Contract Act, 1872 – Sec. 43 – Any one of joint promisors may be compelled to perform.

Article 753 – **Insolvency of joint debtor** - The creditor who demands the performance in full or part from one of the joint debtors, is not precluded from making the demand against the others in the event of insolvency of the former.

- See Indian Contract Act, 1872 – Section 43 – Any one of joint promisors may be compelled to perform.

Article 754 – **Right of recovery of the joint debtor** - A joint debtor, who effects payment on behalf of the others, shall be indemnified by each of them proportionately; and where one of them is insolvent, his liability shall be shared amongst all.

 See Indian Contract Act, 1872 – Section 43 – Joint promisors compelled to perform. Contribution and sharing of loss.

Article 755 – **Loss of things attributable to joint debtor** - Where the thing, which is object of obligation, is lost on account of the fault of one of the joint debtors, others do not stand exonerated; but he who gives cause to the loss shall be solely responsible for compensation for losses and damages.

Article 756 – **Defences available to joint debtor** - The joint debtor who is sued is entitled to defend himself by all the means available to him personally, or which are common to all joint debtors.

Article 757 – **Liability of heirs** - The heirs of a joint debtor are collectively liable for the whole debt. Each of them, however, is liable individually for a share proportional to the number of heirs and to the share which each of them has in the inheritance of joint debtor, except in the case mentioned in article 731(2).

Article 758 – **Payment of debt not due** - When, by mistake of fact or law, as provided in articles 657 onwards, anyone pays what really is not due from him, he may recover what he has paid, on the following terms:-

§ 1 - Whoever receives the undue payment in bad faith, shall restore it with losses and damages. Where the thing is transmitted to another who is equally in bad faith, the aggrieved party may recover it. But if the recipient was in good faith, only the aggrieved party may recover it if it had been transferred gratuitously and the transferor is found insolvent.

§ 2 - In respect of the improvements, provisions of articles 499 onwards shall be observed.

 See Indian Contract Act, 1872 – Section 72 – Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

SECTION VII
PAYMENT AND DEPOSIT

Article 759 – **Deposit in court** - The debtor may discharge himself by depositing the thing due in the Court, with notice to the creditor in the following cases:

1. Where the creditor refuses to receive it;
2. Where the creditor does not come or send anyone to receive it, at the time or the place stipulated for payment;
3. Where the creditor is not willing to issue acknowledgement receipt; 4. Where the creditor is incapable of receiving it;
5. Where the creditor is uncertain.

§ Sole Paragraph: In case of No.5 of this Article, notice to the creditor is dispensed with.

 See Civil Procedure Code, 1908 – Order 24 and Order 21, Rule 1 – Payment into Court.

Article 760 – **Doubt as to liability** - Where the creditors are known, but their corresponding right is doubtful, the debtor may deposit the thing due, with notice to them in order that they may have their rights ascertained through proper means.

Article 761 – **Efficacy of deposit** - Where the deposit is not contested, the thing shall remain at the risk of the creditor and the obligation shall stand extinguished from the date of the said deposit; but if it is contested, those effects will start only from the date of the judgement, after it has become final for want of appeal.

Article 762 – **Withdrawal of unclaimed deposit** - Until the creditor does not accept the thing deposited, or the validity of the deposit is not decided by the Court, the debtor is free to withdraw it.

Article 763 – **Operation of judgement -** After the judgement, the thing deposited may be withdrawn by the depositor only with the permission of the creditor; but in this case, the creditor looses any right of preference which he had over the thing and the co-debtors and sureties shall stand exonerated.

Article 764 – **Expenses for the deposit** - The expenses incurred for making deposit shall be on account of the creditor, except where, in case of opposition, finally the order is passed against the debtor.

SECTION VIII

SET-OFF

Article 765 – **Set-off** - The debtor may stand discharged of his debt by set-off with another that the creditor owes to him, on following terms:

1. Where the one and the other debt are ascertained;
2. Where the one and the other equally, may be demanded;
3. Where the debts consists of sums of money or consumable things of the same type and quality; or if some consist of sums of money and others consist of things whose value may be ascertained, as provided in last part paragraph I of this article.

§ 1 - Ascertained debt is that in respect of which the amount is ascertained or can be ascertained within a period of nine days.

§ 2 - A debt is said to be enforceable when its payment may be demanded through Court.

Article 766 – **Partial set-off** - Where the debts are not of equal amounts, set-off may take place for the corresponding part.

Article 767 – **Where set-off is not permissible** - Set-off shall not take place:

1. When any of the parties has renounced in advance, the right to set-off;
2. When a debt consists of a thing of which the owner has been dispossessed;
3. When the debt is towards alimony, or other thing, which may not be attached either by operation of law or due to the nature of the title from which it proceeds, except where both the debts are of the same nature;
4. Where the debt arises from a deposit;
5. Where the debts are due to the Government or Municipality except where the set off is permitted.

Article 768 – **Effect of set-off** - The effects of set-off operate by virtue of law and it extinguishes both the debts with corresponding obligations from the time it takes effect.

Article 769 – **Payment of debt susceptible to set-off** - Whoever pays a debt which admits set-off, is not entitled, when the payment of the debt which could be set-off is demanded, to avail to the prejudice of a third party of the priorities and mortgages which were securing such credit, except upon proof of ignorance of the existence of the credit which had extinguished it.

Article 770 – **Plurality of debts susceptible to set-off** - Where there are several debts which admit set-off, in the absence of any other declaration, the order indicated in the article 729 shall be followed.

Article 771– Waiver of right to set-off - The right to set-off may be renounced not only expressly but also from the facts which the renunciation may be necessarily implied.

Article 772 – **Debts which cannot be set-off** -The surety is not entitled to set-off his credit, with a debt of the principal debtor; similarly a joint debtor is not entitled to ask for set-off with a debt of the creditor to his co-debtor.

Article 773 – **Presumed relinquishment of rights to set-off -** The debtor, who has consented to the transfer made by the creditor in favour of the third party, is not entitled to plead set-off against the transferee, the set-off which he could plead against his transferor.

Article 774 – **Claim of set-off against assignee of a debt** - Where, however, the creditor informs about the transfer and the debtor does not give the consent, he may plead set-off against the transferee of the credits, which he had against the transferor and which are prior to his transfer.

Article 775 –**Saving of the rights of third parties** - Set-off shall not be admitted to the prejudice of the rights of a third party.

Article 776 – **Debts payable at different places** - The set-off is admissible even where the debts are payable at different places provided that the additional expenses to realize them are met.

Article 777 – **Set-off in case of assignment without notice** - Where the transfer is made, without giving notice to the debtor, he may plead set-off against the transferee of the credits, which he had against the transferor either prior or subsequent to the transfer.

SECTION IX

SUBROGATION

Article 778 – **Payment by third party on behalf of the debtor with his consent** - Whoever pays on behalf of the debtor with his consent, expressly manifested, or which may be clearly inferred from the facts, stands subrogated in the rights of the creditor.

- See Indian Contract Act, 1872 – Section 69 – Reimbursement of person paying money due by another, in payment of which he is interested.

Article 779 – **Payment by third party without consent of the debtor** - Whoever pays, on behalf of the debtor, without consent, acquires right of the creditor only in the following cases; 1. Where the person, who makes the payment, is a guarantor or is interested in any other manner, that such a payment may be made.

2. Where the creditor, who receives the payment, transfers his rights in accordance with the following section or subrogates in his rights the person who has made the payment provided that the subrogation is done expressly at the time of payment.

Article 780 – **Subrogation in favour of the lender or usurer** - Where the debt is paid by the debtor himself, with the money which a third party had lent to him for this purpose, the latter may stand subrogated in the rights of the creditor, only where the loan is recorded in an authentic document, in which it is declared, that the money was asked for the payment of that debt.

Article 781 – **Rights of the subrogee** - The subrogee may exercise all the rights which are available to the creditor, against the debtor as well as against the guarantors.

Article 782 – **Preference to the original creditor over the subrogee** - The creditor, who was paid only in part, may exercise his rights, in preference over the subrogee, in respect of the balance due.

§ Sole paragraph - Such preference, however, is available solely to the original creditors, or their transferee, and not to any other subrogee.

Article 783 – **Cases in which partial subrogation cannot take effect** - Partial subrogation will not take place in case of the debts which are not divisible.

Article 784 – **Order of payments to subrogees** - The payment to the subrogees of different parts of the same credit, where no payment is possible to all at the same time, shall be made as per successive order of different subrogation.

SECTION X

CESSION (ASSIGNMENT)

Article 785 – **Cession - Assignment** - The creditor may transfer to another, his right or credit, without or with consideration, regardless of consent of the debtor.

§ Sole paragraph - But, where the rights or credits are litigious, it is not lawful to transfer them in any manner to the judges of the singular or collective Courts, or other authorities, in case such rights or credits are contested within the jurisdiction where they exercise their functions. The transfer made in breach of this paragraph shall be void.

Article 786 – **Assignment by onerous title of litigious obligation** - The debtor of any litigious obligation, transferred for consideration, may have himself discharged upon payment to the transferee of the amount which he had paid for the same, with interest, and additional expenses for acquiring the same, except where the transfer has been made:

1. In favour of heir or the co-owners of the right transferred;
2. In favour of the possessor of the immovable, which is the object of such right;
3. To the creditor in payment of his debt.

Article 787 – **Efficacy of decree over litigious credit** - The solution given, in the preceding article may take place until dispute is not finally decided by order of the court which has become res judicata.

Article 788 – **Litigious right** - Litigious right for the purposes declared hereby is such that has been contested in substance before the court by any interested party.

Article 789 – **Mode of assignment** - As far as the transferor is concerned, the right transferred passes to the transferee by mere operation of the contract; but in relation to the debtor or the third party, the transfer shall be effective from the time the same is notified to the debtor or brought to his knowledge by any other means, provided, it is done in authentic form.

Article 790 – **Preference amongst assignees** - Where notice or knowledge of different transfers takes place on the same day, the different transferees shall be taken to have equal rights, except where the hour of the service of the notice is clearly declared; in such case, the first in point of time, will have preference.

Article 791 – **Consequences of notice between the assignors and the debtor** – As long as there is no notice or knowledge, it is lawful for the debtor to discharge himself by payment to the transferor and it is open for the latter to exercise all his rights against the debtor. The transferee during this interval of time may only proceed against the transferor, for the necessary measures for preservation of his right.

Article 792 – **Operation of the notice as against third parties** - The creditors of the transferor in the same manner may exercise their rights in respect of debt transferred, so long as the transfer is not notified, or made known in the aforesaid manner.

Article 793 – **Effects of assignments** - The transferred credit passes to the transferee with all its accessory rights and obligations, there being no stipulation to the contrary.

Article 794 – **Liability of assignor** - The transferor is bound to guarantee the existence and legality of the credit at the time of the transfer, but not the solvency of the debtor, except where it is so provided.

Article 795 – **Time limit for the liability of the assignor** - Where the transferor has assumed the responsibility for the solvency of the debtor, but the time for which such responsibility is to last has not been specified, the same shall be limited to a period of one year, from the date of the contract, where the debt is already due, and if it had not matured from the time of its maturity. § Sole paragraph: Where the transfer is of the rent or of the installments payable in perpetuity, the liability of the transferor shall last for a period of ten years, in the absence of a stipulation to the contrary.

SECTION XI
MERGER OF RIGHTS AND OBLIGATIONS

Article 796 – **Merger of rights and obligations** - Where the capacity of creditor and debtor gets merged in the same person, by virtue of the same cause, the credit and the debt stands extinguished.

Article 797 – **Effect of merger on guarantor** - The merger which takes place in respect of the person of the principal debtor, is available to his guarantor.

Article 798 – **Effect of merger on the guarantor and the creditor** - The merger which takes place in the capacity of the guarantor and creditor does not extinguish the obligation.

Article 799 – **Merger of joint liabilities** - The merger, which operates in the person of the creditor or of the joint debtor shall take effect in the proportion to the credit or debt.

Article 800 – **Impermissibility of merger of debt where inheritance is accepted under benefit of inventory** - There will be no merger where the capacity of the creditor and debtor are found in the same person on account of the title of inheritance accepted under benefit of inventory.

Article 801 – **Extinguishment of merger** - Where the merger gets undone, the obligation will revive with all its accessories, even in relation to the third party where the fact has retrospective effect.

SECTION XII
NOVATION[17]

Article 802 – **Novation** - Novation takes place:

1. When the debtor contracts with the creditor a new debt in place of the old one, which stands extinguished;
2. When the new debtor is substituted for the old one, who stands exonerated;
3. When a new creditor is substituted for the old one and the old debtor assumes obligations towards the former.

Article 803 – **Novation not to be presumed** - Novation is not to be presumed; it is necessary that the same is stipulated expressly, or it has to be inferred clearly from the terms of the new contract.

Article 804 – **Novation by substitution of the debtor** - Novation, by substitution of the debtor, is not permissible without the consent of the creditor; but it may be done without intervention of the former debtor, on the terms in which, without the consent of the debtor, the payment may be made.

Article 805 – **Discharge of debtor** - The creditor, who by novation exonerates the former debtor by accepting in his place a new one, shall not have any recourse against the former, where the new debtor is found insolvent or found incapable, except if otherwise provided.

Article 806 – **Cases where novation does not arise** - The mere indication, done by the debtor, of the person who should make the payment in his place, or made by the creditor, of the person who should receive the payment in his place, does not amount to novation.

[17]*See Section 62 of Indian Contract Act, 1872.*

Article 807 – **Effects of novation** - When the old debt is extinguished by novation, all the accessory rights and obligations are also extinguished, there being no express reservation.

§ Sole paragraph: Where such reservation is in respect of a third party, his consent is also necessary.

Article 808 – **Benefits of novation of joint debt** - When, however, the novation takes place between the creditor and any joint debtor, the privileges and mortgages of the old credit may be reserved only in relation to the properties of the debtor, who contracts new debt.

Article 809 – **Novation of joint debt** - As a result of novation made between the creditor and any of the joint debtors, all other co-debtors shall stand discharged.

Article 810 – **Novation of extinguished debt** - Where the first obligation is found extinguished when the second was contracted, the novation shall be of no effect.

Article 811 – **Novation of conditional debt** - Even though the former obligation is dependent upon a condition precedent, the novation is dependent on its fulfillment only in a case in which it has been so stipulated.

Article 812 – **Novation of void debt** - Where the former obligation is absolutely disapproved by law or is such as cannot be cured or ratified, the new obligation which substitutes it shall be void.

Article 813 – **Nullity of novation** - If the novation is void, the old obligation shall subsist.

Article 814 – **Defences available to the substituted debtor** - The substituted debtor is not entitled to plead against the creditor, the defences which the former debtor could plead; but he may plead those which he personally has against the same creditor.

SECTION XIII

DISCHARGE AND RENUNCIATION

Article 815 – **Discharge and renunciation** - It is lawful for anybody to renounce his right or pardon and condone the installments which are due to him, except in the cases prohibited by law.

§ Sole paragraph: The renunciation may be proved only by document written and signed by the one who renounces, and in case he does not know to write or is not able to write, two witnesses with authentication by Notary shall be necessary.

Article 816 – **Result of discharge in relation to the guarantor** - Remission granted to the principal debtor is available to the guarantor; but that which is granted to the latter does not benefit the former.

Article 817 – **Discharge to a joint guarantor** - There being more than one guarantor and all being joint, the remission granted to one of them in respect of his part of the responsibility does not benefit the others.

CHAPTER X

SECURITY OR GUARANTEE OF CONTRACTS

SECTION I

GUARANTEE[18]

SUB-SECTION I

GUARANTEE IN GENERAL

Article 818 – **Definition of guarantee** - The fulfillment of obligations, which arise from the contracts, may be secured by a third party, who is answerable for the debtor, in the event the said obligations are not fulfilled. This is called guarantee.

Article 819 – **Who can guarantee** - Whoever has the capacity to contract may furnish guarantee.

[18] ***Arts.818 to 854*** *– Cf. Sections 126 to 147 of Indian Contract Act, 1872*

Article 820 – **Capacity of married women to be a guarantor** - Married women may furnish guarantee only with the express consent given in writing by the husband.

Article 821 – **Stipulation of guarantee** – A guarantee may be stipulated between the surety and the creditor, even without the consent of the debtor, or of the first surety, if the guarantee refers to him.

Article 822 – **Accessory character of guarantee** - Guarantee is void in law if it secures an obligation which is not valid, save where the nullity of obligation arises exclusively from the incapacity of the person.

§ 1 - In the last case, the guarantee subsists, even though the principal debtor may cause rescission of his obligation.

§ 2 - Such exception does not include the guarantee offered for the loan granted to the minor as explained in the respective title, covered by articles 1535 and 1536.

Article 823 – **Extension of guarantee** - The guarantee shall not exceed the principal debt, nor it shall be contracted under more onerous conditions. However, it may be contracted for lesser amount and under less onerous conditions. Where it exceeds the debt or the conditions are more onerous, the guarantee shall not be null in law, but it will be reduced to the precise terms of the debt covered by guarantee.

Article 824 – Requirements of the guarantor - When any debtor is bound to furnish a guarantee, the creditor is not bound to accept the surety who does not have:

1. Capacity to contract;
2. Immovable properties free and without encumbrances, which are sufficient to secure the obligations and are situated within the jurisdiction of the court where the payment should be made.

Article 825 – **Replacement of guarantee** - If the financial condition of the surety is changed, there being risk of insolvency, the creditor may demand another surety.

Article 826 – **External form of guarantee** - The furnishing of guarantee and discharged thereof shall be proved by the means established by law to prove the principal contract.

Article 827 – **Security for the guarantor** - One or more persons may assume responsibility for the solvency of the surety. This act is called standing as security for solvency of surety.

Article 828 – **Mode of furnishing security** - In order to constitute security for the solvency of surety, it should be in clear, express, and affirmative terms.

Article 829 – **Proof of security and regulations thereof** - The standing as security of the solvency of surety may be proved by the same manner by which guarantee is proved and in all the rest it will be subject to the provisions which regulate the furnishing of guarantee, except where the law expressly provides to the contrary.

SUB-SECTION II

EFFECTS OF GUARANTEE IN RELATION TO THE SURETY AND CREDITOR

Article 830 – **Secondary character of guarantee** - The surety shall not be compelled to pay to the creditor without first exhausting all the assets of the debtor, except:

1. Where the surety has bound himself as the principal debtor;
2. Where he renounced to the benefit of first exhausting the assets of the debtor;
3. It is not possible to sue the debtor within the Kingdom.

Article 831 – **Liability of debtor and guarantor to pay** - The creditor may file a suit simultaneously against the principal debtor and the surety, save the rights or the surety for recovery against the principal debtor.

Article 832 – **Demand on the debtor** - Where the surety is sued, either as surety simpliciter or as principal payer, he may apply for issuance of summons to the debtor so that he may defend himself alongwith the debtor, or so that the decree may be passed against them jointly.

Article 833 – **Right to recover properties through execution in case of decree jointly passed** - When final judgement is passed jointly against the debtor and the principal payer, where the latter is directed to pay, he may assign for attachment the properties of the debtor, if the latter owns them free from encumbrance, and situated within the same judicial division.

Article 834 – **Effect of compromise with creditor** - The compromise made between the surety and the creditor does not include the principal debtor, nor does the compromise between the principal debtor and the creditor include the surety save, in either case, where there is consent of the third party.

Article 835 – **Where there is more than one guarantor** – Where there are many sureties of the same debtor for the same debt, each of them is liable for the totality, unless there is a declaration to the contrary; but, when only one of them is sued, he may ask that summons be issued to others so that they may defend themselves alongwith him or be jointly decreed against, each one for his share, and in such case, shall be liable only in their absence.

§ Sole paragraph: The benefit of the division between the co-sureties is not attracted in cases where there is no right of first exhausting the assets of principal debtor.

Article 836 – **Liability for insolvency of the other guarantors** - The surety, who may ask for the benefit of the division is only liable proportionately for the insolvency of other sureties, prior to the division, and even not for such division where the creditor voluntarily had made a pro rata division without the same being challenged by the surety.

Article 837 - **Right to recover assets through execution in security contract** - He who stood as security of surety enjoys the benefits of remedy of exhausting the assets, not only against the surety but also the principal debtor.

SUB-SECTION III

EFFECTS OF GUARANTEE UPON DEBTOR AND GUARANTOR

Article 838 – Guarantor's right to recover - The surety, who was compelled to pay on account of the debtor, has right to be compensated:-

1. For the principal debt;
2. For the interest concerning the amount paid, from the date from which the payment was effected, even though interest was not accrued to the creditor;
3. For the losses and damages caused by the debtor.

§ Sole Paragraph: What is provided in this article shall be given effect, even when the guarantee has been offered without knowledge of the debtor; but, in such a case, the interest shall be reckoned from the time when the surety informed the debtor of the payment effected by him. Now, Interest Act, 1978 operates in this area.

Article 839 – **Subrogation of guarantor in the rights of the creditor** - The guarantor who effected payment to the creditor stands subrogated in all rights which the creditor had against the debtor.

§ Sole paragraph: If the surety, however, had compromised with the creditor, he has right to demand from the debtor only what he actually paid, except when the creditor had made gift to the surety of the amount corresponding to the reduction made on the amount of the debt.

Article 840 – **Guarantor's right of recovery against joint debtors** - When there are two or more debtors jointly liable for a debt, the surety may demand from any of them the total amount paid by him.

Article 841 –**Defences available in suit for recovery by guarantor** - Unless the debtor has consented to the payment voluntarily made by the surety to the creditor, he is entitled to raise all defences which he could raise against the creditor, at the time when the payment was made. § Sole paragraph: He may do the same, if the guarantor, having paid as a consequence of the suit brought against him by the creditor, failed to have summons served on the debtor in the said suit.

Article 842 –**Absence of notice of payment to debtor** - Where the debtor pays again, on account of the absence of a notice from the surety, the latter has no right to recover the amount from the debtor, but only from the creditor.

Article 843 –**Payment by guarantor before due date** - Where the debt is payable at specified time and the surety effected payment thereof before the day of maturity, it is not lawful for the surety to demand the payment from the debtor, except after the debt is due.

Article 844 – **Discharge of guarantor** - The surety may, even before effecting the payment, demand that the debtor should either make the payment, or exonerate him from the guarantee in the following cases:-

1. If the payment is demanded from him through Court;
2. If the assets of the debtor have decreased, and there is risk of his insolvency;
3. If the debtor intends to absent himself from the kingdom;
4. If the debtor has agreed to exonerate the surety at a specified time and such time had lapsed;
5. If the debt became payable on maturity;
6. If ten years have lapsed and there was no specified time for payment of the principal liability, and the surety was given without consideration.

§ Sole paragraph: In the case of clause no.5, the surety may also demand that the creditor may sue the debtor, or may sue the surety himself giving to the surety the benefit of exhausting first the assets of principal debtor; and if the creditor fails to do so, the surety will not be liable in case of insolvency of the debtor.

SUB-SECTION IV

EFFECTS OF GUARANTEE AMONGST GUARANTORS INTER SE

Article 845 –**Guarantor's recourse against co-guarantor** - Where there are two or more sureties of the same debtor, and for the same debt, the surety who had paid the whole debt, may demand that others, may effect payment pro rata to him.

§ 1 - Where one of them becomes insolvent, his share will fall on others proportionately. § 2 - The provision of this article is applicable only when the payment is demanded through Court or when the principal debtor is found to be insolvent.

Article 846 – **Defences permissible to the co-sureties (co-guarantors)** - In the case of preceding article, the co-sureties may raise against the surety who effected the payment, the defences which the principal debtor could raise against the creditor, which are not merely personal to that surety.

Article 847 – **Liability of one who secures the guarantor -** He who secured the solvency of a surety in case of insolvency of the surety, for whom the security was given, is liable to the other co-sureties, on the same terms as the surety would be.

SUB-SECTION V

EXTINGUISHMENT OF GUARANTEE

Article 848 –**Extinguishment of guarantee** - The liability of the guarantor stands extinguished with the extinction of the principal debt and on the same grounds on which the same could be extinguished, save for the provisions of 1st paragraph of article 822.

Article 849 – **Survival of the security -** If the liability of the debtor, and of the surety are merged, because of the devolution by inheritance between them, the liability of the surety of solvency of surety, if any, shall not get extinguished.

Article 850 – Gift for consideration - Where the creditor accepts voluntarily anything towards payment of the debt, the surety shall stand exonerated, even though subsequently the creditor loses the thing, on account of eviction.

Article 851 – **Effect of discharge of one of the guarantors** - Where the creditor exonerates any of the sureties, without the consent of others, all others shall stand exonerated in proportion to the liability discharged.

Article 852 – **Moratorium given to debtor without consent of the guarantor** - The moratorium granted to the debtor by the creditor, without the consent o the surety, shall extinguish the suretyship.

Article 853 – **Impossibility of complete subrogation of guarantor attributable to the creditor**- The sureties, though joint, shall stand exonerated of their obligation, where, on account of any act attributable to the creditor, they cannot get subrogated in the rights, privileges and hypothecation of the same creditor.

Article 854 –Defences permissible to the guarantor against the creditor -The surety may raise against the creditor all the defences extinguishing the obligation, which the principal debtor may raise, and which are not purely personal of the debtor.

SECTION II

PLEDGE[19]

Article 855 – **Definition of pledge** - The debtor may secure the fulfillment of his obligation, by delivering to the creditor, or his representative, some moveable, as a security. This is called pledge.

Article 856 –Purpose of pledge - The object of the pledge may be movables which can be alienated.

Article 857 – **Pledge of private credit documents** - When the pledge is of documents of credit issued by private person, not being by any company, the pledge should be notified to the original debtor.

Article 858 – **Conditions for efficacy of pledge** - The contract of pledge shall produce effect between the parties, only after the delivery of the thing pledged; but in relation to the third parties, it is necessary that, besides this, the type and nature of the object pledged, should be reflected in the document, authentic or authenticated.

[19]***Arts.855 to 872*** *– Cf. Sections 172 to 179 of Indian Contract Act, 1872.*

Article 859 – **Who can pledge** - The pledge may be created by the debtor himself or by the third party even without his consent.

Article 860 – **Rights of Pawnee** - By virtue of the pledge, the creditor acquires the right: 1. Of being paid of his debt from the value of the pledge in preference to the other creditors of the debtor.

2. Of using all the preventive remedies to protect his possession, and to initiate criminal proceedings against whoever has stolen the pledged thing, even if it is the owner himself; 3. Of being indemnified of all the expenses necessary and useful which he might have made with the object pledged.
4. Of demanding from the debtor, another pledge, or the fulfillment of the obligation, even before the agreed period, if the object of the pledge is spoilt or its value is decreased, without any fault on his part, or the thing is demanded by third party, who is the owner of the thing and who has not consented to the pledge.

Article 861 – **Liabilities of Pawnee** - The creditor is liable:
1. To preserve the thing pledged, as if it is his own and to compensate for all losses and damages caused to the thing on account of his fault or negligence;
2. To handover the thing pledged, as soon as the liability is fully discharged, and upon payment of the expenses incurred by him with the preservation of the same thing.

Article 862 – **Rights of debtor in relation to the pledged object** - The debtor may demand that the creditor may offer surety towards the pledge, or that the thing is deposited with a third party, if the creditor used the thing pledged, in such a manner that it may be lost or deteriorated.

Article 863 – **Judicial sale of pledged object** - If, within the agreed period, the debtor does not effect the payment, or, there being no stipulated period, the debtor, upon the demand, fails to effect the payment, the creditor may have the thing sold through the Court with summons to the debtor.

Article 864 – **Extra judicial sale or adjudication of the pledged object by mutual consent** - It is not lawful for the creditor to retain the thing pledged, in payment of the debt, without valuation, or on the basis of his own valuation; but the parties may agree that the sale be done outside the Court, or that the creditor retains the pledged thing, as per valuation done by the assessors appointed by agreement between the parties.

Article 865 – **Release of the pledged object** - In any of the cases mentioned in the preceding two articles, the debtor may cause to suspend the sale, by offering payment within twenty four hours.

Article 866 –**Sale for a price different from the guaranteed debt** - If there is any excess in the sale proceeds, the same shall be handed over to the debtor; but if the proceeds are not sufficient for full payment to the creditor, the latter may sue the debtor for the balance.

Article 867 – **Adjustment of expenses against the proceeds of the thing pledged** - The proceeds arising from the thing pledged shall be adjusted towards expenses incurred with the same and accrued interest, and if no interest is payable, towards the principal amount.

Article 868 – **Stipulation of the setting-off of different interests** -The parties may stipulate reciprocal adjustments of their interests.

Article 869 – **Eviction of the pledged object upon sale** - The creditor is not liable for the eviction of the thing sold, unless there is deceitfulness on his part, or if he had expressly assumed warranty for restitution.

Article 870 – **Continuance of pledge** - The debtor is not entitled to demand from the creditor the delivery of pledged thing, on full or in part, without full payment of the debt, unless otherwise agreed.

Article 871 – **Presumed remission of pledge** - The return of thing pledged, presupposes redemption of the right of pledge, unless otherwise proved by the creditor.

Article 872 – **Effects of remission of pledge** - From the redemption of the pledge, there is no presumption of remission of the debt.

SECTION III
ASSIGNMENT OF INCOMES

Article 873 – **Consignment of incomes** – A contract of entrustment of income takes place when the debtor stipulates successive payment of debt and interest, or the principal only or interest only, by the application of income of certain and specific immovable assets.

Article 874 – **Modalities of assignment** - The contracting parties may agree:-1. That the assets, income of which is entrusted, continue in possession of the debtor.

2. That they pass to the possession of the creditor.

3. That they pass to the possession of a third party, by way of lease or by other title.

§ 1. The application of income, however, does not prevent in any of such cases that the debtor dispose by any means the assets income of which is under entrustment, but the rights of the creditors are always safeguarded.

§ 2. In case of clause 2 of this article, the creditor is equated to lessee, in order that the provisions of this Code relating to lease may apply, wherever possible.

Article 875 –External form of assignment - When the objects of this contract are immovable assets, it may be done only by way of public deed; and in order to produce legal effect against third parties, it should be duly registered.

Article 876 – **Duration of assignment of incomes** - The assignment of income may be created:- 1. For a specified number of years;

2. Without specific number of years, but till the payment of amount due, which shall be specified, and also of interest, if payable.

§ Sole paragraph: In case of no.2 of this article, the entrustment contract may be only by indicating in advance the amount which should be adjusted towards the principal, every year, whether the income is higher or lower than the amount.

Article 877 – **Duration of assignment** - Such contract comes to an end, when in case number 1 of the preceding article the time stipulated expires and in case number 2 of the said article by full payment of the principal with the interest due.

SECTION IV
PRIVILEGES IN CREDITS AND MORTGAGES[20]

SUB-SECTION I
PRIVILEGES IN CREDITS

DIVISION I
PRIVILEGES IN CREDITS IN GENERAL AND THEIR DIFFERENT TYPES

Article 878 – **Meaning of privilege in credit** – Privilegeincredit is a right, which the law grants to certain creditors of being paid in preference to the others, irrespective of the registration of their credits.

Article 879 – **Types of privileges** - There are two types of privileges in credit: mobiliary and immobile.

§ 1 – Mobiliary privileges are subdivided into:

1. Special, which cover only the value of certain and specific mobiliary assets.
2. General, which cover the value of all the mobiliary assets of the debtor.§ 2 – Immobile credits are always special.

DIVISION II
MOBILIARY PRIVILEGES

[20]*In the matter of mortgages we have a few provisions in the Transfer of Property Act, 1882, Sections 78 and 79 (Priority) and Sections 81 and 82 (Marshalling and Contributions).Also Contract Act, 1872, Secs.59 to 61 deal with Appropriation of payments.*

Article 880 – **Privileges on fruits of land** – The following credits constituting one class enjoy special mobiliary privilege on the fruits of land:

1. The credit arising from dues of “Foros” (fees for emphyteutic lease) “Census” or “shares”, in relation to last two years and current year;
2. Credit arising from debt towards rent, in relation to last year and current year;
3. The credit relating to seedlings or loan arising from work for agricultural purpose, relating only to the last year or only to the current year;

4. The credit arising from salary of the servants for agricultural work in relation to one year and debts of salary of workers of last three months;
5. The credit relating to premium of insurance relating to last year and current year.

§ 1 - In order that the privilege mentioned in No.1 & 2 of this article may be available, it is necessary that the respective encumbrance of emphyteusis, census, share or lease are registered, when they are subject to the registration.
§ 2 - Such privilege comes in force from the date of registration, without, however, being retrospective from the date of the credit, if the same is older.
§ 3 - In order that the privilege mentioned in no.3 and 4 of this article becomes available, it is necessary that there should be a declaration as to which land or properties such credits have been applied.

Article 881 – **Privileges on rent of buildings** – The following credits constituting one class enjoy special mobiliary privilege in the rent of buildings:

1. The credit arising from the debt of foros, census and shares relating to last two years and current year;
2. The credit relating to premium of insurance relating to last year and current year.

§ Sole paragraph: To the privilege, mentioned in clause no.1, the provisions of paragraph 1(one) of the preceding article is applicable.

Article 882 – **Third category of special mobiliary privileges** – The following credits, constituting one class, enjoy special mobiliary privilege:

1. The credit on account of charges towards transports, freight through vessel, transport by horses, on the value of the goods which have been transported.
2. The credit towards charges of a lodge or asylum, on the value of implements which the debtor has in the lodging;
3. The credit towards the price of any movables or machinery or on account of the cost of repair or either of them on the value of the same movables or machinery;
4. The credit on account of rent, or of any damages caused by the tenant or arising from any burden declared in a contract of tenancy of building, relating to last year, the current year, on the value of the movables existing in the same building;
5. The credit arising from premium of insurance of movables or merchandise, relating to last year and current year on the value of objects insured.

§ 1 - The privilege, referred to in clause 1 of this article comes to an end when the objects transported go out of control of the person who transported the goods.

§ 2 - That of no.2 ends, when the objects go out of the lodge.
§ 3 - That of no.3, when the movables or the machinery purchased or repaired, go out of hands of the debtor.

§ 4 - That of no.4, when the movables go out of the respective property.
§ 5 - That of no.5, when the movables or merchandise pass to the hands of the third party. § 6 - However, what is provided in preceding paragraph is not applicable, if it is proved that while taking goods there are malafides not only on the part of the debtor, but also of the persons to whom the said objects were successively transferred, when transfer is done for consideration.

Article 883 –**Fourth category of special mobiliary privileges** – The following credits, constituting one class, also enjoy special mobiliary privileges:

1. The credit towards the price of raw materials, on the value of the goods manufactured, even though they are not manufactured from the raw materials for which price was not

paid, provided that goods are of same kind as those which can be manufactured from such raw material;

2. The credit towards salary of the workmen manufacturing the goods, relating to last three months on the value of the same goods;

3. The credit for insurance premium, relating to last year and current year, on the value of goods insured.

§ 1 - In order that the privilege mentioned in clause 1 may arise, it is necessary that the goods remain in the possession of the debtor or, if they are not retained by the debtor, that they have been passed with malafides to the prejudice to the creditor, in terms of paragraph 6 of preceding article.

§ 2 - This privilege is extinguished if not enforced within one year.

Article 884 – **General mobiliary privileges** – The following credits enjoy general privilege over movables:

1. The credit on account of expenses for the funeral of the debtor, in accordance with his status and the local custom;
2. The credit towards the expenses of the mourning of the widow and children of the deceased, according to their status;
3. The credit towards expenditure with doctor and medicines towards the sickness of the debtor, relating to the last six months;
4. The credit for the maintenance of the debtor and of the persons of his family to whom he had duty to maintain, relating to the last six months;
5. The credit arising from pay, salaries, wages of the employees, servants and other family members and workers, relating to one year;
6. The credit arising from salaries or pay payable to teachers of science or arts who had thought the children of the deceased or the persons to whom he had the duty to provide education, relating to the last six months.

Article 885 – **Privileges of the Public Exchequer** - The credits on account of taxes due to the government enjoy mobiliary privilege on all the classes.

Article 886 - **Rights of Pawnee** - The creditor of any pawn has privilege to be paid of his debt by the price of the object or objects pawned, to the extent of the price of the same, and for the excess if any, he shall be treated as common creditor.

DIVISION III
IMMOBILE PRIVILEGES

Article 887 –**Immobile privileges** – The following are the privileged credits over the immovables of the debtor even when they are encumbered with a mortgage:-

1. The credit towards taxes payable to the government relating to last three years and on the value of the assets on which said taxes are levied;
2. The credits arising from expenditure incurred in the last three years for the maintenance of the properties, in relation to those to which these expenses were applied, but not exceeding 1/5th of value of the same properties.
3. The credits arising from costs of the proceedings in the Court, incurred in the common interest of the creditors, on the value of the property in relation to which they were made.

SUB-SECTION II
MORTGAGES[21] IN GENERAL

Article 888 – **Meaning of mortgages**[22] - Mortgage is a right, conferred upon certain creditors, of being paid from the value of certain immovable assets of the debtor, in preference to other creditors, where their credits are duly registered.

Article 889 –**Object of mortgage** - The object of mortgage can only be immobile assets which are not outside the commerce.

§ Sole paragraph - Whenever there is mortgage of the properties, encumbered with burdens, the mortgage shall cover only the value of the same properties, after deducting the amount of the encumbrances registered prior to the registration of the same mortgage.

21 *The Portuguese concept of 'hipoteca' (Article 888) is a contractual right, a kind of security or charge on immovable property and has similar effect as 'Mortgage' (section 58 onwards of Transfer of Property Act, 1882) which however is viewed as a form of transfer. It is different from hypothecation, a term which relates to movables and is not defined in our traditional statutes being a term of mercantile /banking usage, first mentioned in a statute in Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, under section 2(n). Some foreign codes like that of Quebec use the word 'Hypothecs"Section 2660 onwards, but there it covers both, movables and immovables. The Mexican Civil Code translates 'hipoteca' as mortgage (Articles 1407, 3039, 2893).*

22 *Mortgages (Arts.888 to 948) in Portuguese Law are viewed as a form of contract but in Indian Law they are viewed as a mode of transfer of property under Transfer of Property Act, 1882, Sections 58 to 104.*

Article 890 – **Immobile assets capable of being mortgaged** - Only the following may be mortgaged:-

1. The immovable assets, and those which are declared by law as such as mentioned under clause no.1 and 2 of article 375;
2. The usufruct of the same assets;
3. The "*dominium directum*" (legal/ nominal ownership of the owner) and "*dominium utile*" (equitable ownership /beneficial right to use and enjoy the land and its profits) of the properties granted under emphyteusis.

Article 891 – **Accessories to mortgage** - Mortgage includes:-

1. The natural accessions;
2. The improvements made at the cost of the debtor, save the right of the third party to the extent the value of the property has been increased on account of that.
3. The compensation payable by the insurers.
4. The compensation towards land acquisition or damages caused.

Article 892 – **Effects of mortgage** - Mortgage burdens the properties covered by the same and makes the properties liable directly and immediately for the fulfillment of the obligations which are secured by them, regardless who is the possessor of the same properties.

Article 893 –**Indivisibility of mortgage** - Mortgage by its nature is indivisible; it subsists in all and each of the properties mortgaged and in each of the parts over which it is constituted; save in a case where in the respective document creating the mortgage, the part of the property or properties, burdened thereby is specifically mentioned.

Article 894 – **Capacity to mortgage** - Only those who have power to alienate assets, may create mortgage and only those assets which may be alienated may be mortgaged.

§ Sole paragraph - The manner in which the mortgage of assets put under administration, can be created, is regulated, in respective titles of this Code.

Article 895 – **Who may mortgage** - The mortgage may be created by the debtor, or by any other person for the benefit of the debtor.

Article 896– Mortgage with condition precedent or condition subsequent - Whoever possesses a property conditionally, subject to a condition precedent or a condition subsequent, may create mortgage subject to same conditions.

§ Sole paragraph - An owner enjoying property subject to conditions, shall declare in the contract the nature of his right, if it is known to him, and if he fails to do, he shall incur a liability of the offence of cheating in addition to payment of compensation for losses and damages.

Article 897 – **Preference to creditors of inheritance** - The exclusive liabilities of the heir in no case creates mortgage over the assets of the inheritance to the detriment of the creditors of the deceased, even if they are common creditors.

§ Sole paragraph - The creditors of the deceased are given a period of one year from the date their knowledge of the death of the estate leaver, to put their claim for payment of their dues from the assets of inheritance, in preference to the creditors of the heirs, even though the creditors of the heirs have obtained mortgage or any other security over the same assets.

Article 898 – **Mortgage of possessory rights** - In order that the holder of the possessory title may create mortgage, to include the totality of the property under emphyteusis, there is no need of the consent of the holder of the direct dominion over the soil who, otherwise, retains all his rights.

Article 899 – **Duration of mortgage of possessory rights** -When the holder of the direct dominion of the soil achieves the consolidation of both the dominions, whichever may be the mode of acquisition, the mortgage, which burdens the possessory title follows the same property.

Article 900 – **Mortgage relating to credit with interest** - The mortgage concerning a credit on which interest accrues, includes interest not only of the year preceding summons for the execution as well as during the pendency of the execution, in order to have benefits of the mortgage independent of registration.

§ Sole paragraph - The interest, relating to previous years has the security of the mortgage as a distinct debt, if registered as such.

Article 901 – **Additional security for mortgage** - Where, for any reason, the mortgage becomes insufficient for the security of the liability contracted, the creditor may demand that the debtor furnish further security; failing which, the creditor may demand the full payment of the debt as if it has matured.

Article 902 – **Destruction of mortgaged property** - Where, the property given in mortgage is destroyed, and on that count the owner of the property is to receive any compensation, the rights of the creditor fall on the amount of such compensation, or on the property itself, when the building is re-erected at the cost of the one who was liable to compensate.

Article 903 – **Right of the mortgagor** - On default of the payment, the creditor may not appropriate the property mortgaged, except by bidding for it in auction or by the same being adjudicated to him; but the auction or adjudication shall always be held whatever may be the value of the property or of the debt secured by the mortgage, unless otherwise agreed upon by the creditor.

Article 904 – **Types of mortgages** - The mortgages may be statutory or by contract between the parties.

SUB-SECTION III
STATUTORY MORTGAGES

Article 905 – **Meaning of statutory mortgages** - Statutory mortgages result from operation of law, independently of the will of the parties and subsist by reason of the fact that the obligation for which they serve as security subsists.

Article 906 – **Credits secured by statutory mortgages** - Creditors, who have a right of statutory mortgage, as security for payment of their debts, are:-

1. The Government, the Municipal Corporations, public establishments, over the assets of the concerned responsible officials, and over the assets of their sureties, in accordance

with fiscal and administrative laws, for the payment of amounts found short or for which they are held responsible;

2. A minor, an absentee, an interdicted person, and in general, all the persons who are deprived of the administration of their assets, in the assets of their tutors, guardians or administrators for the payment of the amounts which they failed to utilize properly, which they failed to duly handover, or which they allowed to be lost on account of their negligence or fraud;
3. The woman married under dotal regime, in the properties of the husband for the payment of mobiliary dotal valuables and the stipulated pin money;
4. The surviving spouse in the properties of deceased spouse for the payment of the maintenance to which he or she has right;
5. The creditor for the maintenance, on the assets, the income of which was assigned to satisfy them, or on any other assets of the debtor when there is no such assignment.
6. The establishments of Property Credit for the payment of their debentures on the assets which the same debentures designate;
7. The co-heirs for the payment of the respective owelty money on the assets of the inheritance, which are subject to such payment;
8. The legatees of a specified amount or value or of periodical installments, on the assets subject to the burden of the specific legacy, for the payment of the same.

Article 907 – **Mortgages to secure privileged credits** - The credits, which have privilege of any type, have statutory mortgage whenever they are duly registered as credits on mortgage, and satisfying all the necessary requisites.

§ Sole paragraph - The credits registered in a manner indicated in this article, do not lose by reason of this fact, the privilege and may obtain, in the contest between creditors secured by mortgage, the payment which in marshalling the preferred credits could have attained.

Article 908 – **Statutory mortgages which cannot be renounced** - It is not lawful to renounce the mortgages to which mention is made in Article 906 no.1, 2 and 3; but they may be substituted or dispensed with in case it is expressly declared by law.

Article 909 – **Assets covered by statutory mortgages** – Statutory mortgages may be registered as against all the assets of the debtor, when the mortgaged immovables are not specified in the respective document indicating the properties; the debtor, however, may demand that the registration be confined to the assets necessary for the fulfillment of the obligation and he has the privilege to designate those which he desires for the purpose.

SUB-SECTION IV

VOLUNTARY MORTGAGES

Article 910 –Sources of voluntary mortgages – Voluntarymortgages arise from contract or disposition of the last will.

Article 911 – **Assets which can be subject to voluntary mortgages -** Such mortgages may only be in respect of certain and specific assets, and for a certain and specific amount, at least by approximation.

Article 912 – **External form** - Mortgages by will of parties, arising from contracts may be proved by public deed or public proceeding, or if, the amount secured by mortgage does not exceed 1,000$ (escudos), by private document, written and signed by the person who is creating mortgage, or if he does not know or is unable to write, by another, at his request, with signature of two witnesses, who write their names, and, in any event, the signatures are authenticated by the notary.

Article 913 – **Duration and conditions of mortgages** - Mortgage may be agreed for indefinite period, and on terms agreeable to the parties, save the effects, and the formalities and restrictions expressly laid down by law.

Article 914 – Successive mortgages over the same property – By reason of a mortgage already created, the debtor is not prevented from mortgaging the same property again, but in such case, if any of the debts is paid, the property remains mortgaged, not in part, but in totality.

Article 915 – **Mortgages over common assets** – A common property of various owners cannot be mortgaged in her totality, without consent of all; but, if it is divisible, each one may separately mortgage the share which he has in it, and only in respect of such part, the indivisibility of the mortgage operates.

SUB-SECTION V

MODE OF EFFECTING MORTGAGE

Article 916 – **Mode of effecting certain statutory mortgages** - The mortgage, referred to in article 906, clause no.1, is created by indication of the public servant, in accordance with fiscal and administrative laws.

§ Sole paragraph – Such mortgage may be replaced by deposit either in cash or by way of securities.

Article 917 – **Assets covered by mortgage effected under Art. 916(1)** - Where there is neither deposit of money done, nor assets are offered as security to the Government, Municipality, or to the establishments, referred to in clause no.1 of article 906, the mortgage may be registered on any assets of the debtor, save always the right which he has to demand that the security be reduced to the just limits, in terms of article 909.

Article 918 – **Statutory mortgage in favour of legally disabled** - The mortgage in favour of a minor, and other persons mentioned in no. 2 of article 906, is to be created by indication of the tutor, curator or administrator.

Article 919 – **Mode of constituting statutory mortgage in favour of legally disabled and absentees** - Once the indication, as referred to in the preceding article is made, the family council, taking into consideration the value of the movables and of the income, which the appointee is likely to collect, and retain in his hands, shall determine the value of the mortgage, and shall indicate the assets in relation to which the same is to be registered, and the period during which the registration is to be completed and to that effect the resolution is to be passed.

§ Sole paragraph - Wherever, no appointment of family council has been made, in accordance with the law, the powers of the family council shall be exercised to that extent, by the Court after hearing the General Curator.

Article 920 – **Judicial indication of assets to be mortgaged** - Where the family council has not made the indication of the assets, the appointee may do so within ten days and when the latter does not do it or makes it in incomplete manner, the judge shall indicate any assets, which he comes to know as belonging to the appointee, in order that the registration be made in relation to the same.

Article 921 – **Powers of family council** - It will be lawful for the family council, whenever found convenient, to exempt the tutor, the curator or the administrator appointed from creating mortgage or effecting registration only and other preliminary acts, in order to take up the administration immediately and comply with the said formalities later, as well to accept the mortgage of assets, the value of which is less than the value of movables and of the income, where the appointee does not have sufficient assets and the council does not think fit to appoint another person.

Article 922 – **Registration of mortgage** - The appointee shall be given notice, within the time fixed by the family council, to obtain the registration of the mortgage and produce before the Court the

respective certificate and, if he fails to do so and gives sufficient cause, which is accepted by the council, the judge shall impose fine of 10.000 (reis) to 100.000 (reis) and shall by virtue of his office direct the registration, be effected at the expense of the appointee.

Article 923 – **Appeals against deliberation of councils** -The appeals which are preferred by the appointees, or by the protutor and by the Curator General from the deliberations of the family council, or from the orders of the judge, in terms of the preceding articles shall not result in suspending the effects of the former or the latter.

Article 924 – **Partial cancellation of mortgage registration** - Where there is more than one ward or person under administration, the tutor or the administrator, while handing over the possession to each of them of the respective assets and obtaining the approval of the general

accounts, may apply to the family council permission for the cancellation of the registration of mortgage, for the amount corresponding to the liability reduced.

Article 925 – **Statutory mortgage, in favour of married woman** - The mortgage in favour of married woman, referred to in clause no.3 of article 906 is created on the basis of respective public deed of dotal regime.

§ Sole paragraph - When this mortgage has not been registered before the marriage, registration may be done during the marriage and even after its dissolution, without prejudice to the rights of third parties registered earlier.

Article 926 – **Extent of mortgage and additional security for the same** - The mortgage referred to in the preceding article, when consisting of assets, expressly designated for the security of the "dot", may be registered only in respect of such assets.

§ 1 - If, for any reason such mortgage has become ineffective, the wife, as well as those who granted the "dot", may apply that the same mortgage be reinforced.

§ 2 - In the absence of indication of the assets or failure to reinforce the mortgage, the same shall be registered in respect of any assets belonging to the husband, save the right which he has to reduce it to just limits.

Article 927 – **Reduction of mortgage** - The mortgage created by deed of dotal regime, if initially registered in respect of totality of the assets of the husband, may thereafter, at the instance of the husband be reduced proportionally, and the registration shall subsist only over as many assets as are sufficient for effective security, and other assets of the husband being exonerated.

Article 928 – **Nullity of renunciation of right to register** - The renunciation of the right to register or of any other right arising from the registration, if done by the wife in favour of the husband, or of third parties shall be void.

Article 929 – **Measures to secure the dowry of minors** - For the marriage of the minors, under dotal regime, no order of consent for the marriage shall be passed unless, besides the documents required by the law, the application is supported by provisional registration of the "dot" over the

immovable assets, if there are, and the mortgage for the security of movables of dot, if any. The clerk of the Court who issues the certificate, without complying with these requirements hereinbefore mentioned, shall lose the office, besides being liable to pay compensation for the losses and damages.

Article 930 –Conversion of provisional registration of mortgage into final registration - It is not lawful to grant application for delivery of the assets, in the case of marriage of minor, without satisfying that the provisional registration of the dot and the mortgage, if any, has been converted into final by way of annotation.

§ Sole paragraph - The tutor, who without order from the judge makes the above referred delivery of assets or income, shall be liable for the same, as if no delivery was made.

Article 931 – **Statutory mortgage in favour of surviving spouse** -The mortgage in favour of the widow, referred to under no.4 of article 906, is created on the strength of deed assuring the payment of pin money, pension or appanage.

Article 932 – **Statutory mortgage for the guarantee of maintenance liabilities** - The mortgage in favour of a person, who has right to get maintenance, referred to in no.5 of article 906 is created on the strength of the document evidencing the obligation to give the maintenance.§ Sole paragraph - There being assets specifically encumbered with the obligation to give the maintenance, the registration shall be made in respect of the same; but if there is no specification of the assets, or if designation is on the totality of the assets, the mortgage may be registered over all the immoveable assets of the debtor, or in relation to those which make up the full estate, are components of the total assets, without prejudice to the right to reduction in terms of article 909.

Article 933 – **Mortgage in favour of property credit establishments** - The mortgage mentioned in the documents of the establishment of the property credit, shall be registered in relation to the assets mentioned in those documents.

Article 934 – **Statutory mortgage for guarantee of payment of owelty money** - The mortgage mentioned in clause no.7 of article 906 is created on the strength of document of partition and shall be registered in relation to respective assets.

Article 935 – **Statutory mortgage in favour of legatees** - The mortgage mentioned in clause no.8 of article 906, is created on the basis of the testament, and shall be registered in relation to the assets subject to the payment of legacy.

Article 936 – **Making and registration of voluntary mortgage** - The mortgage out of the will of the parties shall be created by the respective contract or disposition of the last will and may be registered only in relation to the assets specifically indicated, or in the absence of the indications on any assets of debtor or of the testator, without prejudice to the right to seek reduction in accordance with article 909.

Article 937 – **Valuation of assets to be mortgaged** - Where there is doubt about the valuation of the assets constituting mortgage, the same may be valued previously; but such valuation shall not be done through the Court unless there is provisional registration of the mortgage.

SUB-SECTION VI

REDEMPTION OF MORTGAGES

Article 938 – **Redemption of mortgages -** Anyone who acquired one mortgaged property, and desires to have redemption of the mortgage or mortgages, may achieve the purpose, in any of the following manner:

1. By paying fully to the mortgage creditors the debts, for which the aforesaid property was mortgaged;
2. By depositing the price of the auction of the said property, when acquisition of the same has been made in public auction;
3. By declaring in the Court that he is ready to give to the creditors, for payment of the debts, the amount upto which he got the property or the sum which he estimates, where the acquisition has not been made for consideration.

§ Sole paragraph - The provisions of the article are applicable to case foreseen in article 1484, paragraph 1.

Article 939 – **Notification of registered mortgage creditors** - In any of the cases of the preceding article, the new possessor of the property shall apply for summons to all registered mortgage creditors,

so that they may come to the court and receive part of the price which belongs to them, and to have the property finally adjudicated as free from burden of mortgage or mortgages to which it was subject.

Article 940 – **Redemption of mortgage guarantees installments** - Where the obligation secured by mortgage is periodical installments, not being those which constitute real ones on the property, the redemption takes place by depositing capital corresponding to such installments, done in coins, securities or shares of banks legally constituted.

§ 1 - The capital deposited reverts to the benefit of the depositor, or whoever represents him as soon as the obligation which gave rise to the deposit is extinct.

§ 2 - Until the deposit lasts, the creditor receives interest or dividends of the titles deposited, choice of which is left to the discretion of the depositor, securing to the creditor the realization of the installments.

Article 941 – **Auction sought by third parties** - Any of the interested parties may apply that the property be put in auction for the highest price obtained above the price offered by the new possessor, or as per his estimate in the following cases:-

1. When the new possessor does not redeem the mortgage in the manner established in article 938.
2. When, the new possessor proposes to redeem the mortgage, in the manner established as no.3 of article 938, but the amount offered by him, for the payment to the creditors was less than the computation of privileged creditors and of burdens registered before the mortgages to which the property was subject.

Article 942 – **Auction insufficient for covering the guaranteed credit** - Where, in the case of the preceding article, the value, referred to therein, does not cover the bid, the rights of the interested parties shall be exercised over the same value, save any action against the original debtor for the balance.

§ Sole paragraph - In respect of the part which is not covered by the proceeds of the mortgage, they are considered as common creditors.

Article 943 – **Waiver of auction by the applicant** - Even though the creditor who applied for auction of the property, later on withdraws therefrom, nevertheless the auction shall not cease to follow its regular course, when any other creditors oppose the withdrawal.

Article 944 – **Right of mortgage creditors who do not appear** - The right of the creditors who being summoned do not put appearance in the Court, shall be held ex-parte, and the amount payable to them, as per the judgment, shall be invested.

Article 945 – **Preservation of rights of absentee creditors not fully paid** - Where, however, the said sum is not sufficient for complete payment of the principal and interest, due to the same creditors, they shall retain all their rights, as common creditors, against the debtor, in relation to amount not paid.

Article 946 – **Complete cancellation of encumbrance of mortgage property** - Once the payment to all the creditors who came to the Court is satisfied and the deposit having been made in relation to those who are set ex-parte, the property shall be declared free from mortgage, and all the respective registrations shall be cancelled.

Article 947 – **Compulsory nature of the notice to creditors** - The judgement, however, shall not be pronounced without satisfying that the service was effected on all the creditors based on the certificate issued by the Registrar.

Article 948 – **Rights of mortgage creditors left out** - The creditor, who having his credit duly registered, by any reason, is not included in the certificate issued by the registrar, or having been

included, has not been served, does not lose his rights as mortgaged creditor, irrespective of any judgment passed in relation to the other creditors.

SUB-SECTION VII

REGISTRATION[23]

DIVISION I

REGISTRATION IN GENERAL

Article 949 - Acts subject to registration - The following are subject to registration:

1. Real rights over immovable things;
2. Encumbrances over immovable things;
3. Real actions (suits) over specified immobile assets and any others aimed at securing their ownership and possession; suits for nullity of registration or its cancellation; and judgments pronounced and become final in respect of any of these suits;
4. Transfers of immovable property by gratuitous or onerous title (i.e. without consideration or for consideration, respectively) and all transfers of immobile assets or rights;
5. Mere possession.

§ 1 - For the purposes of Clause 1 of this article, real rights are only ownership or immovable property and the immobile imperfect forms of property specified in Article 2187 of the Civil Code; but the registration of ownership and that of visible easements, the external signs of which are permanent, shall be optional.

§ 2 - For the purposes of Clause 2 of this Article only the following are considered as real encumbrances;

a) Mortgages;
b) Attachment in execution and attachment before judgment over immobile assets or mortgage receivables;
c) Attachment of mortgage receivables;

23*Articles 949 to 1004 – Registration: The subject of registration, essentially of property rights, was dealt with in a summary and rudimentary manner in Arts.949 to 1004 of the Civil Code, which was later improved by various Property Registration Codes ("**Código do Registo Predial**"), viz. Code of Property Registration, 1952 Decree No.38804 dated 27/06/1952 vide Government Gazette Series I No.32 dated 07/07/1952 and thereafter by Code of Property Registration, 1959 Decree Law No.42565 dated 08/10/1959, which was extended to Goa, Daman and Diu by Portaria No.18751 dated 29/09/1961 of the Oversees Ministry, Art.12 of which revokes the Decree No.38804 of 27/06/1952, Government Gazette Series I, No.47 dated 28/11/1961. Arts.949 to 1004 is a mere 55 articles, the Code of 1952 had 225 articles, while the Code of 1959 has 292 articles. Since the 1959 Code came into force, only three weeks before Liberation, the corresponding provisions of the 1952 Code which was in force for a longer period are also given.*

d) Dowry;
e) Lease for more than one year, if there is an advance towards rent, or for more than four if there is no advance;
f) Consignment of income towards payment of a specified amount or for specified number of years;
g) Award in respect of incomes.

§ 3 - In the mortgage of factories, besides the buildings, open land and appurtenances considered immovable, machinery and movables meant for its operations, listed in the document of mortgage and which its owners or possessors cannot alienate, encumber or remove from the respective buildings without the written permission of the creditor, on the penalty and liability for a receiver in breach of trust, shall also be included.

§ 4 - The registration of military easements shall continue to be regulated by the law of 24th May, 1902 with the alterations introduced by subsequent legislations.

- See Arts.2 and 3 of the Code of Property Registration, 1959.
- Earlier Art.95 of the Code of Property Registration, 1952.

Article 950 - Territorial Jurisdiction of Land Registration Office for effecting registrations - Registration should be made in the office of the district where the property to which it refers is the property situated and not in another on pain of nullity.

§ Sole paragraph - If the property is situated in the territorial limits of more than one office the registration shall be effected in each one of them.

- See Art.27 of the Code of Property Registration, 1959.
- Earlier Art.97 of the Code of Property Registration, 1952.

Article 951 - Consequences of absence of registration - The absence of registration of title documents, and of rights subject to the same, does not prevent that they be relied upon in adjudication between the parties themselves or their heirs or representatives; but with respect to third persons the effects of such titles and rights shall begin only from the date of registration.§ Sole paragraph - The transfer of immovable property which is indeterminate is excepted from the provisions of the last part of this Article.

- See Arts.6 and 7 of the Code of Property Registration, 1959.
- Earlier Art.188 of the Code of Property Registration, 1952.

Article 952 - Effectiveness of possession apart from registration - Possession may be pleaded in adjudication as proof of ownership and protected by possessory means, independently of registration, excepting the provision of Arts.524, 525 and 526(1).

- See Art.6 of the Code of Property Registration, 1959.
- Earlier Art.188 - exception no.3 of the Code of Property Registration, 1952.

Article 953 - Juridical or Civil Possession - The inscription in registration records of a title of transfer of property without any condition precedent, involves, independently of any other formality, the transfer of possession to the person in whose favour such inscription was made.

- See Art.8 of the Code of Property Registration, 1959.
- Earlier Art.181 of the Code of Property Registration, 1952.

Article 954 - Judicial delivery and possession of immobile assets - The judicial delivery and possession of immobile assets, not excepted by the sole paragraph of Art.951 may, in no case take place, on pain of nullity, unless the juridical act on which the application is founded has been registered.

Article 955 - Transfer of unspecified assets, when found specified later - The transactions resulting in modification or transfer of property, carried out by any person in whose favour the transfer of the same has been done, in the manner indicated in the sole paragraph of Article 951, or by his heirs or representatives, are null and void, in relation to third parties if on the assets being found specified, the transfer has not been registered.

- See Art.188 of the Code of Property Registration, 1952.

Article 956 - Order of Priority of Inscriptions in Land Registration Office - The priority of inscriptions is determined by the dates on which they are made and all those which are applied for on the same day are deemed to have been effected on the same date.

§ 1. For different inscriptions of the same type and of the same date the priority shall be determined by the serial number which they bear; where the inscriptions are of the same date but of different types the priority amongst them shall be regulated by the order in which they were presented for registration as may be recorded in the inward register.

§ 2. From the provisions of the proceeding paragraph are excepted the inscriptions of mortgage competing among themselves to which if they are registered on the same date the provisions of Art.1017 apply.

- See Arts.76 and 77 of the Code of Property Registration, 1959.

Article 957 - Books to be maintained in the Registration Office - In order to effect the Registration there should be in each Registration Office:-

1. Daily Book;
2. Register of descriptions;
3. Register of inscriptions;
4. Register of mortgages;
5. Register of Transfers.

§ 1. The Register indicated at serial no. 1 is meant for noting the registrations applied for on each day, which shall, be made summarily in the order of which they are presented.
§ 2. The Register indicated at serial no. 2 is meant for describing properties submitted for registration for the first time, and for indicating the additions, divisions or other modifications of the said properties which take place subsequently.
§ 3. The Register indicated at serial no. 3 is meant for inscribing all the transactions mentioned in Art. 955 with the exceptions of Mortgages and Transfers.
§ 4. The Register indicated at serial no. 4 is meant only for the Inscriptions of Mortgages. § 5. The Register indicated at serial no. 5 is meant for Registration of Transfers of the whole or any part of each of the properties described in the appropriate Register, whatever may be the means admissible in law for them to operate.
§ 6. The link between the description made in the register serial no. 2 with the Mortgage or other inscriptions and with the Transfers, and vice-versa shall be effected by means of summary notings made on the side of each of these registers, in the manner laid down in the respective regulations.

- See Arts.38 to 44 of the Code of Property Registration, 1959.
- Earlier Arts.56 to 71 of the Code of Property Registration, 1952.

Article 958 - Mode of making registration entries - Registration entries shall be drawn by extract in the appropriate book, in the sequence in which they are applied for, in accordance with the preceding article.

- See Art.75 of the Code of Property Registration, 1959.

Article 959 - Extract of Property Description - An extract of property description shall contain the following:-

1. A serial number;
2. The date on which it was made with year, month and day;
3. The name, type and location and the boundaries and measurements if any of the property to which the registration refers;
4. The valuation of the property if made and in the absence of the same, the market value, annual rent or output which the person seeking registration attributes to the said property, by declaring the same in writing or which can be gathered from the title deed or document presented;
5. The number of the lot of documents of the respective year in which the title deed or declaration on the bases of which the inscription is made, has been kept or the description of the office or public archive where the document lies;

- See Art.145 of the Code of Property Registration, 1959.
- Earlier Art.128 and 129 of the Code of Property Registration, 1952.

Article 960 - Extract of Inscriptions - The extract relating to property inscription besides a serial number and date with year, month and day, both of the title document, as well as of its presentation for registration shall contain.

§ 1. The name, status, profession and residence:

1. Of the owner in the case of mortgages encumbrances on immovable property rights and possession;
2. Of the transferor in the documents of transfer;
3. Of the defendant in suits and judgments;
4. Of the judgment debtor in the attachments.

§ 2. The name, status, profession and residence:

1.Of the person's in whose favour the mortgages or encumbrances on rights to immovable property are effected, or the names of the dominant heritage in the case of easements.

2. Of the person's in whose favour the transfer is made in the case of transfers of immovable assets.

3. Of the plaintiff in suits and judgments.

4. Of the execution creditor in attachments.

§ 3. The amount secured by mortgage by which the transfer was made or for the payment of which the attachment was made.

§ 4. The conditions attached to the mortgage, the transfer or encumbrance on immovable rights.§ 5. The number of the lot of documents of the respective year in which the title or declaration on the bases of which the inscription is made, has been kept or the description of the office or public archive where the document lies.

- See Art.178 of the Code of Property Registration, 1959.
- Earlier Arts.144, 145 and 146 of the Code of Property Registration, 1952.

Article 961 - Responsibilities of the Land Registrar - The Land Registrar who omits any of the declarations mentioned in Art. 959 shall be suspended for a period of one year besides incurring liability for the losses and damages resulting from the said omissions.

- See Arts.52 and 82 of the Code of Property Registration, 1952.

Article 962 - Responsibility of the Land Registrar for omissions in the registration extract -Out of the averments mentioned in Article 960, the Land Registrar is bound to make only those which are recorded in the registered title document. When any of them is omitted the action to be taken against the Land Registrar shall be graded according to the gravity of the omission and by the extent of fault or fraud which has taken place therein.

- See Arts.52 and 82 of the Code of Property Registration, 1952.

Article 963 - Certificate of Registration - The Land Registrar shall handover to the person who has applied for registration a certificate of the same, checked with the original and signed, which will be accepted in Court as proof that the registration has been made.

§ Sole paragraph - In the case of fortuitous destruction or misplacing of the certificate the creditor may apply for the certificate which will be issued to him by the Registrar and shall have the same legal force as the certificate which has been destroyed or misplaced.

Article 964 - Efficacy of registration of mortgages effected in a foreign country - The mortgages contracted in foreign countries on property situated in the kingdom, shall have effect only from the day in which they are registered in the respective Land Registration offices within the country.

Article 965 - Duration of the effectiveness of registration - The effect of registration subsists so long as it is not cancelled.

DIVISION II

PROVISIONAL REGISTRATION

Article 966 - Provisional Registration - There shall be a Provisional Registration which shall be drawn in the same book in which the final registration is entered.

- See Art.99 of the Code of Property Registration, 1952.

Article 967 - Transactions subject to provisional registration - The following may be registered provisionally:-

1. All contractual mortgages, and the statutory mortgages mentioned in Clauses 3 and 6 of Article 906;
2. Encumbrances on immovable property;
3. Transfers resulting from contract;
4. Suits;
5. In general, all the acts mentioned in Article 949, for which the Registrar refuses final registration, in terms of Art. 981.

- See Arts.115 and 116 and of the Code of Property Registration, 1952.
- Article 967(4) – See Arts.117, 118 and 119 of the Code of Property Registration, 1952.
- Article 967(5) – See Art.120 of the Code of Property Registration, 1952.

Article 968 - Discretionary nature of provisional registration - Provisional Registration is compulsory for dowries, mortgages pursuant to dowries and maintenance in the case of Article 929 and for suits. In all other cases it is optional.

Article 969 - Form of provisional registration - Provisional Registration mentioned in Sub-clause 1, 2 and 3 of Art. 967 excepting that of mortgage dealt with under Art. 906(3) may be made on the face of a plain declaration, written and signed by the possessor of the property, to which it relates, the writing and the signature been attested by the notary. If the former does not know or cannot write, the declaration shall be written by a 3rd person at the request of the declarant and signed by the same and by two witnesses, in the presence of the said declarant and of a notary who certifies the same and which attests the signature in the said document.

The said declarations shall be made separately as may be required to enable the drawing up of the registration of inscription and also that of the description, if it is still not there.

§ 1 - Provisional Registration mentioned in Sub-clause 4 shall be effected on the face of a certificate which proves that the suit in question has been filed in a trial court, the presenter being also bound at the same time to furnish in writing any declarations necessary for registration; or shall be made on the face of a certificate which proves the dismissal of the proceedings.

§ 2 - Provisional Registration mentioned under no.5 shall be made on the face of a declaration which refuses final registration, if the person who has applied for the latter requests for the same.

- See Art.116 of the Code of Property Registration, 1952.

Article 970 - Conversion of provisional registration into final registration - Provisional Registration of juridical facts referred to in Art. 967 clauses 1, 2, 3 and 5 shall be converted into final upon the presentation and endorsement of Title document sufficient for registration and relating to the transaction with which the registration is concerned and that of the suits, in the same way will be converted into final by endorsement of the respective judgment which has become final.

- See Arts.115(1) and 150 of the Code of Property Registration, 1952.

Article 971 - Provisional registration of dowries - Provisional Registration of dowries, mortgages relating to dowries and maintenance, can only be made on the face of extracts or

certificates of the respective deeds of ante-nuptial contracts and shall be converted into final upon entry of the marriage certificate.

- See Art.118 of the Code of Property Registration, 1952.

Article 972 - How provisional registration has to be done - Provisional Registration is governed by the provisions laid down in the preceding division as to the manner in which final registration is to be made.

- See Arts.100, 101 and 106 to 127 of the Code of Property Registration, 1952.

Article 973 - Order of priority of provisional registration converted into final - Provisional registration when converted into final maintains the order of priority which it had as Provisional Registration.

- See Art.182 of the Code of Property Registration, 1952.

Article 974 - Lapse of provisional registration – Provisional registration which within a period of one year from its date is not endorsed as final or is not renewed as provisional shall stand extinguished.

§ Sole paragraph – Provisional Registration mentioned in Art.976 is excepted.

- See Arts.185 and 116(2) of the Code of Property Registration, 1952.

Article 975 - Renewal of provisional registration of suits - Provisional Registration of suits may be renewed by proving through certificate that the proceedings are still pending.

§ Sole paragraph - The said registration may also be renewed on the basis of certificate proving the annulment of the proceeding; but in this case it will lapse unless fresh proceedings are filed within a period of 60 days.

- See Arts.185(1) and 116 of the Code of Property Registration, 1952.

Article 976 -Provisional registration of certain mortgages - Provisional Registration of mortgages stipulated for the payment of expenses for construction or repair or improvement of buildings, clearance of land, plantation, drying or draining of open land is also permissible provided the immovables to which the said expenses apply the amount of the same and the time limit for the performance of the contract are specified.

§ Sole paragraph - This registration shall be made on the face of the document of the respective contract and may be converted into final till the end of the stipulated period and even one month thereafter, based on the endorsement of the document proving that the contract has been performed by the contractor and the amount agreed and the part there of is still due to him. In the last case the amount due shall he declared and the registration shall be effective only in respect of the same.

Article 977 - Renewal of provisional registration of dowries - Provisional registration mentioned in Art.971 may be renewed unlimited number of times. So long as it is not made final.

DIVISION III
DOCUMENTS ADMISSIBLE FOR REGISTRATION

Article 978 - Documents admissible for final registration - For final registration only the following shall be admissible;

1. Certified copies of Judgments;
2. Records of compromise;
3. Certificates of the decisions of the family council or orders of the court in matter within its powers;
4. Deeds, Wills or any other authentic document;
5. Documents from authorized property credit institutions;

6. Documents of private contracts of value not exceeding 1,000$ (one thousand escudos) in the cases permitted under the code and possessing the requirements laid down therein; 7. Contracts of lease of immovable properties for more that four years or for more than one, if there has been advance payment of rent.

- See Arts.46 and 75 of the Portuguese Civil Procedure Code, 1939 and Arts.92 and 99 to 130 of the Code of Property Registration, 1959.

Article 979 - **Registration of mortgages made in foreign countries** - Registration of mortgages contracted in foreign countries may be effected within the kingdom only upon the respective document being attested in due form of law.

- See Art.96 of the Code of Property Registration, 1959.

Article 980 - **Pre-conditions for Registration** - The documents mentioned in Art.978 shall not be accepted for registration unless it is shown that the dues to the State Exchequer arising from the said transaction are paid or secured; and if it is a mortgage debt with stipulation of interest unless the necessary statement has been drawn.

§ Sole paragraph - The Land Registrar who admits the same, shall be suspended for one year and if any of the interested parties challenges a judgment declaring the registration null and void, he shall be liable for the losses and damages.

- See Art.126 of the Code of Property Registration, 1952.

Article 981 - **Refusal of final registration** - The Land Registrar may refuse to accept for final registration documents which are manifestly null, void or illegal and in the case of private documents those in which the signature are not attested when they are found doubtful. In such case after stating the reason for refusal the Land Registrar shall effect the registration but provisionally.

§ 1 - If the refusal arises from the attestation of signature, the registration shall be converted into final upon presentation of the document duly attested, or accompanied by proof by the authenticity of the signature.

§ 2 - If the refusal is based on nullity or illegality of the document the issue shall be decided by the judicial authority after hearing the Public Ministry, and the registration shall become final when the decision which declares it as such, has become final and is presented to the Land Registrar.

- See Art.241 of the Code of Property Registration, 1959.
- Earlier Art.164 of the Code of Property Registration, 1952.

Article 982 - **Liability of the Land Registrar for refusal** - The Land Registrar incurs no liability for refusal, even if the reason for the same is found not to be sustainable, unless it is proved that there was fraud in his conduct.

- See Art.169 of the Code of Property Registration, 1952.

Article 983 - **Duplicate of the document to be registered** - The document which has to be registered shall be presented in duplicate to the Registrar who shall check the perfect

correspondence; unless the original or authentic copy of the said document is permanently found in any archive or judicial office.

- See Art.127 of the Code of Property Registration, 1952.

Article 984 - **Fake registration** - Whoever registers any of the facts mentioned in Article 949 without the same having juridical existence, shall be responsible for losses and damages, and when he does the same fraudulently shall incur the penalties prescribed for the crime of fraud.

DIVISION IV

PUBLICITY OF REGISTRATION AND RESPONSIBILITY OF THE LAND REGISTRARS

Article 985 - **Publicity of registration and responsibility of the Land Registrars** - The Land Registrars are bound to allow inspection of the registers to any person who so desires and to issue positive or negative certificates, required from them, both of the descriptions as well as of the inscriptions and of the notings existing in respect of any properties situated in the area of the said registration offices.

- See Art.259 of the Code of Property Registration, 1959.
- Earlier Art.86 of the Code of Property Registration, 1952.

Article 986 - **Responsibility of the Land Registrars** - The Land Registrars are responsible without prejudice to the criminal penalties that they may incur for the losses and damages which they may occasion:

1. If they refuse or delay the acceptance of documents which are presented to them for registration:
2. If they do not do the descriptions and the inscriptions required in due form of law; 3. If they refuse to issue promptly the certificates requested from them;
4. For the omissions made by them in the said certificates.

§ Sole paragraph - In the case of nos.1 and 3 the interested parties shall immediately get verified on the declaration of two witnesses the factum of refusal in a written record drawn by any notary or judicial clerk, to serve them as proof in the necessary proceeding.

- See Arts.275 and 276 of Code of Property Registration, 1959.
- Earlier Art.52 of the Code of Property Registration, 1952.

Article 987 - **Special regulation for property registration** - The organization of Land Registration offices, the rights and other duties of the Land Registrars shall be laid down by special regulation.

- This was eventually regulated by the 1952 and 1959 Codes.
- See Arts.1 to 71 of the Code of Property Registration, 1959.
- Earlier Arts.1 to 16 of the Code of Property Registration, 1952.

DIVISION V
CANCELLATION OF PROVISIONAL AND FINAL REGISTRATION

Article 988 - **Cancellation of registration** - The registrations of Inscriptions may be cancelled by concerned persons interested in them or by provision of law.

- **Cancellation** - See Arts.123 to 130 of the Code of Property Registration, 1959.
- Arts.988 to 999 - Earlier Arts.122(i) & (ii) and 123 of the Code of Property Registration, 1952.

Article 989 - **Meaning of cancellation** - Cancellation consists in a declaration made by the Land Registrar in the margin of the respective registration entry as to how the same is cancelled, in full or in part.

Article 990 - **Voluntary cancellation of provisional registration** - If the registration is provisional it may be cancelled on production of an authentic or authenticated declaration of the interested parties being:

1. Of mortgage;
2. Of encumbrance on immovable;
3. Of transfer as a result of contract.

§ 1 - The provisional registration for a suit may be cancelled on the face of the document which proves the dismissal or withdrawal of the said suit or dismissal on maintainability, except in the case of the sole paragraph of Article 975.

§ 2 - Provisional Registration by reason of refusal of final registration may be cancelled on the face of the final decision of the judicial authority confirming the grounds which the Land Registrar had for the said refusal.

Article 991 - **Statutory cancellation of provisional Land Registration** - Provisional Registration shall be cancelled by operation of law when the period prescribed for renewing the same or converting it into permanent has expired without the said renewal or conversion having been duly applied for.

Article 992 - **Voluntary cancellation of final registration** - The cancellation of final registration may be applied by the person in whose favour it was made or even by the person against whom it was made or even by the one who is interested in it upon their proving by authentic or authenticated document the complete extinction of the obligation or the encumbrance or ceasing of the fact which occasioned the registration.

Article 993 - **Cancellation of mortgage concerning legally disabled person** - Parents as administrators of the assets of their children, or guardians of minors and interdicted persons and any other administrators even if entitled to receive or give discharge may only consent to the cancellation of the inscription relating to any mortgage of their wards, or persons subject to registration, in case of effective payment.

Article 994 - **Cancellation requested on the basis of prescription** - If the cancellation of final registration is sought on the basis of the prescription it may only be done on the face of a final judgment declaring as prescribed the rights of a person benefiting from the registration.

Article 995 - **Cancellation of defective registration** - Whenever a registration is falsely or unduly done it's cancellation shall be carried out by means of a suit filed for this purpose.

Article 996 – **Court having jurisdiction for a suit under Article 995** - Court with jurisdiction for a suit under Article 995 is the court within whose jurisdiction the Land Registration office where the registration has been done is situated.

- This is now governed by Art.85 of Portuguese Civil Procedure Code of 1939.

Article 997 - **Cancellation of defective inscriptions made in various Land Registration offices** - If the inscription arising from the same document has been made in various offices the suit shall be filed in the jurisdiction where the major part of the encumbrance part of the assets are situated, which will be where the highest direct contribution is paid in respect of the assets or in the jurisdiction where the person who effected the registration is domiciled, if some of the assets are located there.

Article 998 - **Requirements for valid cancellation** - Cancellation of final registration is null and void if any of the following requirements is missing:-

1. Specific declaration by the concerned Land Register that he recognizes the identity of the person who applies for cancellation, or the declaration of two witnesses who identify the same;
2. Verification of the right which this person has for applying, based on the document on which the petition is founded;
3. Statement of the names of all interested parties in the noting, and mentioning of the date of the cancelled registration and of its nature.

Article 999 - **Void Cancellation** - Cancellation shall be declared null and void:

1. When the document on the basis of which it has been made is adjudicated null and void or false;
2. When there is an error which cannot be amended or a fraud is proved; but in such cases nullity shall prejudice third parties only if there is already pending in court a suit which has been duly registered.

DIVISION VI
REGISTRATION OF PAST MORTGAGES

Article 1000 – **Registration of prior mortgages** - The mortgages, which by legislation prior to this Code were not subject to registration, or were so subject in relation to certain and specific assets; and still subsist at the time of promulgation of the same Code, are admissible for registration in terms of the following articles.

Article 1001 – **Assets covered by registration** - Where the said mortgages are special, they may only be registered in respect of the assets over which they have been specifically created; if they are general in nature, the mortgage may be registered in respect of any assets of the debtor, save the right of the debtor to seek reduction of the same.

Article 1002 – **Right to apply for certain statutory mortgages** - The mortgage meant to secure the responsibility of the tutor, curator or administrator, after determining its value, in terms of article 919, may be directed to be registered by the curator, by members of the family council, if any, or relatives of the minor or the interdicted person, save for what is provided in article 984.

Article 1003 – **Right to apply for registration of mortgages to the benefit of married woman**- The mortgage meant to secure restitution of dowry and other own assets of the married woman, or payment of pension or appanages, may be registered by the wife, independently of the consent of the husband, or by any of her relatives, or even by any stranger, if he is the endower of the dot, save for what Is provided in article 984.

Article 1004 – **Provisions applicable to registrations referred to in preceding provisions** -These registrations are governed by the provisions of this subsection to the extent such provisions are applicable.

SUB-SECTION VIII
CONTEST BETWEEN PRIVILEGED CREDITS AND CREDITS SECURED BY MORTGAGE AND ORDER OF PAYMENT OF THE SAME[24]

Article 1005 – **Preferential rights amongst competing creditors** - In the matter of payment to the creditors by the price realized from the assets of the debtor, there cannot be any preference, which is not founded :-

1. On Privileged credits
2. On mortgage.

24***Arts.1005-1029 - Privileged credits:*** *In the matter of mortgages we have a few provisions in the Transfer of Property Act, 1882, Sections 78 and 79 (Priority) and Sections 81 and 82 (Marshalling and Contributions). Also Contract Act, 1872, Secs.59 to 61 deal with Appropriation of payments.*

 See Arts.1134(5), 1194(2) & 1357 of Portuguese Civil Procedure Code of 1939.

Article 1006 – **Comparative efficacy of privileged credits and mortgages** – Privileged credits give a right of preference, independent of registration. Mortgages give right of preference only if registered.

DIVISION I
COMPETING CLAIM OF MOBILIARY CREDITS

Article 1007 – **Competing claim between general and special privileged credits over mobiliary assets** - Creditors, who have special privilege against certain and specific movables, have the preference over those who have general privilege over all the movables of the debtor.

Article 1008 – **Preference to mobiliary privilege of credits of the State Exchequer** -The privilege of the Government on the mobiliary assets referred to in article 885, has preference over all other privileged creditors, special or general.

Article 1009 – **Concurrence amongst special mobiliary privileges** - In ranking amongst special mobiliary privileges of the same class, the preference is regulated by the order, by which each of the creditors is numbered in their respective categories.

§ Sole paragraph: Similar rule is followed in the matter of contest amongst general mobiliary credits inter se.

Article 1010 – **Priority amongst special privileges under the same number** - When there are competing creditors all of whom have special mobiliary credits, over the same objects, and their respective credits having also the same numeration, the payment shall be made by distributing rateably amongst them the value of the object or objects over which the privileges lie.

§ Sole paragraph: The same rule applies to the general preference on mobiliaries of the same category with same numbering.

Article 1011 – **First preference in privileged credits** - In all contests amongst privileged creditors whatever be the nature, the preference falls over the net realization, after paying all the costs, transport expenses and any other expenses, which are inherent to the liquidation which is done for the payment to the creditors.

DIVISION II

CONCURRENCE OF IMMOBILE CREDITS

Article 1012 – **Preference over immobile assets** - From the price of immobile assets of the debtor the following creditors shall be preferably paid:-

1. The creditors who have immobile privilege.
2. The creditors who have registered mortgage.

Article 1013 – **Concurrence amongst immobile privileges** - In ranking immobile privileges inter se, the credits are graded as per the order of their numbering in this Code.

Article 1014 – **Priority amongst credits mentioned in Art. 887(2)** - Where there are competing creditors for expenses made for conservation of the thing, in accordance with clause no.2 of article 887, where the total amount of credits of all exceed the value of one fifth part, referred to in the aforesaid number, the amount, which is to be paid for such expenses, shall be distributed amongst all, in due proportion, and for the balance they are considered unsecured creditors.

Article 1015 – **When there is concurrence amongst mortgages** - In the matter of mortgages there cannot be any competition, except amongst those which fall over the same property, irrespective whether the debtor has more assets, free or burdened.

Article 1016 – **Insufficiency of the product of mortgage** - The creditor or creditors, who, having competed in accordance with preceding article, were not paid in full, or part of their debts, out of the proceeds of the mortgaged property, become unsecured creditors in respect of the amount which was not reimbursed, even though the debtor has other unencumbered assets.

Article 1017 – **Ranking amongst mortgages** - In the contest between mortgages inter se, payment shall be made in order of priority of registration and if the date of registration is the same, the payment will be done pro-rata.

Article 1018 – **Value of unregistered mortgages** - Mortgages, even though legally created, not being registered, shall be solely admitted for payment in the same manner as unsecured creditors of the debtor, whichever may be the source of the debts, or the document in support of the same.

Article 1019 – **Grading of past mortgages** - Mortgages referred to in article 1000, may be admitted to the contest independent of registration, within the period of one year, from the date of the promulgation of this Code and if they are registered within the same period, they have preference in the competition above all the mortgages created after that date, even though they might have been registered before the former.

§ Sole paragraph: The ranking of the mortgages, referred in article 1000, inter se, shall be regulated by the legislation to which they were subject before the promulgation of this Code.

Article 1020 – **Grading amongst past mortgages registered beyond time** - Mortgages mentioned in article 1000, which have been finally registered, beyond the period prescribed in the preceding article, may compete with any other in the manner declared in article 1017.

Article 1021 – **Privileges which subsist after alienation of property** - Auction, adjudication or transmission of any property, effected in any manner, do not affect the special immobile or mobiliary privileges which by this time have been created over fruits, rents, or moveables of the property auctioned, adjudicated or transferred.

Article 1022 – **Real encumbrances which subsist after alienation of property** -The encumbrances on property, registered prior to that of any mortgage, attachment, seizure, or transfer mentioned in the previous article, follows the property alienated and from its total value, the amount of the said encumbrances shall be deducted.

- This is also reproduced in Art.907 of Portuguese Civil Procedure Code of 1939.

Article 1023 – **Real encumbrances registered after mortgage or transfer** - The encumbrance on property, with registration subsequent to the mortgage or transfer do not follow the property. § Sole paragraph: The burden on property constituted before the promulgation of this Code which is registered within one year, from the date of promulgation of this Code are excepted from the provisions of this article.

Article 1024 – **Right to sue in respect of encumbrances over acquired properties** -Acquisition, in which ever manner it has taken place, renders enforceable from its date, all the obligations which encumber the acquired property.

Article 1025 – **Ranking of credits recorded in documents liable to be registered** - There is no difference in ranking between the credits, represented by any of the title documents which are admissible for registration.

SUB-SECTION IX

EXTINGUISHMENT OF PRIVILEGES AND MORTGAGES

Article 1026 – **Extinguishment of privileges** - Privileges get extinguished:-

1. By extinguishment of principal obligation;
2. Through relinquishment by the creditor;
3. By prescription;
4. In the cases specified in paragraphs 1, 2, 3, 4 and 5 of article 882, and in paragraph 1 and 2 of article 883, except for the provisions of paragraph no.6 of article 882.

- Art.1246 of Portuguese Civil Procedure Code of 1939, also leads to the same result.

Article 1027 – **Extinguishment of mortgages** - Mortgages are extinguished:-

1. By redemption;
2. By the judgment of the Court become res judicata;
3. By any of the modes specified in paragraphs nos. 1, 2 and 3 of the preceding article for the extinction of the privileged credits.

Article 1028 – **Endorsements to extinguishment of mortgages -** The extinction of the mortgage commences to have effect, after the same is noted in the competent register and it can be admitted in the Court only when certified copy of respective noting is produced.

Article 1029 – **Revival of mortgages** - In the case of extinction of principal obligation by way of payment, if the same is annulled, the mortgage revives; but if the inscription is cancelled, the inscription appears from the date of new inscription, save the right left to the creditor to be compensated by the debtor for the losses the former has suffered therefrom.

CHAPTER XI

ACTS AND CONTRACTS TO THE PREJUDICE OF THIRD PARTIES

Article 1030 – **Rescission of acts practiced to the prejudice of third parties** - Acts and contracts, to the prejudice of third party, may be rescinded at the instance of the aggrieved parties, in following terms.

- Art.1169 of Portuguese Civil Procedure Code of 1939, extends the scope of this act. However, Art.1168 of the above Code partly enacts a different system.

Article 1031 – **Simulation** - The acts and contracts done by the contracting parties to defraud interests of the third party, may be annulled and rescinded, at any time, at the instance of the aggrieved parties.

§ Sole paragraph: Simulated act or contract is in an act in which the parties declare or admit falsely anything which in truth did not happen, or in which was not been agreed upon between them.

- See Arts.665 and 778 of Portuguese Civil Procedure Code of 1939.

Article 1032 – **Effect of annulment of simulated act** - Once the simulated act or contract is rescinded, the thing or right is restituted to whoever it belonged with its income or profits, if any.

- See Art.1171 of Portuguese Civil Procedure Code of 1939.

Article 1033 – **Requisites of suit for revocation of debtors injurious act -** A true act or contract, but made with intent to cause injury to the creditor, may be rescinded at the instance of

the same creditor if the credit was prior to the act or contact and therefrom, there is insolvency of the debtor.

Article 1034 – **Rescission of onerous acts** - Where the act or contract is onerous, it may be rescinded only where there is bad faith, on the part of debtor as well as from the other party.

- See Art.1170 of Portuguese Civil Procedure Code of 1939.

Article 1035 – **Rescission of gratuitous acts** - Where the act or contract is gratuitous, rescission may take place, even though the contracting parties have not proceeded in bad faith.

- See Art.1168(1) of Portuguese Civil Procedure Code of 1939.

Article 1036 – **Insolvency and bad faith** - There is insolvency, where the total of the assets and credits of the debtor, estimated by fair value, do not equal to total of his debts. Bad faith in such case consists on the knowledge of such state of affairs.

- See Art.1194(3) and 1355 of Portuguese Civil Procedure Code of 1939.

Article 1037 – **Rights upon re-transfer** - Where the original transferee has transferred the thing acquired to a third party, such party shall have the benefit of his good faith on the terms aforesaid, without prejudice to the right of the creditor to recover from the transferor.

Article 1038 – **Rescission on renouncement** - Rescission may occur, not only in the cases where the debtor alienates the assets which he actually possesses, as well where he renounces the rights accrued to him and which are not purely personal.

Article 1039 – **Rescission of payment in advance** - It is lawful also to rescind the payment effected by insolvent debtor, before the due date of payment of the debt.

- See Arts.1170(2) and 1154 of Portuguese Civil Procedure Code of 1939.

Article 1040 – **Cession of the suit for rescission** – The suit for rescission, mentioned in article 1033, ceases as soon as the debtor satisfies the debt or acquires the assets with which he can repay the debts.

- Procedure is laid down under Art.1031(1) of Portuguese Civil Procedure Code of 1939.

Article 1041 – **Right of third party transferee to end suit for rescission** – The transferee when sued may also put an end to the suit by payment of the amount in debt.

- Procedure is laid down under Art.1031(4) of Portuguese Civil Procedure Code of 1939.

Article 1042 – **Preference unduly obtained by one creditor** - If there is fraud, which consists of preference unduly availed from any creditor, it only has the effect of losing such advantage.

Article 1043 – **Proof of insolvency of debtor** - When a party, who pleads the insolvency of the debtor, proves how much is the amount of the debts of the debtor, it is for the debtor to prove that he has assets of equal or greater value.

Article 1044 – **Cessation of suit for revocation** - Once the act or contract is rescinded, the amount alienated reverts to the mass of the estate of the debtor, to the benefit of his creditors.

- Procedure is laid down under Art.1171 of Portuguese Civil Procedure Code of 1939.

Article 1045 – **Limitation of suit for revocation** - Such suit is barred, if not filed within a period of one year, counted from the date when insolvency of the debtor has been declared by the court.

CHAPTER XII
EVICTION[25]

Article 1046 – **Eviction** - When a transferee, who having acquired a property by contract for consideration, is deprived of the same, by a third party, who has right to it, the transferor is bound to compensate the transferee, on the following terms.

- See Art.910 and 911 of Portuguese Civil Procedure Code of 1939.

Article 1047 – **Liability of the alienor** - The transferor, even though has acted in good faith, is bound to pay fully:

1. The price or what he has received from the evicted transferee;

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25 ***Arts.1046-1055: Eviction*** *are peculiar provisions, although the subject of eviction at present is dealt with under the Transfer of Property Act, 1882 and specific legislations like The Goa Buildings (Lease, Rent & Eviction) Control Act, 1968 and Rules, 1969 (Act No.2 of 1969); The Goa, Daman and Diu Agricultural Tenancy Act, 1964 (GDD Act No.7 of 1964) and Rules; and Decree on Leases no.43525 of 07/03/1961.*

2. The expenses, the transferee has incurred with the contract and with the suit for eviction, save for the exception of article 1053;
3. All the expenses incurred towards useful and necessary improvements and which may not have been awarded to the transferee by the evicted or by the successful party.

§ 1 - When the transferee was directed to pay back the income, he may demand from the transferor the income or interest or the property or the sum advanced by him.

§ 2 - Where the transferee has not been directed to effect the restitution, it is deemed that the income is compensated by the interest.

§ 3 - When the transferee has obtained benefit on account of deterioration, and he has not been directed to pay the compensation, such benefits shall be adjusted from the amounts which he has to receive from the transferor.

§ 4 - Where the transferee is held liable for deteriorations, the transferor shall not be liable except where the same are attributable to his fault.

§ 5 - Where the transferor has done improvements, before the alienation and these were awarded to the successful party, this amount shall be adjusted in the amount which the transferor is to pay. § 6 - The transferor is not bound to pay for expense of voluntary nature which the transferee has made.

Article 1048 – **Liability of alienor in bad faith** - Where the transferor has acted in bad faith, he shall be liable to pay damages to the transferee, in the above terms, with following differences:-§ 1 - When the value of the thing, at the time of eviction was superior to the value paid, the transferor shall be liable for the difference.

§ 2 - The transferor shall be liable for all the losses resulting from the eviction, not excepting even the expenses incurred for own pleasure.

Article 1049 – **Partial eviction** - Where the transferee was only deprived of part of the thing, or part of right transferred, the preceding provisions shall be followed in respect of the portion from which he is evicted, it being lawful for the transferee to rescind the contract or demand compensation for such part, in the manner referred to hereinabove.

Article 1050 – **Eviction from amongst various transferred things** - The provision of the preceding article is applicable to the case where two or more things have been transferred jointly and eviction is in respect of one of them.

Article 1051 – **Cases in which the transferor is not responsible for the eviction** - The transferor does not answer for eviction:

1. If it was so stipulated, or if, the transferee having been informed of the risk of eviction, took it upon himself;
2. If the transferee knowing the right of the third party seeking eviction, fraudulently conceals the same from the transferor;
3. If the eviction proceeds upon a cause subsequent to the act of transfer not attributable to the transferor, or from an act of a transferee, whether subsequent or prior to the transfer; 4. If the transferee has not impleaded the transferor.

- See Arts.330(4), 1051(4) and 332 of Portuguese Civil Procedure Code of 1939.

Article 1052 – **Cases in which the liability of the transferor subsists** - The transferor, however, is liable to answer for eviction, even when he has not been impleaded as party:

1. Where the right of the evictor is undoubted and the transferee abandons the property with knowledge and acquiescence of the transferor.
2. Where the transferee succeeded in the rights of the third party who was entitled for the eviction.
3. Where the transferee in order to preserve the property, paid to the creditors the registered mortgage credit which he has not taken upon himself.

Article 1053 – **Resistance by the purchaser at his sole responsibility** - Where the transferor, being joined as a party or having come to know in any manner, the claim of the successful evictor, admits the evictor's claim and offers to satisfy the claim to the extent of his liability, he will not be answerable for the costs and expenses, resulting from the insistence of the transferee.

Article 1054 – **Refusal of right of eviction to the transferor himself** - The transferor, who, at the time of the transfer of the property, was not really the owner, is not entitled to initiate a suit for eviction against the transferee, even though he acquires this status subsequently.

Article 1055 – **Predominance, within limits, of contractual rights in the matter of eviction** -The contracting parties may increase or decrease, by agreement the effect of the eviction; but not renounce the responsibility, which may arise from fraud or bad faith.

TITLE II
OF CONTRACTS IN PARTICULAR

CHAPTER I
MARRIAGE

Note: In 1910-11, the following laws were enacted ("Family Laws"):-

1. Law of Marriage as a Civil Contract, Decree No.1 of 25/12/1910, which came into force in Portuguese India w.e.f. 26/05/1911 of which Article 72 reads as follows: "*Articles 1056 to 1074, 1083 to 1095 and 1184 to 1188 and 1192 of the Civil Code and any legislation to the contrary are hereby substituted and repealed."*

2. Law of Protection of Children being Decree No.2 dated 25/12/1910 came into force in Portuguese India w.e.f. 16/09/1913 of which Article 59 reads as follows: *"Articles 101 to 136 of the Civil Code, 665 and paragraph 3 of the Code of Civil Procedure and any other legislation to the contrary are hereby substituted and repealed."*

3. Law of Divorce, dated 03/11/1910 came into force in Portuguese India w.e.f. 26/05/1911 of which Articles 69 and 70 read as follows:-

*"**Article 69** – This Decree which shall come into force in the normal time shall be subject to the approval of the ensuing National Constituent Assembly and embodied as amendment to the Civil Code and Code of Civil Procedure."*

*"**Article70** – The law to the contrary hereby stands repealed."*

In 1940, Decree No.30615 of 25/07/1940, was enacted which recognizes the catholic or canonical marriage also, and its version for the colonies was enacted.

In 1946, by Decree No.35461 on Canonical Marriage which came in force on 04/09/1946.

SECTION I
GENERAL PROVISIONS

Article 1056 - Concept of marriage as a civil contract and its purpose - Marriage is a perpetual contract made between two persons of different sex with the purpose of legitimately constituting a family.

- The concept of marriage is mentioned in Art.1 of the said decree, Law of Civil Marriage). Civil marriage is presumed to be perpetual under the Law of Divorce being Decree of 03/11/1910. However, Catholic or Canonical Marriage is perpetual under Decree No.30615 of 25/07/1940.

Article 1057 - Secular nature of marriage - Marriage shall be solemnised before the official of Civil Registration Services under the conditions and in the manner established in Civil Law.

- This article survives despite Art.72 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).
- It is now modified by Art.1 of Decree No.30615 of 25/07/1940, which recognizes the catholic or canonical marriage also.

SECTION II
PROVISIONS COMMON TO BOTH THE TYPES OF MARRIAGE

Article 1058 - Impediments to marriage – Marriage is forbidden :-

1. To minors below twenty-one years and majors interdicted from administering their persons and properties, until they obtain the consent of their parents or of those who represent them, in accordance with Article 1061;
2. To the guardian and his descendants, with the ward, as long as the guardianship has not ceased and the accounts of guardianship have not been approved, except if the deceased father or mother has permitted it in his/her will or in any other authentic document 3. To the adulterous spouse with the abettor convicted as such;
4. To any spouse convicted of committing or abetting the commission of murder or attempt to commit murder of his/her spouse, with the person who committed or abetted the

commission of the said offence or has contributed to the same;

5.

Those who have the impediment of religious order or those who are bound by vows recognised by law.

- Substituted by Art.4 onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1059 - Violation of impediments - The contravention of the provisions contained in the preceding Article shall have no effect other than making the offender liable to the penalties provided below.

Article 1060 - Lack of permission for marriage of legally incapable - The non-emancipated minor or the major under guardianship, who marries without the permission of his/her parents or of those who represent them, shall be liable to the following penalties:-

§ 1 - The non-emancipated minor shall not take over the administration of his properties unless he/she attains majority, he/she being entitled only to demand necessary maintenance within the income of such assets;

§ 2 - The majors under guardianship may take up the administration of their assets when the cause of disability ceases and in other respects what is laid down in relation to the minors shall be observed.

§ 3 - The marriage contracted, by non-emancipated minors or by majors under guardianship, without the necessary consent, shall always be deemed to have been contracted under the regime of separation of assets.

- Substituted by Art.5 of Decree No.30615 of 25/07/1940 and Arts.7, 13 to15 and 51 to 53 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1061 - Grant of permission for marriage of minor - In case of dissent between the parents in respect of grant of permission for the marriage, the opinion of the father shall prevail. Where only one parent survives or where the other is under legal impediment, the consent of the survivor or of the one who is not under impediment, will suffice, except when the survivor being the mother remarries and is not confirmed as administratix of the assets of the son/daughter; in this event the power shall vest in the family council.

§ 1 - Where in the absence or impediment of the parents the guardianship is exercised by the grandparent, the latter shall have power to grant or refuse permission.

§ 2 - In the absence or impediment of the parents and grandparents such power shall vest in the family council.

- Substituted by Art.6 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1062 - No appeal against grant or refusal of permission - In no case shall an appeal lie against the grant or refusal of permission.

- Substituted by Art.6(5) of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1063 - Impediment relating to guardianship - The guardian or his descendant, who marries the ward in contravention of provisions of Article 1058 clause 2, shall be prohibited from receiving any thing by way of gift or will from the ward and the marriage shall be deemed to be contracted under the regime of separation of properties.

§ Sole paragraph - Further, the guardian shall be deprived of the administration of the properties during the minority of the ward.

- Substituted by Arts.17 & 55 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1064 - Sanctions against default for other impediments - What is provided in the preceding Article shall be applicable to all the persons mentioned in Article 1058 clause 3 and 4 who contract marriage in contravention of the provisions of the said Article.

- Substituted by Arts.11 & 12 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1065 – Marriage of Portuguese in foreign country - The marriage contracted between Portuguese in a foreign country, shall not produce civil effects in this country, in case it is not contracted in conformity with the Portuguese law; except what is provided in the second part of Article 24 in respect of the formal validity of the contract.

- Substituted by Art.58(2) onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage).
- Also see Art.245 of Code of Civil Registration, 1912.

Article 1066 – Marriage abroad when one of the spouses is Portuguese - The marriage contracted in a foreign country, between Portuguese (male) and foreigner (female) or between foreigner (male) and Portuguese (female), shall have civil effects in this country, provided that the conditions required by the Portuguese law are satisfied as regards the Portuguese spouse. - Substituted by Arts.58(1) & 59 onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1067 - Agreement to marry - The consent of the contracting parties to the marriage may only be given irrevocably at the very moment of its solemnization. Therefore the agreements

under which the parties agree under the title of betrothal, affiance or any other, to contract marriage in the future, are null and void, whether or not penal provisions are stipulated.

§ Sole paragraph - The provision of this Article does not, however, exempt the person who, due to the promise of marriage has received any gift or has authorised any expenses, from being compelled to return them or to compensate for it, if so demanded.

- Substituted by Art.24 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1068 - Marriage through Power of Attorney - The consent to the marriage may be given through an attorney, provided that the power of attorney is special and expressly designates the person with whom the marriage shall he contracted.

- Substituted by Art.24 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

SUB-SECTION I
SPECIAL PROVISIONS REGARDING THE CATHOLIC MARRIAGE

Article 1069 - Validity of Catholic marriage - The Catholic marriage will produce civil effects only if it is solemnized in conformity with the canonical laws followed in this country or recognised by them, with the exception of the following provisions.

- Revoked by Decree No.1 of 25/12/1910 (Law of Civil Marriage). However, by Decree No.30615 of 25/07/1940, pursuant to the Concordat between Portuguese Government and Holy See signed on 07/05/1940, both the celebrations of marriage, catholic and canonical were recognized. However, the catholic marriage has to be transcribed in the Civil Registration office soon after its celebration.

Article 1070 - Regulation of Catholic marriage - The canonical law defines and regulates the conditions and spiritual effects of the marriage; the civil law defines and regulates the conditions and temporal effects of the same.

- Revoked, however in view of Decree No.30615 of 25/07/1940. The impediments under civil law also operate as impediments for canonical celebration of marriage.
- See Arts.6, 17 and 19 of Decree No.30615 of 25/07/1940.

Article 1071 - Responsibility of the celebrating priest - The minister of the Church who solemnises any marriage in contravention of the provision of Article 1058 shall be criminally liable.

- Revoked, however, see Art.14 of Decree No.30615 of 25/07/1940.

SUB-SECTION II
SPECIAL PROVISIONS REGARDING MARRIAGES SOLEMNIZED AS PER THE PROCEDURE PRESCRIBED BY THE CIVIL LAW

Article 1072 - Efficacy of civil marriage - The marriage between non-Catholic Portuguese subjects shall also have civil effects where the essential requirements of contracts, the provisions of Article 1058 and fol1owing Articles are satisfied.

- Revoked, however, see Art.1 of Decree No.30615 of 25/07/1940.

Article 1073 - Impediments to civil marriage - The following shall, not contract marriage:

1. Relatives by consanguinity or affinity in a direct line;
2. Relatives in the second degree in a collateral line;
3. Relatives in the third degree in a collateral line except if they obtain exemption; 4.
Males below the age of fourteen years and females below the age of twelve years; 5.
Those joined by another marriage, not yet dissolved.

§ Sole paragraph - The exemption referred to in clause 3 shall be granted by the Government if there are ponderous reasons.

- Revoked, replaced by Art.4 onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage) with alterations introduced by Art.5 of Decree No.30615 of 25/07/1940.
- The impediments of catholic and religious marriages are the same.
- See however, Art.12(3) of the said Decree No.30615.

Article 1074 - Relevance of impediments to marriage - The contravention of the provision of the preceding Article gives rise to nullity of the marriage.

- Revoked, replaced by Arts.11, 13 and 1751 onwards of Decree No.1 of 25/12/1910.

Article 1075 – Declaration to be presented to the Civil Registrar - Whoever desires to contract marriage as per the procedure prescribed by the Civil law shall present to the official of Civil Registration Services of his domicile or of his residence, a declaration signed by both the contracting parties which shall contain:

1. The names and surnames, age, profession, domicile or residence of the contracting parties;
2. The names and surnames, profession and domicile or residence of their parents.

§ 1 - Where the official of Civil Registration Services, chosen for the solemnisation of marriage is not from the domicile of both the contracting parties, the aforementioned declaration shall be presented to the official of Civil Registration Services of the domicile of each of them, with the mention of the one whom they have elected for the solemnization of the contract.

§ 2 - The declaration shall also be accompanied by the birth certificate of the contracting parties and by the documents which prove the consent of their legal superiors if needed, as well as the exemption referred to in clause 3 and sole paragraph of Article 1073, when it may be necessary.

Replaced by provision of Code of Civil Registration, 1912, Article 191.

- As to Catholic marriage, see Art.7 of Decree No.30615 of 25/07/1940, and Arts.1 onwards of the Decree No.35461 dated 22/01/1946.

Article 1076 – Public notices - The officials of the Civil Registration, to whom the declaration mentioned in the preceding Article is presented, shall affix in a public place at the entrance of their offices a notice showing the intention of the contracting parties with all the details mentioned in the same Article, and inviting the persons, who know of any of the legal impediments mentioned in Article 1058 and 1073, to declare them within the period of fifteen days.

§ Sole paragraph - The legal impediments, mentioned in Article 1058 clause 1 may be brought to the notice only by those whose consent is necessary for the solemnisation of the marriage.

Arts.1076 to 1082 – See Code of Civil Registration, 1912, Arts.193 to 199.

Article 1077 – Steps after public notices - After the lapse of fifteen days, when there is no declaration of any legal impediment and the official of Civil Registration Services has no knowledge of any of them, the same official shall solemnise the marriage in accordance with Article 1081.

§ 1 - When their notice is published in more than one office of Civil Registration Services, the official chosen for the solemnisation of the marriage shall demand that a certificate be brought from the other officials stating that neither any objection was raised to the marriage nor that he or they know of any legal impediment which is a bar to the said marriage.

§ 2 - In any case, after one year has lapsed from the date of publication without the solemnisation of the marriage, the marriage shall not be solemnised without a new publication.

- **Arts.1076 to 1082** – See Code of Civil Registration, 1912, Arts.193 to 199.

Article 1078 – Adjudication as to impediments recorded - Where within the period of publication of notice or before the solemnisation of marriage any declaration of any legal impediment is made, or such an impediment is known to the official of Civil Registration Services who shall in such a case declare it in writing, the marriage shall not be solemnised unless the impediment is declared non-existing within the time and in the manner established in the Code of Procedure.

Article 1079 – Declaration of the impediments - The declaration referred to in the preceding Articles shall mention the impediment, domicile or residence of the person who makes the declaration and shall be dated and signed.

§ Sole paragraph - The signature shall be authenticated by the Notary.

Article 1080 – False declaration of impediment - Where the declarations of impediment are found to be false, the declarant shall be liable to pay damages as well as criminally liable if he/she has acted with malice.

Article 1081 – Solemn celebration of marriage - For the purposes of the solemnisation of marriage the contracting parties or their attorneys shall appear in the Office of Civil Registration Services, whose official has to record the marriage entry, except where on account of sickness one of the contracting parties does not appear in person, and does not appear through the attorney, because in such case the official of Civil Registration Services shall go to the place where such contracting party is found. In the presence of the contracting parties or their representatives and of the witnesses, the official shall read Articles 1056 and 1057 of this Code and shall ask forthwith each of the contracting parties whether he/she maintains his/her resolution to solemnise the marriage by such procedure, and after the affirmative reply from both, shall record the certificate of marriage with the formalities prescribed in this Code without any previous enquiry in respect of the religion of the contracting parties.

§ Sole paragraph - In the office of Civil Registration Services the marriage shall be solemnised in the presence of two witnesses and when outside it before six witnesses.

Article 1082 – Illegal celebration - Responsibility of the employee - The officials of the Civil Registration who solemnise the marriage in contravention of the provisions of this Division, shall, to the extent applicable, incur the penalties prescribed for the ministers of the Church in Article 1071.

SECTION III
PROOF OF MARRIAGE

Article 1083 - Proof of marriage - The solemnisation of marriage contracted in the country shall be proved only by way of a certified copy of the competent registration except upon proof of the loss of the same because in such a case any other kind of proof is admissible.

- **Arts.1083 to 1085** are revoked by Art.72 of the Decree No.1 of 25/12/1910 (Law of Civil Marriage).
- Proof of marriage is regulated by Arts.45 and 46 of the said decree, as also by the Code of Civil Registration, 1912, Arts.4 to 6 and 180.

Article 1084 - Value of possession of the married status - However, no one shall challenge the existence of the marriage between deceased persons, who lived in such status, to the prejudice of their

children, on the ground of absence of certified copy of marriage where the deceased had not declared the place where they solemnised it, unless it is proved by another certified copy that any one of them at the relevant time was married to a third party.

- Revoked, substituted by Arts.47 and 48 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1085 – Proof of marriage celebrated abroad - The marriage contracted in a foreign country may be proved by any kind of proof, when in that country such acts are not subject to a regular and authentic registration.

- Revoked, substituted by Art.61 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).
- See also Code of Civil Registration, 1912 Art.245.

SECTION IV

ANNULMENT OF MARRIAGE AND ITS EFFECTS

Article 1086 - Annulment of Catholic marriage - Catholic marriage may be annulled only in the Ecclesiastical Court and in the circumstances contemplated in the laws of the Church followed in this country.

- Revoked, see transitory provisions in Arts.65 and 66 of Art.61 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).
- However, by Decree No.30615 of 25/07/1940, Ecclesiastical Tribunal has jurisdiction to take cognizance of nullity of catholic marriage.
- See Art.19 of Decree No.35461 dated 22/01/1946.

Article 1087 - Limits of jurisdiction of Ecclesiastical Courts - However, the jurisdiction of the Ecclesiastical Court is restricted to the cognisance and decision of nullity and all the proceedings and acts of inquiry, which have to be done, shall be done by a letter of request addressed to the competent Civil Court.

- Revoked, see notes under Art.1086 of Portuguese Civil Code, 1867.
- See Art.19 of Decree No.35461 dated 22/01/1946.

Article 1088 - Execution of Decrees - Once a judgment annulling marriage is pronounced by the Ecclesiastical Court it shall be executed by the civil authority to which it shall be officially communicated and it is the duty only of the Ecclesiastical authority to send to the priest before whom the marriage had been solemnised, a certified copy of the judgment in order to be endorsed on the margin of the respective certificate.

- Revoked, but Art.24(2) of Decree No.30615 of 25/07/1940 enacts a similar provision.
- See Art.19 of Decree No.35461 dated 22/01/1946.

Article 1089 - Annulment of Civil Marriage - The annulment of the marriage contracted between Portuguese subjects as per the procedure prescribed in the Civil law may be declared only by the Civil Courts.

- Revoked by Arts.65 and 67 onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1090 - Irrelevance of the religion of the newly married - Such a marriage shall not be annulled on the ground of religion of the contracting parties.

- Though technically revoked by Art.72 of Decree No.1 of 25/12/1910 (Law of Civil Marriage), the principle remains

inforce.

Article 1091 - **Putative marriage** - Any marriage, even though annulled, shall not cease to have its civil effects from the date of its solemnisation, in relation to the spouses as well as to their children, if it is contracted in good faith by both the spouses.

- Revoked, substituted by Arts.30 and 31 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1092 - **Good faith of only one of the spouses** - Where only one of the spouses had been in good faith, the said effects shall be produced only in relation to him/her and his/her children.

- Revoked, substituted by Arts.30(2) and 31 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1093 - **Fate of the children** - Where the separated spouses do not arrive at an amicable settlement regarding the children, a family council organised in terms of Article 1206 shall be convened. Such council shall take steps in accordance with Article 1207 clause 3.

- Revoked; the matter is governed by Art.1452 onwards of Portuguese Civil Procedure Code of 1939.

Article 1094 - **Parental power in relation to daughters** - Where both the separated spouses had been in good faith, the father shall not be entitled to separate the daughters from the company of the mother against her wish.

- Revoked, see Art.1455(2) of Portuguese Civil Procedure Code of 1939.

Article 1095 - **Effect of annulment on the assets of the spouses** - The annulment of marriage shall have, regarding the properties of the spouses, the same effects which are produced by dissolution of the marriage by death.

- Revoked, replaced by Art.69 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).
- See also Art.1444 onwards of Portuguese Civil Procedure Code of 1939.

SECTION V
CONTRACT BETWEEN SPOUSES IN RESPECT OF THEIR ASSETS

SUB-SECTION I
GENERAL PROVISIONS

Article 1096 – **Ante-nuptial conventions principle of freedom** - It is lawful for the spouses to stipulate, before the solemnisation of the marriage and within the bounds of law, whatever they think fit in respect of their assets.

Article 1097 – **External form of convention** - Such contracts shall not be valid, unless they are recorded by way of public deed.

Article 1098 – **Presumed regime of assets** - In the absence of any contract, it is deemed that the marriage is done as per the custom of the country, except when it is solemnized in contravention of the provisions of Article 1058 clause 1 and 2; because in such a case it is deemed that the spouses are married under the simple communion of acquired assets.

- The exceptions mentioned in this article refer to the cases contemplated under Arts.53 to 56 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).
- Communion of assets is no longer the default regime in case of Catholic marriage referred to in Art.17 by virtue of Art.18 of Decree No.30615.

Article 1099 – **Contract of communion of assets between spouses** - Where the spouses merely declare in their contract that they desire to marry as per the custom of the country, the provisions of Articles 1108 to 1124 shall be observed.

Article 1100 – Contract of communion of acquired assets - Where the spouses merely declare that they want to marry under the simple communion of acquired properties, the provisions of Articles 1130 to 1133 shall be observed.

- Communion of acquired assets is the presumptive regime in cases covered by Arts.53 to 56 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1101 – Contract of separation of assets - Where the spouses merely declare that they want to marry under the separation of assets, the provisions of Articles 1125 to 1129 shall be observed.

- Separation of assets is the default regime in cases under Art.18 of Decree No.30615 of 25/07/1940.

Article 1102 – Contract of dowry regime - Where the spouses want to marry under the dotal regime, the provisions of Articles 1134 to 1165 shall be observed.

Article 1103 – Void terms of Contract - Any contract which may change the legal order of succession of legal heirs or the paternal and conjugal rights and obligations, laid down by law, shall be deemed as not written.

Article 1104 – Reservation of maintenance - The wife is not entitled to deprive the husband, by way of ante-nuptial contract, from administering the assets of the couple; but she may reserve for herself the right to receive part of the income of her assets for pocket expenses and dispose of it freely, provided it does not exceed one-third of the said net-income.

Article 1105 – Prohibition of change of Matrimonial regime - No revocation or change of ante-nuptial contract by way of new contract is permissible, after the solemnisation of the marriage.

- See however, Art.27 of the Law of Divorce dated 03/11/1910.

Article 1106 – Contract made between Portuguese abroad - The ante-nuptial contract stipulated in a foreign country, between Portuguese subjects, shall be governed by the provisions of the present section; however the said contract may be drawn either in authentic form prescribed in that country or before the consular agents of the Portuguese Government in that country.

Article 1107 – Presumed regime of assets for marriage celebrated abroad - Where the marriage is contracted in a foreign country between a Portuguese (male) and a foreigner (female), or between a foreigner (male) and a Portuguese (female) and where the contracting parties have not declared nor stipulated anything in respect of their assets, it shall be deemed that they are married as per the general law of the country of the male spouse, without prejudice to what is laid down in this Code in respect of immovable assets.

SUB-SECTION II

MARRIAGE AS PER THE CUSTOM OF THE COUNTRY

Article 1108 – Concept of communion of matrimonial estate - The marriage as per the custom of the country consists in the communion between the spouses of all their assets, present and future, not excluded by law.

Article 1109 – Own Assets - The following shall be excluded from the communion:

1. The emphyteusis of limited duration, successor to which can be freely appointed, until they are converted into hereditary emphyteusis;
2. The assets gifted or bequeathed on condition of incommunicability or those substituted in their place;
3. The assets inherited by the re-married father or mother on the death of the child of the other marriage if there are full blood brothers/sisters of the deceased child, or children of the deceased full blood brothers/sisters, in accordance with Article 1236;
4. Half of the assets held by the spouse who remarries or which are inherited from his/her relatives or received by way of gift, when he has issues or other descendants from the previous marriage, in

accordance with Article 1235;
5. Clothes, garments and other objects of personal and exclusive use of the spouses and betrothal ornaments given by the spouses before the marriage.

§ Sole paragraph. The incommunicability of the assets mentioned in this Article does not include the fruits and the income from the said assets, the value of the improvements, nor the price of the emphyteusis acquired during the subsistence of the marriage.

Article 1110 – Debts prior to marriage - The debts of the spouses acquired before the marriage are also incommunicable except:
1. Where the other spouse has personally undertaken to pay or desires to bind himself to make the payment thereof;

2. Where they have been utilised for the common benefit of the spouses.

See Art.335(4) of Portuguese Civil Procedure Code of 1939.

Article 1111 – Meaning of debts prior to marriage - The debts acquired before the marriage include those resulting from any previous act of the spouses, even though the liability for payment arises during the subsistence of the marriage.

Article 1112 – Assets chargeable for debts prior to marriage – However, in case the assets brought by the debtor to the conjugal society are not sufficient, the creditors for the debts mentioned in the preceding articles may, have themselves paid, through his/her moiety in the acquired assets but only after the dissolution of the marriage or separation.

Article 1113 – Debts subsequent to marriage which may be included in the communion of the marital estate - The debts incurred during the subsistence of the marriage by act or contract of both the spouses, or by the husband with the written consent of the wife, or by the wife with the permission of the husband, or by the wife alone in the cases where it is permitted by Article 1116, are communicable.

§ 1 - Where the common assets are not sufficient for the payment of the debts referred to in this article, the exclusive assets of any of the spouses shall be liable for the payment.
§ 2 - The spouse who has been compelled to pay any of the said debts or the major part thereof through his or her exclusive assets, shall have the right to be repaid through the exclusive assets, if any, of the other spouse to the extent the payment has exceeded half of his or her liability.

Debts contracted by the wife in domestic expenses are also communicable vide Art.39 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1114 – Debts contracted by husband without intervention of the wife - The exclusive assets of the husband are liable for the payment of the debts incurred by the husband without written consent of the wife during the subsistence of the marriage.

§ 1 - In the absence of exclusive assets of the husband, the said debts shall be paid through his moiety in the common assets. However, in this case the said payment may be obtained only after dissolution of the marriage or separation of the assets between the spouses; the creditor, may, nevertheless, for the sake of his guarantee, proceed with the suit and execution up to the stage of the attachment of the right and interest of the husband in the common assets of the couple.§ 2 - But in case the debts have been used for the common benefit of the spouses or incurred in the absence of or impediment of the wife, in case the purpose for which they were incurred did not permit him to wait until her return or cessation of the impediment, the common assets shall be liable for the payment of the same.

Confirmed by Art.824 of Portuguese Civil Procedure Code of 1939.

Article 1115 – Other subsequent debts which are not communicable - What is laid down in the preceding Article both in respect of the husband as well as in respect of the wife is also applicable to:

1. The debts arising from criminal offences or unlawful acts, committed by any of the spouses; 2. The debts which encumber incommunicable assets, not being for interest, emphyteutic fees, annuity or share, accrued after the acquisition of such assets.

Article 1116 – Capacity of wife to contract debts - The wife is not allowed to incur debts without the permission of the husband, except in case of his absence or impediment and where the purpose for which they were incurred did not permit her to wait until his return or cessation of the impediment.

Article 1117 – Ownership, possession and administration of the assets of the matrimonial estate - The ownership and possession of the common assets vest in both the spouses during the subsistence of the marriage; however, the administration of the assets of the couple, not excluding the wife's own assets, shall lie with the husband.

§ Sole paragraph - The wife may manage only with the consent of the husband or during his impediment or absence.

- See Art.51 ofDecree No.1 of 25/12/1910 (Law of Civil Marriage), as regards administration when the spouses are below the age of marriage.

Article 1118 – Alienation of mobiliary assets of the matrimonial estate - The husband may freely dispose the mobiliary assets of the matrimonial estate of the couple; but in case he alienates them or binds them by gratuitous contracts without the consent of the wife, the amount of the assets so alienated shall be into the account of his moiety.

Article 1119 – Alienation of the immobile assets of the matrimonial estate - The immobile assets, whether common or exclusive of either spouse, shall not be alienated or charged in any manner without the consent and agreement of both.

§ Sole paragraph - In case of dissent or unfounded opposition, the consent of the dissenting spouse may be made good by order of the Court.

- Procedure is laid down under Art.1477 onwards of Portuguese Civil Procedure Code of 1939.

Article 1120 – Capacity of the husband to accept or renounce inheritances - The husband is not allowed to renounce any inheritance without the written consent of the wife; but the liability for unconditional acceptance without the written consent of the wife shall only make his moiety and exclusive assets liable.

Article 1121 – End of the communion of Matrimonial estate - The communion ends by the dissolution of the marriage or by separation, in accordance with the law.

- Communion also ends with annulment or declaration of nullity under Art.69 of Law of Divorce dated 03/11/1910; Absence – Art.82 of Portuguese Civil Procedure Code of 1939 and declaration of insolvency Arts.1361 and 1364 of Portuguese Civil Procedure Code of 1939.
- In case of divorce by mutual consent, Art.1476 provides that the effects shall be retroactive to the date of provisional divorce.

Article 1122 – Administration of the estate in case of the demise of one of the spouses - In case of the death of either spouse the survivor shall continue in the possession and the administration of the matrimonial estate till the finalization of the partition, except :-

1. In respect of incommunicable assets of the deceased; in this case, however, where the legal successor is a minor, the father or mother shall continue the administration;
2. In cases in which there is a lien on account of improvements or communion regarding the price.

Article 1123 – Partition of the assets of the estate - The assets of the communion shall be equally partitioned between the spouses or their heirs and each one shall contribute his or her dues to the common estate.

Article 1124 – Payment of the credits of each of the spouses - The credits due to the wife shall have priority over those due to the husband and where the common assets are not sufficient for the payment

of the entire amount, the exclusive assets of the husband shall be liable, except where he has not given cause for the debt. The husband shall have no similar right against the exclusive assets of the wife.

SUB-SECTION III

OF THE SEPARATION OF ASSETS OR OF THE SIMPLE COMMUNION OF ACQUIRED ASSETS

Article 1125 – Marriage with simple separation of assets - In case the proposed spouses declare that they want to marry under separation of assets, the communion of acquired assets is not deemed as excluded unless there is an express declaration to that effect.

- Separation of assets in Art.53 onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage) means the same thing.

Article 1126 – Provision applicable to simple separation - The subsequent provisions of Article 1130, 1131 and 1132 are applicable to such type of contract.

Article 1127 – Complete separation - In marriages contracted under separation of assets, each of the spouses maintains the ownership of all that belongs to him or her and may freely dispose of the respective assets, save the restriction imposed by the following article.

- See Art.1371 of Portuguese Civil Procedure Code of 1939. (Now S.387 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 – regarding service on spouse where there is absolute separation of assets).

Article 1128 – Separate assets of the wife - Whatever is laid down in Article 1118 with reference to the husband in respect of the common mobiliary assets shall be applicable to the wife in respect of her mobiliary assets separated from the communion and to one third of their income.

§ Sole paragraph – Amounts carrying interest are excepted from this provision and they, as well as the remaining two thirds of the income, and the immobile assets shall be governed by whatever is provided in Article 1119.

Article 1129 – Regulation of the debts of the spouses - Regarding the debts of the spouses, the following shall be observed :-

1. The debts prior to the marriage shall be paid from the assets of the debtor spouse:
2. The debts incurred during the subsistence of the marriage shall be paid by both the spouses where they have jointly incurred the liability;
3. Where only the husband has incurred the liability, or the wife alone with his permission, all the exclusive assets of the spouse who has incurred the liability, shall be liable for the payment; 4. Where the wife has incurred the liability without the permission of the husband, only her exclusive assets, of which free alienation is permitted by Article 1128, shall be liable for the payment.

Article 1130 – System of communion of acquired assets - Where the proposed spouses declare that they want to marry under the simple communion of acquired assets, the assets which each one of the spouses holds at the time of the marriage or gets thereafter by succession or by any gratuitous title or under a previous exclusive right, shall be deemed and governed as exclusive assets where the marriage is contracted under the regime of the custom of the country.

Article 1131 – Inventory of individual assets - The proposed spouses under the simple communion of acquired assets, shall before their marriage make an inventory, either in the ante-nuptial contract or any other public deed or any public indenture, of the assets with which they enter the conjugal society, failing which they shall be deemed to be acquired ones.

§ Sole paragraph - The former provision shall apply to the supervening assets mentioned in the preceding article and the unascertained share in the assets with which they entered the conjugal society, if their inventory is not made within six months from the date on which the specific assets came into the possession of the spouse to whom they belong; such an inventory may be made by way of a public deed or a public indenture or by way of a declaration of assets produced before the Revenue Office.

Article 1132 – **End of the communion of acquired assets** - The communion of acquired assets ends in the same cases in which the general communion ends.

Article 1133 – **Debts prior to marriage** - The debts of the spouses incurred prior to the marriage under the regime of acquired assets, shall be accounted for from the respective share of the debtor spouse when they are paid from the acquired assets.

SUB-SECTION IV

OF THE DOTAL REGIME

Article 1134 – **Dowry system** - In case the proposed spouses want to marry under the dotal regime and they so declare in their contract, the following, provisions shall be followed.

Article 1135 – **Who can endow** - The wife may endow herself with her assets or be endowed by her, parents or by others, provided that all the interested parties intervene in the same contract personally or through their agents.

Article 1136 – **Content of dowry** - The mobiliary and immobile assets and those held by the wife as well as those which she may in future acquire by testamentary or intestate succession may be the object of the endowment.

Article 1137 – **Specification of dowry assets** - Where the endowment consists of existing ascertained assets they shall be specified in the contract of the marriage or in any other document or public indenture made prior to the same contract; in case they are not ascertained the source of the right to such assets shall be mentioned in the contract and in such a case they shall be specified as and when they are ascertained, failing which they shall be taken to be assets of the communion.

§ Sole paragraph - In case future assets are included in the endowment they shall be duly specified within six months from the day they come into the possession of the endowed, failing which they shall also be deemed as assets of the communion.

Article 1138 – **Statement of value of movables in the dowry** - In case the endowment consists of moveable assets their value shall be declared in the dotal contract failing which same penalty provided in the preceding article is attracted.

Article 1139 – **Security for the dowry** - The proposed spouses may stipulate in the dotal contract the security or any other guarantee or designate the assets which may be charged with mortgage.

Article 1140 – **Conversion into money** - Where in the endowment, whether constituted by the wife, by the husband or by any other person, money in cash is included, it shall be converted within three months from the date of the marriage, into immoveable assets, Government shares, or company shares or invested to earn interest, by public deed with creation of mortgage. The endowment in money which is not converted as aforesaid shall be deemed as non-existing and shall form a part of the communion of assets.

Article 1141 – **Un-changeability of dowry** - During the subsistence of marriage neither endowment shall be constituted nor endowment already constituted shall he enhanced except by way of natural accretion.

Article 1142 – **Liability of the parents or the grandparents of the wife for the dowry** - Where the endowment has been constituted by the parents or the grandparents of the endowed, the endowers shall be liable for its value in case the endowed person is dispossessed of them.

Article 1143 – **Liability of other endowers for recovery of the dowry** - Where the endowment is constituted by any other person he or she shall be liable to pay compensation for the dispossession of the endowed person, only if he or she has acted in bad faith or where the liability has been stipulated.

Article 1144 – **Effective date of dowry** - Unless otherwise agreed the stipulated endowment is due, together with all its income, from the date of solemnization of marriage.

Article 1145 – Presumption of delivery of dowry - In case the marriage has lasted for ten years from the time limit fixed for payment of the endowment, the wife or her heirs may demand its refund from the husband in the event of dissolution of the marriage or separation of assets without being liable to prove that the endowment was really paid except where the husband proves that he took steps to receive it, but in vain.

Article 1146 – Liability of parents giving dowry - In case the endowment is constituted by the father and mother jointly, in common assets, without stating the proportion in which each of them contributed, it shall be deemed that each of them is liable for half.

Article 1147 – Dowry on account of legitime - In case the parents do not declare that the endowment is towards their disposable portion, the endowment shall be adjusted from the legitimate portion of the endowed, and only to the extent that the endowment exceeds the legitimate portion, the same shall be deducted from their disposable portion.

Article 1148 - Powers of husband over endowed mobiliary assets - The husband may freely dispose of the dotal mobiliary assets, unless it is stipulated otherwise; but he shall be liable for their value.

Article 1149 – Inalienability of endowed immobile assets - Immobile assets are inalienable, except when it is:

1. To endow and settle the common issues, when both the spouses consent;
2. For the maintenance of the family when the same cannot be provided otherwise; 3. To pay the debts of the wife or of those who endowed her, prior to marriage, when they are mentioned in an authentic or authenticated document and cannot be repaid from other assets;
4. To make indispensable repairs of other dotal assets;
5. If by nature they are inseparable from the non-dotal assets;
6. In exchange of other assets of equal or greater value, the said assets being substituted in the place of the alienated ones;
7. In case of acquisition for public utility.

§ 1 - What is laid down in this article in clauses 1, 2, 3 and 4 is applicable to the dotal immobile assets, and in these cases the husband shall be deemed free from all the liability thereof. Similarly he becomes free from the liability whenever the proceeds of alienation of dotal mobiliary assets, allowed to the husband under preceding Article, has been used for any of the purposes mentioned in the said clauses.

§ 2 - In the cases of clauses 1, 2, 3, 4, 5 and 6 the alienation cannot take place without the order of the Court.

§ 3 - The sale of dotal assets, whenever it takes place, shall be made by way of public auction.§ 4 - The alienation dealt with in clause 1 shall not exceed the legitimate portion of the child who is going to be endowed or established, to this legitimate share being added the half share of his or her parents, all of it calculated in relation to the time when the alienation has to be made in the manner in which it would have been made if, owing to death of the parents, the marriage would stand dissolved at such time.

§ 5 - In the cases of clauses 5 and 7 the proceeds of the alienated assets shall be applied for the acquisition of others of equal value which shall substitute the former.

 The provisions of this section are now supplemented by Arts.1480 and 1483 to 1486 of Portuguese Civil Procedure Code of 1939.

Article 1150 – Illegal alienation of endowed immobile assets - The dotal immobile assets, alienated in violation of what is laid down in the preceding article, may be recovered by the wife, either during

the subsistence of the marriage or after its dissolution or after separation, even though she had consented to the alienation.

§ 1 - In case the alienated assets are mobiliary, the recovery dealt with in this article shall be permitted only in the following circumstances:

1. Whenever the husband does not hold assets which may make good the value of the alienated assets;
2. When the alienations, made by the husband as well as the ones subsequently made between third parties, were under gratuitous title or in bad faith.

§ 2 - The right of recovery devolves on the heirs of the wife.

Article 1151 – Liability of husband for illegal alienation or illegal charge - The husband who alienates or binds the dotal assets, in cases in which he is not allowed to do so, is liable for all the losses and damages to the wife as also to third parties, to whom he has not declared the nature of the alienated assets.

Article 1152 – Absence of prescription in respect of endowed immobile assets - The dotal immobile assets cannot be acquired by prescription during the subsistence of the marriage, as laid down in article 551. The dotal mobiliary assets may be acquired by prescription, but the husband is liable for them.

Article 1153 – Paraphernal assets - The assets which the wife, married under the dotal regime, may hold or acquire afterwards, and which are not deemed as dotal, shall belong exclusively to the wife as her own, but its income shall be common, except when there is a stipulation to the contrary.

Article 1154 – System of paraphernal assets - The wife does not get any charge against the assets mentioned in the preceding article nor any lien for which she is not entitled except under the general law.

Article 1155 – Regime of husband's own assets - The assets of the husband married under the dotal regime are deemed to be exclusively his and the provisions of Article 1131 and its paragraph are applicable.

Article 1156 – End of dowry system - On dissolution of the marriage or on separation, the endowment shall be refunded to the wife or to her heirs together with any other assets which rightly belong to her, free from any mortgages or encumbrances with which the same or its income might have been charged during the subsistence of the marriage and the assets shall become free from the respective dotal charge only by death of any of the spouses.

Article 1157 – Loss of dowry for causes not attributable to the husband or his heirs - The husband or his heirs shall not be liable for the refund mentioned in the preceding article, when the assets belonging to the wife are lost by accident not imputable to them.

Article 1158 – Bar on restitutions of endowed mobiliary assets - Whenever immobile assets are comprised in the endowment they shall be returned as soon as they are demanded; but the mobiliary assets comprised in the same endowment may be demanded only after a lapse of one year from the date of dissolution of the marriage or of the legal separation.

§ Sole paragraph - The moveable assets in custody of the husband are excepted from the above.

Article 1159 – Interest on delayed dues - However, the wife or her heirs may demand legal interest on the delayed payments made in the above mentioned manner.

Article 1160 – Restitution of certain endowed immobile assets - In case the endowment consists of usufruct, annuity, emphyteutic fees or shares, the refund shall be made by delivery of the respective titles and it shall cease to enjoy the use or to receive the installments.

§ Sole paragraph. The time granted in the last part of Article 1158 is not applicable to the type of assets mentioned above.

Article 1161 – Liability of husband for active debts - In case the endowment consists of credits, the husband shall be liable for the amounts received and for the amounts lost or barred by prescription due to his fault or negligence. Regarding the rest it would be sufficient to return the documents which he has in his possession.

Article 1162 – Income due from assets of the dowry - The pending fruits and the income of any dotal assets shall be partitioned between the husband and the wife or their heirs in proportion to the time during which the marriage has lasted in the final year.

Article 1163 – Improvement made by husband or his heirs - The husband or his heirs are entitled to the payment by the wife or by her heirs for the necessary and useful improvements, but only to the extent of the increase in value at the time of return. The luxurious improvements may be merely removed by the husband or by his heirs, according to Article 500.

Article 1164 – Ordinary expenses of dowry assets - The expenses and the ordinary charges of dotal assets shall, be deemed as compensated by the income of the same assets.

Article 1165 – Restitution of paraphernal assets - The rules in respect of the return of the dotal assets are applicable to the return of the exclusive assets of the wife.

SUB-SECTION V

OF GIFTS BETWEEN PROPOSED SPOUSES

Article 1166 – Gifts amongst spouses - It is lawful for the proposed spouses to stipulate in the ante-nuptial contract in favour of one or of both, the gifts or disposition which they may think proper, save the following restrictions.

Article 1167 – Limits of gifts or disposition - In case the husband or the wife had at the time of marriage ascendants or descendants entitled to the legitimate portion and any one of them is alive at the time of dissolution of the marriage, the said gift or disposition shall not exceed half of the assets which he or she was then holding.

Article 1168 – Lapse of gifts amongst spouses - The gifts or dispositions stipulated in the ante-nuptial contract shall become null and void, in case the marriage does not take place or is annulled, save what is laid down in Article 1091.

- Reference to Art.1091 means reference to Art.30 and partly Art.33 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1169 – Special regime for ante-nuptial gifts - The ante-nuptial gifts shall not be annulled:

1. For want of express acceptance;
2. Due to supervention of issues;
3. On account of ingratitude.

Article 1170 – Gift of existing and specific assets - Unless otherwise stipulated, in case the gift is of present and specific assets, it shall be irrevocable even though the donee dies before the donor.

Article 1171 – Gift of part or full inheritance - In case the gift is of the whole inheritance or part thereof, the donor shall not revoke or defeat the gift by disposing the gifted assets without consideration.

Article 1172 – Prior demise of the donee - The right to the gift, mentioned in the preceding article, be it reciprocal or not, is not transmissible to the heirs of the donee in case the donee dies before the donor.

Article 1173 – Legal capacity of betrothed minors - Minors are allowed to make gifts by ante-nuptial contract, provided they are done by authority of those who, according to Article 1061 and its paragraphs, are competent to authorise the marriage.

Article 1174 – Applicability of general rules relating to gifts - The general rules established in the Chapter on Gifts, in so far as they are not inconsistent with what is laid down in the present Section are applicable to gifts between the proposed spouses.

SECTION VI

GIFTS MADE BY THIRD PERSONS TO THE PROPOSED SPOUSES

Article 1175 – Gifts to spouses from third parties - Any person may dispose in favour of future spouses, by way of gift inter vivos or mortis causa, the totality of his or her assets present and future or a part thereof, provided that he or she makes it in the same ante-nuptial contract or by a separate public deed, save for what is laid down in respect of inofficious gifts.

Article 1176 – Acceptance by the donee - If the gifts allowed by the preceding article are made in the ante-nuptial contract, the same shall be valid with express acceptance by the donee; but when made by separate acts shall not have effect unless they are expressly accepted.

Article 1177 – Prior demise of donee – Although the said gifts are made in favour of the spouses or any of them, the issues of the marriage shall derive benefit from the same, even if the donee or donees die before the donor; and shall lapse only in case the donor survives all the descendants of the donees.

SECTION VII

OF GIFTS BETWEEN MARRIED PERSONS

Article 1178 – Gifts amongst spouses - The husband and the wife may gift to each other their present assets, either by act inter vivos, or by will.

Article 1179 – Regulation of gift amongst spouses - The gifts inter vivos shall be governed by what is laid down in the chapter of Gifts and the gifts mortis causa by what is laid down in the chapter of Wills.

Article 1180 – Prohibition of joint gifts - The spouses are not allowed to make gifts to each other in the same and single act, except the dispositions or reservations of usufruct to the survivor, made at the time of gift of their properties to third persons.

Article 1181 – Revocation of gifts amongst spouses - The gifts between spouses may be freely revoked at any time by the donors.

§ 1 - For such purpose there is no need that the wife be authorised by the husband or by an order of the Court.

§ 2 - The revocation shall be express.

Article 1182 – Supervenience of children. Inofficiousness - Such gifts are not revocable by supervention of issues, but may be reduced for inofficiousness.

Article 1183 – Nature acquired by gifted assets - The gifted assets shall assume the nature of exclusive assets of the donee, whatever may be the ante nuptial contract.

SECTION VIII

OF GENERAL RIGHTS AND DUTIES OF THE SPOUSES

Article 1184 - Ordinary duties of spouses - The spouses are bound:

1. To maintain mutually conjugal fidelity;
2. To live together;

3. To reciprocally assist and help one another.

Arts.1184 to 1188 are revoked by Art.72 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

- Art.1184 is substituted by Art.38 of the said decree.
- See Art.41 of the said decree and Arts.1470 and 1471 of Portuguese Civil Procedure Code of 1939.

Article 1185 - **Duties proper to each of the spouses** - The husband is specially bound to protect and defend the person and assets of the wife; and the latter is bound to obey the husband.

Revoked, replaced by Art.39 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1186 - **Absence of husband abroad** - The wife is bound to accompany her husband except to foreign countries.

- Revoked, replaced by Art.40 of Decree No.1 of 25/12/1910 (Law of Civil Marriage) and completed by Art.1470 of the Portuguese Civil Procedure Code of 1939.

Article 1187 - **Publication of her writings by married woman** - The wife shall not publish her writings without the consent of her husband; but she may approach the Court in case of his unfounded opposition.

- Revoked and substituted by Art.42 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1188 - **Right to enjoy the privileges of the husband** - The wife enjoys all the honours of the husband which are not merely inherent to the post he holds or has held and shall maintain them until she remarries.

- Revoked, replaced by Art.84 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1189 – **Administration of the assets of the marital estate** - The management of all the assets of the matrimonial estate belongs to the husband, and it belongs to the wife only in case of absence or impediment of the former.

Article 1190 – **Powers of the woman administratrix** - The wife as the administratrix, during the absence or impediment of the husband shall not alienate the immobile assets without the authorisation of the family council which will be assisted by the Public Ministry, and in case the value of such assets exceeds 1,00$000 reis, the alienation may only be made in the manner established in Article 268 and onwards.

§ Sole paragraph - The alienations, made in violation of the provision of the present article, shall be null and void and the purchasers may only recover the price of the purchase from the exclusive assets of the vendor wife, in case she has any, or from those belonging to the matrimonial estate only upto the value of the increase, upon proof that such price was utilized for the increase of the matrimonial estate.

Article 1191 – **Powers of the husband over immobile assets** – It is not lawful for the husband to alienate immobile assets nor to be in litigation on questions of property or possession of immobile assets without the written consent of the wife.

§ 1 - Such consent may be made good judicially when the wife refuses to give it without just cause, or when she is unable to give it.

§ 2 - However, the alienation of exclusive assets made by the husband in violation of the provisions of this article may be annulled at the request of the wife or her heirs only in case the husband is found liable to pay her or her heirs and there being no other assets by which the liabilities can be met.

§ 3 - In case the said alienations are of common assets, the wife or her heirs or the heirs of the husband with right to the legitimate portion may, in all cases, apply that the same be annulled.

- The second part of the body of this article is now replaced by Art.17 of the Portuguese Civil Procedure Code of 1939.

Article 1192 – **Judicial capacity of wife** - A married woman shall not move the Court without the consent of the husband, except:

1. In criminal cases in which she is the accused;
2. In any suits against her husband;
3. In proceedings which have, as its sole object, the maintenance or preservation of her own and exclusive rights;
4. In cases in which she has to exercise the rights and duties inherent in parental control in respect of her legitimate issues or of her illegitimate issues born from another.

Revoked, replaced by Art.18 of the Portuguese Civil Procedure Code of 1939. See also Arts.19, 1477 and 1478 of the same Code.

Article 1193 – Incapacity of married woman in property matters - The wife shall not acquire or alienate assets or incur obligations without the authorisation of the husband, except in cases where the law specifically permits it.

§ Sole paragraph. In case the husband denies without any reason the authorisation asked by the wife, she may apply to the respective Civil Judge to make it good and the Judge shall grant or reject it, as he thinks fit, after hearing the husband.

Procedure is laid down under Art.1477 of Portuguese Civil Procedure Code of 1939.

Article 1194 – Form of marital authorisation - The authorisation of the husband shall be special for each one of the acts which the wife wants to execute, except when it is to carry on the business, in which case the wife may execute, by virtue of a general authorisation, all the acts in respect of her business and even mortgage her immobile assets and file suits, provided that it is on account of her dealings.

Article 1195 – Mode of prescribing authorisation - The marital authorisation may be granted orally or in writing or by facts from which it can be necessarily deduced.

Article 1196 – Authorisation by authentic or authenticated document - However, the authorisation to carry on business, to mortgage or to alienate immoveable assets or to file suits in the Courts may only be granted under an authentic or authenticated document.

Article 1197 – Revocation of authorisation - The husband may revoke the authorisation as long as the execution of the act for which it has been granted has not commenced; but in case the execution has already commenced, he may revoke it only by making good to the third party any damage resulting from the revocation.

Article 1198 – Effects of authorisation - The husband is liable for the obligations contracted with his authorisation by the wife, married under the regime of custom of the country or under simple communion of the acquired assets, but he is not liable for the obligations, which the wife, married under any other regime, contracted upon her exclusive assets or interests.

Article 1199 – Effects of judicial authorisation - In case the authorisation is made good by an order of the Court, the husband is liable only for the acts of the wife arising from common obligations or which give rise to common benefit.

Article 1200 – Who can claim nullity of acts practiced by wife - The nullity arising out of want of authorisation may be alleged only by the husband or by his heirs and legal representatives.

Article 1201 – Ratification of nullity - The nullity for want of authorisation may be cured: 1. By the confirmation of the husband, when no suit has been filed in the Court by a third person, in this respect;
2. When it is not invoked within one year from the date of dissolution of the marriage; 3. Where prescription has operated as per the general rules.

Article 1202 – Sanction against marriages not transcribed in Portugal - The rights given to the spouses in the above mentioned cases, cannot be availed of when the marriage is solemnised in a foreign country and not publicised in this country in accordance with the law.

SECTION IX
INTERRUPTION OF CONJUGAL SOCIETY

Article 1203 – Mode of interruption against conjugal society - The conjugal society may be interrupted either in respect of persons and assets of the spouses or only in respect of the assets.

Vide Law of Divorce dated 03/11/1910 – Divorce interrupts conjugal society.

SUB-SECTION I
OF SEPARATION OF PERSONS AND ASSETS[26]

Article 1204 – Grounds of separation of persons and assets - The following shall be valid grounds for the separation of persons and assets:

1. Adultery committed by the wife;
2. Adultery of the husband with public scandal, or complete abandonment of the wife or keeping a mistress in the coijuga1 domicile;
3. The conviction of the spouse to life-imprisonment;
4. Ill-treatment and serious injuries.

Revoked and substituted by Art.43 of Law of Divorce dated 03/11/1910.

For divorce by mutual consent see article 1472 onwards of Portuguese Civil Procedure Code of 1939.

See also Art.25 of Decree No.30615 of 25/07/1940.

Article 1205 – Who can apply for separation - The separation may be sought only by the innocent spouse.

Substituted by Art.44 of Law of Divorce dated 03/11/1910.

Article 1206 – Summoning and constitution of family council - The spouse who desires to get the separation shall approach the Court of his or her domicile or residence in order that he may convene the family council, which shall be constituted of six closest relatives of one and the other spouse, three from each side, and of the competent law officer of the Public Ministry, who shall have no right to vote but only to express his opinion.

§ 1 - The lack of relatives shall be made up by friends of the family and the lack of the latter by respectable persons of the neighbourhood.

§ 2 - In case of a tie, the matter shall be decided by the Judge.

§ 3 - Once the family council is appointed, both the parties shall be heard on the point of its constitution and either may apply for substitution of the members who are inhibited due to the circumstances mentioned in clauses 1, 2, 3, 4, 5 and 6 of Article 234. If the above inhibitions are lacking, a similar application may be made to lead evidence to prove the existence of any of the following circumstances:

26 *Vide Article 70 r/w Articles 43 to 49, paragraph 7 of Article 61 and Article 50 of the Law of Divorce, p. 73.*

1. Bribery.
2. Interest in the separation.

§ 4 - The wife may at the same time apply for provisional custody, whether the wife or the husband is the applicant.

Article 1207 – Powers of the family council - The family council after hearing the Public Ministry and the parties and being unable to bring about a reconciliation, shall examine whatever evidence is adduced before it in respect of the matter and shall decide:

1. Whether the separation of persons should or should not be granted;
2. What should be the amount of maintenance in case one of the separated spouses requires it and the other has the means to provide the same;

3. And, finally, where there are issues, the provision in respect of them, in case the spouses do not arrive at an agreement about the same.

- See Arts.393 onwards, 1452 onwards and 1475 of Portuguese Civil Procedure Code of 1939.

Article 1208 – Binding force of decisions of family council - The decisions of the family council shall be sanctioned by the Judge and no appeal shall lie therefrom except in the case of clause 2 of the preceding article concerning the amount of maintenance.

Article 1209 – Punishability of adultery by spouses - In the case of clause 1 and 2 of Article 1204, the innocent spouse is permitted to move the family council or institute criminal prosecution against the other spouse.

§ 1 - However, where there is repetition on the part of the offending spouse, the innocent spouse may institute criminal prosecution even though the family council has been moved.
§ 2 - When criminal prosecution is instituted against the wife and she is acquitted, she shall in law be deemed as separated as to her person and assets, and she may apply, without the need of any document other than the judgment of acquittal, that by way of execution proceedings, separation, and delivery of the assets belonging to her, be made.
§ 3 - Where the spouse institutes criminal prosecution, what is provided in clause 3 of Article 1207 shall be observed and for such purpose the family council shall be convened in terms of Article 1206.

- Revoked expressly by Art.61(7) of Law of Divorce dated 03/11/1910 and replaced by the same.

Article 1210 – Effect of separation of persons – From the separation of persons, the separation of the assets necessarily follows.

§ Sole paragraph - Whichever be the regime under which the marriage has been contracted, the wife, in case of her adultery, shall have no right of separation of assets but only for maintenance, except if it is proved that at the time when she committed adultery she could have applied for separation from her husband on any of the grounds mentioned in clause 2 of Article 1204.

Article 1211 – Effects of separation of assets - In all the cases where there is separation of assets, the inventory and the partition of the same shall be done as if the marriage has been dissolved.

- See Art.20 of Portuguese Civil Procedure Code of 1939, regarding rights of wife to sue, without permission of husband, incase of judicial separation of assets. For procedure of partition in case of divorce, separation or annulment see Arts.1444 to 1447 of the same Code.

Article 1212 – Paternal power after separation of spouses - When the issues are under the care and custody of one of the spouses, the other on that account is neither exonerated from his or her obligations nor is deprived of parental control to the extent that it is not inconsistent with the care and custody entrusted specially to the other spouse.

- See Art.1452 onwards of Portuguese Civil Procedure Code of 1939.

Article 1213 – Sanctions against guilty spouses - The spouse, who gives cause for separation, shall lose all that he or she might have received from the other spouse or any other person might have given or agreed to give on account of the other spouse.

Article 1214 – Saving of rights of creditors of the marital estate - The rights previously acquired by the creditors of the conjugal society are not defeated by the separation of the assets.

Article 1215 – Effect of separation as to movables - The spouses may freely dispose the mobiliary assets which belong to each of them after the separation, save for the right of the children.

- See Art.20 of Portuguese Civil Procedure Code of 1939.

Article 1216 – Effect of separation as to immobile assets - The disposition inter vivos of immobile assets which belong to each of the spouses after separation, depends on the consent of both and the consent of the one who refuses it without a just cause may be made good by order of the Court.

- Procedure is laid down under Art.1477 onwards of Portuguese Civil Procedure Code of 1939.

Article 1217 – Bar of exercise of rights depending on execution of marriage - The separation of properties does not authorise the spouses to exercise in anticipation the rights arising from dissolution of the marriage.

Article 1218 – Reconciliation of spouses - Whatever may be the manner under which the separation is made, it shall always be lawful for the spouses to reconstitute the conjugal society in terms under which it had been constituted, provided the reconstitution is done by an act of conciliation before the respective Justice of Peace.

§ Sole paragraph. Such reconciliation shall not in any way defeat the rights of third persons acquired during the subsistence of the separation.

- Restoration of conjugal society will follow the steps under Art.305 of Portuguese Civil Procedure Code of 1939.

SUB-SECTION II
OF THE SIMPLE JUDICIAL SEPARATION OF ASSETS

Article 1219 – Judicial separation of assets - The wife, married either without communion of assets or under it, who may find herself in manifest danger of losing whatever belongs to her, due to the bad administration by the husband, may apply for the separation of assets in the following terms.

- See Arts.1200(2), 1361 & 1447 of Portuguese Civil Procedure Code of 1939.

Article 1220 – Effect of separation of regime of general community of assets - In case the wife is married under the regime of custom of the country, the separation shall only be of the assets which she might have brought to the matrimonial estate or devolved to her thereafter and the moiety of those acquired jointly with the husband.

Article 1221 – Separation in remaining regime - In case the wife is married under the dotal regime or under any other kind of separation of assets, the judicial separation will be permitted only when the dotal or separate assets are susceptible to deterioration and the refund of endowment is not sufficiently secured by way of any of the modes established in Article 1139.

Article 1222 – Effective date of separation in regime of separation of assets - In case the marriage has been contracted under the regime of custom of the country, it shall be deemed that the spouses renounce the communion of assets from the date of presentation of the application for separation in the Court, in case the separation materialises.

Article 1223 – Effects of separation - Once the separation is granted by the judgment of the respective Civil Judge, the wife shall be given the administration of her assets.

Article 1224 – Nature of assets of the separation - After the separation, the dotal assets shall continue to maintain the same nature. All the others shall be deemed as exclusive assets.

Article 1225 – Publicity of separation - The application for the separation as well as the judgment granting it shall be published within a period of eight days in any one of the periodicals of the Judicial Division, or in case there is no periodical, by way of public notice affixed in the Court of domicile of the spouses.

§ 1 - The period of eight days shall be counted, in the first case, from the date of presentation of petition in the office of respective clerk of the Court; and, in the second case, from the date on which the judgment becomes final for want of appeal.

§ 2 - The assets which are separated by way of judgment shall not be liable for the debts incurred by the husband after the first publication.

Article 1226 – Duty to contribute to the expenses of the matrimonial estate - The separation of assets does not exonerate the wife from contributing towards the expenses of the couple, from the income of her assets in proportion to her belongings in relation with those of the husband.

Article 1227 – **Judicial character of separation** - Such separation of assets cannot be made by way of agreement.

Article 1228 – **Right of objection to creditors of the spouses** - The special creditors of any of the spouses may be joined as defendants in the proceedings for separation.

- See Art.347 onwards of Portuguese Civil Procedure Code of 1939.

Article 1229 – **Reconciliation of the spouses** - The effect of separation may be annulled by way of agreement between the spouses, provided that the same is executed by way of public deed or public indenture and published in the same manner prescribed in respect of application and judgment of separation.

§ Sole paragraph - The effects of such agreement, in respect of third persons, only begin to run from the date of the said publication.

Article 1230 – **Right of the wife to object to third person** - Even when there is no judicial separation of assets, the wife shall always be entitled to object, as a third person, without necessity of authorisation of the husband, any recovery proceedings against the income of her dotal or exclusive assets administered by the husband, where due to such recovery proceedings she is deprived from the necessary maintenance.

- See Art.1042 of Portuguese Civil Procedure Code of 1939.

SECTION X
SUBSISTENCE OF WIDOWED SPOUSES

Article 1231 – **Subsistence of widowed spouse** - Once the marriage is dissolved whichever may be the regime under which it has been contracted, the spouse, who due to the death of the other is found without means of subsistence, shall be entitled to be maintained from the income of the assets left by the deceased, whatever may be their nature.

§ Sole paragraph - This provision does not include the assets of which the deceased spouse was merely an usufructuary.

Article 1232 – **Duration and fixation of maintenance** - The maintenance shall last until the maintained spouse is in need of it or until he or she remarries and shall be fixed as the Judge thinks fit and proper in proportion to the income of the aforesaid assets and as per the necessity and conditions of the maintained spouse, except when the parties agree amicably on the matter.§ Sole paragraph - The provision of this article shall be observed, whether there are issues or not from the marriage, and even when the deceased spouse has left issues from another previous marriage.

- See Art.29 of Law of Divorce dated 03/11/1910 and Art.393 of Portuguese Civil Procedure Code of 1939.

SECTION XI
RE-MARRIAGE

Article 1233 – **Re-marriage** - The widow who wants to remarry before 300 days have elapsed from the date of the husband's death shall be bound to get verified whether she is or is not pregnant.

- Procedure is laid down under Arts.1500 and 1501 of Portuguese Civil Procedure Code of 1939.
- See Arts.10 and 56 of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1234 – **Marriage in violation of art. 1233** - The widow who marries in violation of the provision of the preceding article shall lose all the nuptial benefits which under the law or agreement she had received or had to receive from the previous husband and they shall devolve to his lawful heirs; and the second husband shall not be entitled to contest the legitimacy in respect of the issue born one hundred and eighty days after his marriage, except, however, that the issue, in case he or she wishes to do so, has a right to claim that he or she is the legitimate issue of the previous husband if he or she is able to prove so.

Article 1235 – **Incommunicability of certain assets of the re-married person** - A man or a woman who re-marries, having issues or other descendants who are successors as per the previous marriage, shall not share with or make a gift under any title to the other spouse, of more than half the assets, he or she had at the time of marriage, or that he or she may come to acquire by gift or inheritance from his or her ascendants or other relatives.

Article 1236 – **Succession of children of previous marriage** - Where to a re-married person, are left, from the children of any marriage, assets which the said child had inherited from his deceased father or mother or their ascendants, and there are full blood brothers or sisters of the deceased child or descendants of the deceased full blood brothers or sisters, then the ownership of the said assets will belong to the latter and the father or mother will only have the usufruct thereof.

Article 1237 – **Incapacity of re-married woman of more than 50 years** - The wife who re-marries, after having completed fifty years of age, shall not alienate, under any title, from the date of re-marriage, the ownership of half the assets mentioned in Article 1235, when she has issues or descendants entitled to them, and any party concerned may apply for inventory proceedings of the same assets and the registration of the respective condition subsequent in respect to the assets.

Article 1238 – **Presumption of marital regime in second marriage** - A man or a woman with issues of previous marriage who marries a person having no issue, there being no agreement to the contrary, shall be deemed as married under the regime of custom of the country which shall always subsist, save for the provisions of this Section.

Article 1239 – **Provisions applicable to second marriage** - All that is laid down in respect of the first marriage is applicable to the re-marriage.

CHAPTER II
CONTRACT OF SOCIETY[27]

27*Articles 1240 to 1317 - Society is a general term. Many types of entities would be covered and accordingly this group of provisions has to be viewed in the light of,*

(i) The Indian Partnership Act, 1932;
(ii) The Limited Liability Partnership Act, 2008;
(iii) Companies Act 2013, earlier Companies Act, 1956;

SECTION I
GENERAL PROVISIONS

Article 1240 – **Society** - It is lawful to all those who are entitled to dispose of their assets and labour to associate themselves with others, placing in common all their assets or part thereof, their labour only, or their assets and labour together, with intent to share amongst themselves the profits or losses, which may result from such common holding. This is known as Society.

Article 1241 – **External form of society contract** – A society may exist by express agreement, or by facts from which its existence may necessarily be inferred.

Article 1242 – **Nullity of leonine society** – A society, in which it is agreed that all the profits shall belong to one or some of the shareholders, and all the losses, shall be the liability of the other or others, shall be void.

SECTION II
UNIVERSAL SOCIETY

Article 1243 – **Universal society** - Universal society may include all the assets, movable and immovable, present and future, or only the movables, fruits and income of present immovables and all the assets acquired in future.

§ Sole paragraph - This second type of society, does not include the assets acquired by gratuitous title, unless there is a declaration to the contrary.

Article 1244 – **External form of universal society** - Universal society of all the assets, present and future, may be constituted only by public deed.

Article 1245 – **Nature of assets acquired by shareholders** - The assets acquired by the shareholders, in the second type of universal society, are presumed to be of the same society, until

(iv) Also Societies Registration Act 1860 and even

(v) Co-operative Societies Act, 2001.

it is not proved that they were acquired with the income or in exchange of non-communicable assets.

Article 1246 – **Liability of strictly Universal society for debts of the members** - All the debts, prior or subsequent to the contract, and all the expenses of the shareholders, except those arising from the Criminal offence or the act forbidden by laws, shall be the liability of society, when it is of all the assets present and future.

Article 1247 – **Liability of society of acquired assets for the debts of the shareholders** -Where the society is only of acquired assets, unless there is declaration to the contrary, the society shall be liable to pay only following debts:

1. Debts contracted by the shareholders, for the purposes of the same society;
2. The expenses made and expenditure necessary for the maintenance of the shareholders and their families.

§ Sole paragraph - It is understood that the expenditure towards maintenance is towards habitation, alimony, clothing, as well as treatment during illness.

Article 1248 – **Dissolution of Universal society** - Once a universal society is dissolved, unless otherwise provided, the respective assets shall be partitioned equally amongst the shareholders.

SECTION III
SOCIETY IN SPECIFIED ASSETS

Article 1249 – **Society in specified assets** - Private society is that which is limited to certain and specified assets, to the fruits and income of these, or to a specified industry.

Article 1250 – **External form** - A private society, in which there is an immovable property amongst its assets, may be constituted only by way of public deed.

SUB-SECTION I
MUTUAL RIGHTS AND DUTIES OF SHAREHOLDERS

Article 1251 – **Liability of shareholders towards society -** A shareholder shall be liable to the society for everything in respect of which he has bound himself towards it.

Article 1252 – **Eviction** [28] **of assets brought in by a -** If a shareholder has come into the society with any specific thing of which the society is deprived the said shareholder shall be responsible towards it, in the same manner as a seller to a purchaser.

Article 1253 - Delay in paying amount due by a shareholder - A shareholder who does not come into the society with the amount of money which he bound himself to bring, shall be liable to pay interest to the firm on this amount from the day on which the installment becomes due.

Article 1254 – **Diversion of common funds for own benefit** – The same liability shall be incurred by a shareholder who, without permission, diverts any amount from the common funds for his own benefit.

Article 1255 - Answerability for profits of the society - Whoever has associated himself to exercise in common some Industry, is responsible towards the society for all the profits that he obtains through the same Industry.

Article 1256 – Payment made to a shareholder and to society without indication – Where a shareholder receives an amount from any person liable simultaneously to him individually and also to the society he shall allot the amount proportionately to both the credits even if he issues receipt in his sole name.

§ 1 – If however he issues receipt in the name of the society, the entire amount shall be credited to the credit of the society.

[28]*Eviction ("Evicção"), in this Code, means being deprived / dispossessed of a property. In our usage, we use the same word with reference to the person who is removed / evicted from a property.*

§ 2 – The provisions of article 728 are excepted but only in case the personal credit of the shareholder is more onerous.

Article 1257 – Payment to individual shareholder to be rateably distributed among shareholders – In case a shareholder receives full payment of his share of a common debt, he shall be liable in case the debtor becomes insolvent to bring the amount received by him to the corpus of the common debt even if he issues receipt only in his individual name.

Article 1258 – Liability for damages –A shareholder shall be liable to the firm for the losses caused to it through his fault or negligence and he is not permitted to compensate them from the income otherwise earned by him by his work in other cases.

Article 1259 – Risk of damage to non perishable things – If the shareholder has contributed with certain specified non perishable objects, bringing into the society only the fruits and use of the same, the risk for the loss or decrease of the same objects shall go in the account of the said shareholder; If however he has contributed with the ownership of the objects the risk shall be to the account of the society.

Article 1260 – Liability for damage to perishable things – If the shareholder has contributed perishable things the risk shall be on the account of the society.

Article 1261 – Liability of the society to individual shareholder – The firm shall be liable to an individual shareholder not only for the amounts spent by him for the benefit of the society, as also for the liabilities incurred by him in good faith in the business of the society, as well as resulting from the risks inherent to the administration entrusted to the said individual shareholder.

Article 1262 – **Share of profits and losses** – The share of shareholders, in the profits or the losses shall be proportionate to their investment unless otherwise specified.

Article 1263 – **Shareholders without defined share** – If any of the shareholders comes in only with his labour, not previously estimated, or without prior determination of the share which he has to receive and does not come to any agreement with the remaining shareholders in this regard, he shall have the share which is awarded to him by arbitration.

Article 1264 – **Rights of shareholders who comes in with capital and labour** – If any shareholder, besides the capital with which he comes in, also binds himself to exercise some labour, the rights which he has by reason of his industry, shall not be confounded with those which he may have by reason of the capital with which he entered.

Article 1265 – **Partition deferred to a third party** – Where the shareholders agree that the partition be effected by the third party, they shall not be entitled to dispute the decision, except where they have declared to the contrary.

Article 1266 – **Powers of the administration**–A shareholder entrusted with the administration by a specific clause, may do all acts relating to the said administration, without depending on the approval or disapproval of the other shareholders except if he acts fraudulently.

§ Sole Paragraph - These powers of the administrative shareholder shall remain so long as the society remains and may only be revoked for a legitimate cause.

Article 1267 – **Revocation of the powers conferred after constitution of the society** –Powers conferred by an act subsequent to the institution of the society may be revoked by a simple mandate.

Article 1268 – **Where several shareholders are administrators** – When there are various shareholders entrusted with the administration indistinctly or without specification according to which they should proceed, each one of them may separately carry out such acts of administration as they may deem fit.

Article 1269 – **Stipulation of joint action by administrators** – If it is stipulated that one shareholder administrator cannot do anything without the concurrence of the other shareholder or shareholders, he may act otherwise only if there is a new stipulation or in case he fears grave and irreparable loss.

Article 1270 – **Supplementary rules of administration** – The absence of express stipulation over the form of administration shall be made up by the following rules :-

1. All shareholders are vested with equal power of administration : the acts practiced by any of them bind the others subject to the right to object, till these acts do not produce legal effect; 2. Any of the shareholders may use the assets of the firm in the customary way provided no loss is caused to the society and provided the other shareholders are not deprived of the enjoyment to which they also are entitled;
3. Each shareholder has a right to compel the others to contribute alongwith him in the expenses necessary for the conservation of the assets of society;
4. None of the shareholders may without the consent of the others make alterations in the immovable assets of the society even if such alterations may appear useful to him, nor may he bind or alienate the movable or immovable assets of the society;
5. If there is difference among the shareholders, matters shall be resolved by majority, whatever may be the disproportion in their shares; in case of a tie, the matter shall remain unresolved till a subsequent resolution.

Article 1271 – Shareholder's freedom of association – A shareholder does not require the permission of others to associate with a third party in relation to the share which he has in the society. He may not however, even if he is the administrator, introduce him as a shareholder into the society.

SUB-SECTION II

DUTIES OF SHAREHOLDERS TOWARDS THIRD PARTIES

Article 1272 – Liability of shareholders for debts of the society – Shareholders are not jointly liable for debts of the society nor are they liable beyond their share except where there is a stipulation to the contrary.

Article 1273 – **Rights of creditors of a shareholder** – Shareholders are liable to their creditors in shares proportionate to their respective shares in the society unless otherwise specifically agreed.

Article 1274– Competing claims of creditors of society and of individual shareholder - The creditors of the society shall have preference over the creditors of the individual shareholders as far as the assets of the society are concerned; but the creditors of the individual shareholder may seek attachment and execution of the society share of the individual shareholder who is indebted to the said creditor.

§ Sole paragraph - In the latter case, the society shall come to dissolution and the Judgement Debtor shall be liable for the losses, damages to the other shareholders and the dissolution of the society shall take place automatically.

SECTION IV

DURATION AND CESSATION OF SOCIETY

Article 1275 – **Commencement of society** - Society commences from the time the contract is lawfully entered into, in accordance with article 1240; if there is no stipulation to the contrary: the society, however, does not come into effect, where any shareholder promises to bring in any property, or use of something essential for the existence of the society, and delivery of such property or use of such thing does not take place.

Article 1276 – **Determination of society** - The society ends:-

1. By the lapse of the time for which it was entered into;
2. Where its purpose is extinguished;
3. By the fulfilment of its objective;
4. By the death or interdiction of any of the shareholders; 5. Through renunciation by any of the shareholders and in the case of sole paragraph of article 1274.

Article 1277 – **Survival of society in respect of some of the shareholders** - The society shall, however, continue, despite the death of any one of the shareholders, if it is agreed that, in such case, the society shall continue, through his heirs, or with the existing shareholders.

§ Sole paragraph - In the later case, the heirs of the deceased shall have right only to the part which the deceased had at the time of the death, according to the state of the society, and shall only participate in the rights and obligations which are subsequent and which are necessary dependence of the rights acquired by the deceased.

Article 1278 – **Dissolution of society due to retirement of some of the shareholders** - The dissolution of the society, on account of renunciation of any of the shareholders, is permitted only in case of society of unlimited duration, save what is provided in the subsequent article.

§ 1 - Such renunciation shall be effective only when it is made in good faith, at proper time and with notice to the shareholders.

§ 2 - The renunciation is in bad faith, where the shareholder who renounces intends to take advantage exclusively of the benefits which the shareholders were proposing to take in common. § 3- The renunciation shall not be held as timely, where the affairs of the society are not in proper condition or where the society may be prejudiced, by dissolution, at that time.

Article 1279 – **Retirement of shareholder in society for fixed duration** - A society, for a specified period, cannot be dissolved by reason of renunciation by any of the shareholders except for a legitimate cause.

§ Sole paragraph - Legitimate cause is that which arises from incapacity of any of the shareholders for the business of the society, or failure to carry out his duties or any other similar cause, from which there may be irreparable loss to the society.

Article 1280 – **Rules applicable to partition of society assets** - General provisions which regulate partition between the co-heirs shall be applicable to the partition amongst the shareholders.

SECTION V

FAMILY SOCIETY

Article 1281 – **Family Society** - Society amongst family members is that which is formed between brothers or between parents and major sons. Such Society is either express or tacit.

Article 1282 – **Mode of formation of family society** - Family Society is express when it is as a result of contract in writing and tacit is that which results from the fact of their having lived together for

more than one year, jointly in respect of the meals and habitation, of the income and expenditure, of losses and profits.

Article 1283 – **Prevalence of contractual terms** - In the absence of agreement in writing, the contract is governed by following provisions.

Article 1284 – **Purpose of family society** - The Society amongst family members includes the use, the income of properties of the shareholders and product of their labour and industry and the assets that the shareholders possess in indivision.

Article 1285 – **Duties of family society** - Following are the burdens on the Society:-

1. The expenses of the maintenance, as provided in article 1247 and the sole paragraph; 2. The debts contracted in common benefit;
3. The advances and ordinary expenses of the cultivation and extraordinary expenses incurred in the undivided properties;
4. The encumbrances inherent to the usufruct of those assets, income of which comes to the Society.

§ Sole paragraph - The burden to prove that the debts were contracted in common benefit, lies on the shareholders who incurred the debts.

Article 1286 – **Nature of movables acquired by shareholders** - The acquisitions of the mobiliary assets by shareholders, are presumed to be in their personal name, if the same are not utilized for common benefit.

Article 1287 – **Immovables acquired by shareholders** - The acquisitions of immobile assets, made by the shareholders, shall also be of their exclusive property, even though they declare, that the purchase is done in common, if they have not been specially authorized by the other shareholders; save and except right of the Society to recover damages if such acquisitions were made with common funds.

Article 1288 – **Risk of deterioration of assets of shareholders** – Losses and damages caused to the assets of any of the shareholders by a fortuitous event, shall fall on the owner.

Article 1289 – **Mode of division of society assets** - Upon the dissolution of the Society, partition of the assets shall be made by the manner mentioned below, save where there is express stipulation to the contrary.

Article 1290 – **Partition of undivided immovables** - Where there are undivided immovables at the time of the constitution of the Society, the assets shall be divided equally into plots, or as per value amongst all the shareholders, unless some of them have a clear right to a bigger share.

Article 1291 – **Partition of fruits and produce of immovables** - Where there are fruits, or any other income, arising from the cultivation of the immovables, in which some of the shareholders have worked and others have not, two lots shall be made: the first to be shared amongst the owners of the immovables in proportion of their capital; the second to be shared per capita, amongst those who did the work.

Article 1292 – **Non- shareholder covered in partition** - Where any shareholder has a child or wife, who likewise have worked, the following shall be observed: the wives shall get equal to half of what which was given to the male and the children what they deserve and which considering the circumstances, has been allotted to them.

Article 1293 – **Other non-shareholders covered in partition** - Where, however, any of the children, who, though they have not worked in the cultivation, yet have contributed to the household with other type of labour, they shall be benefited in the same way as others who have worked.

Article 1294 – **Benefit to the owner of cattle used in the cultivation of immovables** - Where there are cattle in the Society, belonging to some of the shareholders, used in the cultivation, he shall be allotted out of the second part some amount which is deemed reasonable.

Article 1295 – **Partition of acquired assets** - Where there are acquired assets, the same shall be shared in the proportion laid down in article 1290.

Article 1296 – **Profits in cultivation of immovables of others** - When the shareholders have worked in the farms of other persons, the profits shall be shared in the manner prescribed, amongst those who did the cultivation.

Article 1297 – **Simultaneous cultivation of own assets with those of another** - When the shareholders have worked simultaneously, in the farms of their own and of strangers, the produce of either shall be separated and thereafter, divisions shall be made, as provided in preceding articles.

§ Sole paragraph - Where the fruits are mixed, proper calculation shall be made.

SECTION VI

RURAL PARTNERSHIP

Article 1298 – **Types of rural partnership** – Rural share cropping covers farming and rearing cattle.

SUB-SECTION – I

AGRICULTURAL PARTNERSHIP

Article 1299 – **Agricultural partnership** – There is agricultural partnership, where one person gives to another any tract of land to be cultivated by whoever receives it, against payment of certain share in the crop, as agreed between them.

Article 1300 – **Death of a partner** – Where, during the pendency of the contract, either of the contracting parties die, neither the surviving party nor the heirs of the deceased party are bound to maintain and fulfill the contract.

§ Sole paragraph - But if, at the time of the death of the owner, the cultivator has cultivated the land, the vineyard is trimmed or he has done any other works of cultivation, or any advances, the contract shall subsist during the time necessary to reimburse the expenses and works done, if the owner is not willing to pay the same.

Article 1301 – **Precautionary measures to the benefit of the owner partner** - The cultivators, who have entered into farm sharecropping, are not entitled to remove the cereals from the threshing floor, nor extract the wine from the wine press nor remove any other fruits, which are to be shared, without informing the owner or his representative, if he is in the same parish. § 1 - Where the owner or his representative are not available in the parish, the cultivator is permitted to measure the fruits in presence of two honest witnesses.

§ 2- If he fails to do the same, he shall pay double the amount payable.

§ 3 - The seeds are to be deducted from the share of the cultivator, if otherwise not provided.

Article 1302 –**Duty to cultivate property** - The sharecropper who fails to cultivate the land, or does not cultivate as agreed, or at least as per custom of the land, shall be liable to make good the loss caused to the owner.

Article 1303 – **Rules applicable to agricultural partnership** - The provisions governing the relations between the landlord and tenant, shall be applicable to the share cropper to the extent not regulated by special provisions.

SUB-SECTION II

PARTNERSHIP IN BREEDING LIVESTOCK

Article 1304 – **Partnership in breeding livestock** - A contract of livestock breeding arises, when one or more persons deliver to another person or persons, certain animals or certain number of animals to breed, treat and watch them, with an agreement to share between them the future profits in certain proportion.

Article 1305 – **Regulation of partnership** - The terms of such agreement shall be regulated by the will of the parties; but in the absence of the agreement, by the general custom of the locality shall be observed, except for following provisions.

Article 1306 – **Duties of the partner who treats the animals** - The partner who bandages the wounds is bound to exercise in the upkeep and treatment of the animals the care that he ordinarily gives to his own, and if fails to do so, he shall be liable for losses and damages thereby caused.

Article 1307 – **Duties of partner who owns** - The owner partner is bound to guarantee to the other partner, who works, the possession and use of the cattle, subject of the contract, and to replace by others those lost in case of eviction, otherwise shall be liable for losses and damages thereby caused by non-performance of the agreement.

Article 1308 – **Risk in case of death of animal** - When the animals perish or are lost by a fortuitous event, the loss shall be on the account of the owner, and in other cases, the losses shall be divided in proportion of the profits.

Article 1309 – **Advantage taken from animals who die** - If any profits are derived from the animals who died, such profit shall be of the owner, and partner who was bound to bandage and treat them, shall be liable for the same.

Article 1310 –**Void stipulation regarding certain losses** - The stipulation that all the losses resulting from fortuitous event, shall be borne by the partner who nurses the livestock, shall be null and void.

Article 1311 – **Disposal of cattle heads** - The caretaker of the cattle shall not dispose of any head of cattle or their offsprings, without consent of the owner, vice-versa, the latter shall not do so without the consent of the former.

Article 1312 – **Shearing of cattle with wool** - The partner who is the caretaker of wool bearing livestock, shall not do the shearing without informing the owner; failing which he shall be liable to pay to the owner double of the value which would have belonged to the owner.

Article 1313 – **Duration of partnership** - The partnership shall last for the agreed period, and in the absence of agreement, the period shall be for such time as, according to the local custom, such partnerships last.

Article 1314 – **Termination of contract** – In any case, the owner may rescind the contract when the caretaker of cattle does not fulfill his duties.

Article 1315 – **Rights of creditors of the owner** - The creditors of the owner may attach only the share of the owner, the obligations contracted by him with the caretaker of cattle being exempted.

Article 1316 – **Rights of the creditors of the partner who treats the animals** - The creditors of the caretaker of cattle cannot attach the animals of the partnership, but only what he has received or may acquire under the contract.

Article 1317 – **Right of follow up of the owner** - The owner, whose cattle was unlawfully

alienated by the caretaker, has the right to recover it, except when the cattle was sold in auction; in which case the owner has right to recover losses and damages from the caretaker who has not given him timely notice.

CHAPTER III

MANDATE OR ATTORNEYSHIP[29]

SECTION I

29*Articles 1318 to 1369 - Power of Attorney:-*

These provisions have to be viewed in the light of,

(i) Indian Contract Act, Chapter X, Agency, Sections 182 – 238;

(ii) Powers-of-Attorney Act, 1882.

GENERAL PROVISIONS

Article 1318 – **Meaning of Mandate or Attorneyship**[30] - A contract of mandate or attorneyship takes place when a person undertakes to do or to perform anything on instructions or in the name of another. The mandate may be oral or written.

Article 1319 – **Meaning and kinds of power of attorney** - The document by which the principal or the mandator records his mandate is called the Power of Attorney. Such a Power of Attorney may be public or private.

Article 1320 – **Registered Power of Attorney** - Power of Attorney is public when it is drawn by a Notary or by the respective official, being recorded in some books.

Article 1321 – **Unregistered Power of Attorney** - Power of Attorney is unregistered when it is written and signed by the principal or written by some other person, and signed by the principal and two witnesses.

Article 1322 –**Meaning of power of attorney deemed to be registered** - A Power of Attorney is deemed as registered when it is written and signed by the principal, the notary having attested the authenticity of the handwriting and of the signature; and that written by a person other that the principal, but signed by him and by two witnesses, if such signatures have been made before the notary, it shall be so certified by him, authenticating the signatures in the document itself.

Article 1323 – **Types of Power of Attorney** - A Power of Attorney may be general or special.

Article 1324 –**Meaning of general and special Power of Attorney** - A Power of Attorney is general where the attorney represents the principal in all and any acts, without specifying them. A Power of Attorney is special where the attorney represents the principal in certain and specified acts.

30 *"Mandato" or "procuradoria" has been translated as Power of Attorney or mandate except in certain cases where it has been translated as agency.*

Article 1325 – **Scope of general Power of Attorney** - A general Power of Attorney may only authorize acts of mere administration.

Article 1326 – **Proof of mandate** - An oral Power of Attorney may be proved by any means of evidence; the written one, where required by law, only by the means provided in articles 1320, 1321 and 1322.

Article 1327 – **Acts which require registered Power of Attorney** – A registered Power of Attorney, or a Power of Attorney deemed as registered, is necessary for the performance of the acts which are to be done in an authentic manner, or for proof of which an authentic document is required.

Article 1328 – **Acts for which unregistered Power of Attorney is sufficient** – An unregistered Power of Attorney is sufficient for acts, the proof of which depends only on a private document.

Article 1329 – **Acts for which verbal mandate is sufficient** - For the performance of the acts, not covered by the preceding two articles, the proof of simple oral agency is admissible.

Article 1330 – **Mandate given to absentees** - The Power of Attorney may be created in favour of absentees, but the contract is valid only upon the acceptance by the attorney.

Article 1331 – **Presumption of gratuitous nature of mandate** - The Power of Attorney is presumed to be gratuitous, if no remuneration is stipulated except, if the object of the Power of Attorney is of such a nature that the attorney deals with it as a matter of his trade or business or by way of a lucrative profession.

SECTION II

PURPOSES OF MANDATE, PERSONS WHO MAY GRANT AND ACCEPT POWER OF ATTORNEY

Article 1332 – **Powers under mandate** - Any person may get done through another all juridical acts which he himself can perform and which are not purely personal in nature.

Article 1333 – **Lawfulness of powers** - The attorney may accept the Power of Attorney for all or any act, which is not forbidden by law.

Article 1334 –Capacity to accept Power of Attorney - Married women and non emancipated minors, may be attorneys, save what is provided in article 1354; but the principal may only file a suit against the minor or against the married woman, in accordance with the general provisions regulating the liability for the acts of such persons, except if the Power of Attorney, being in writing, has been authorized by the husband, father or guardian of the attorney, as the case may be.

SECTION III

DUTIES OF THE ATTORNEY IN RELATION TO THE PRINCIPAL

Article 1335 – **Terms and time limit for the fulfillment of mandate** - The attorney is bound to perform the mandate on the terms and for the time for which it is conferred.

Article 1336 – **Duties and responsibilities of attorney** - The attorney shall conduct the business entrusted to him, with diligence and care that is reasonable, for performance of the agency; failing which he shall be liable for losses and damages which were caused thereby.

Article 1337 – **Exclusion of setting-off of profits with losses** - The attorney is not entitled to offset the losses caused by him, with the profits which he might have realized to the principal.

Article 1338 – **Liability for exceeding powers** - The attorney who exceeds his powers, shall be liable to the principal as well as to the third party with whom he has contracted, for losses and damages caused thereby.

Article 1339 –Rendering of accounts - The attorney is obliged to render the exact accounts of his business.

Article 1340 – **Money diverted by attorney** - If the attorney embezzles to his benefit, the money of the principal, he shall be liable for interest from the date of default, if on such money, interest does not accrue from any other source.

Article 1341 – **Responsibility of joint holders** - There being different persons jointly entrusted with the agency, each of them is answerable for his acts, if it is not stipulated otherwise.

§ Sole paragraph - In case of failure to execute the agency, the liability shall be shared equally amongst all the agents.

Article 1342 – **Sub delegation of Power of Attorney** - It is not lawful for the attorney to entrust to another the execution of the agency, if no specific powers have been given to that effect; and if such

powers have been given without indicating the person, the attorney shall be answerable for the acts of his substitute, if the latter is visibly incapacitated legally or an insolvent.

Article 1343 – **Position of substituted attorney** - The substituted attorney has in relation to the principal the same rights and obligations, which the original attorney had.

SECTION IV

DUTIES OF THE PRINCIPAL IN RELATION TO ATTORNEY

Article 1344 – **Duty to indemnify the attorney** - The principal is liable to compensate the attorney for expenditure incurred by the latter, and for all the losses caused to him in the execution of the agency, provided that the attorney has not exceeded his powers and has acted in good faith.

Article 1345 – **Liabilities on the principal** - It is not lawful for the principal to refuse to fulfill any of the obligations, which the attorney has contracted in his name, within the limits of the powers conferred under the Power of Attorney.

Article 1346 – **Terms on which the principal is bound** - It is not lawful to the principal to exempt himself from complying with what is provided in the preceding articles, on the ground that he has not received the profits that he expected from the agency.

Article 1347 – **Remuneration of attorney** - The principal is liable to pay to the attorney the stipulated remuneration, or that which is due to him, in accordance with the provision of article 1331, even though the agency has not been profitable to the principal, unless the same is on account of fault or negligence of the attorney.

Article 1348 – **Plurality of principals** - Where many persons have granted one Power of Attorney for a common business, each of such persons is jointly liable for all the obligations arising from the execution of the agency, except that the principal, who has effected the payment on behalf of others, has the right to recover from them to the extent of their respective shares.

Article 1349 – **Right of the attorney to retain** - The attorney has right of lien over the object of the agency until he is reimbursed for what is due to him on account of the agency.

SECTION V

RIGHTS AND DUTIES OF THE PRINCIPAL AND ATTORNEY IN RELATION TO A THIRD PARTY

Article 1350 – **Position of principal and attorney in relation to third parties** - The principal is liable to any other person, in accordance with the terms of article 1345, for whatever the attorney had done as such, in relation to that person; but the attorney has no right to recover from such person, in the name of the principal, the fulfillment of the obligations contracted by the same person. Such right vests in the principal.

Article 1351 –**Exceeding of powers granted by the Power of Attorney** - The acts, which the attorney performs in the name of the principal, but beyond the scope of the agency, are null in law in relation to the principal, if the latter does not impliedly or expressly ratify them.

Article 1352 –**Position of third party in respect of the attorney who exceeds his powers** -The third party, who has so contracted with the attorney, shall not have right to sue the attorney, where the attorney had made known to such third person his powers, and if he has not assumed the responsibility personally on behalf of the principal.

Article 1353 – **Acts presumed as unauthorized** - The acts which though of the same nature as those authorized, are evidently contrary to the purposes of the agency, are deemed as not authorized.

SECTION VI

JUDICIAL MANDATE

Article 1354 – **Capacity to exercise judicial mandate** - It is not lawful for the following persons to be attorneys in a judicial proceeding:

1. Minors who are not emancipated;
2. Judges holding office, within their jurisdiction;
3. The officers and employees of the Court within their jurisdiction, except in their own cause;
4. The legal officers of the State in all the proceedings where they may have to intervene, within the limits of their respective judicial divisions;
5. Those who are forbidden by judgment to be attorneys in judicial proceedings or to exercise public office;
6. Descendants, ascendants, or siblings of the judge; 7. Descendants against the ascendants, and vice-versa except in their own cause.

Article 1355 – **External form of judicial mandate** - The Power of Attorney to represent in judicial proceedings may be granted only by public instrument or an instrument deemed as such.

Article 1356 – **Plurality of judicial mandatories** - In judicial proceedings, a Power of Attorney given to two or more persons, with a clause that one shall not act without the others, is not permitted; but it is lawful to give the same powers to different persons simultaneously.

Article 1357 –**Refusal of mandate** - Where the attorneys in the judicial proceedings, out of deference to the opposite party, refuse to accept the Power of Attorney conferred, the judge, upon the application made by the principal shall appoint any of them, who accepts it, failing which they are liable for suspension for six months, if no legitimate excuse is proved.

Article 1358 – **Bar on sharing results of litigation** - A contract entered into, by parties with their advocates or attorneys granting them some part of the relief in the suit shall be null in law. § Sole paragraph - The attorneys or the advocates, who contravene this article, shall be forbidden, for one year, to act as such in court.

Article 1359 – **Remuneration of attorneys and advocates** - The attorneys and the advocates shall be entitled to the remuneration as per the practice of the respective court, besides the expenditure they incur with the suit.

Article 1360 – **Effect of acceptance of mandate**s - The attorney or the advocate, who has accepted the mandate of one of the parties, shall not act as attorney or advocate for the other party in the same suit, even if he gives up the previous mandate.

§ Sole paragraph - The attorney or the advocate, who fails to comply with the above provision, shall be suspended from acting as such for a period of one year.

Article 1361 – **Violation of professional secrecy** - The attorney or the advocate, who discloses to the opposite party the secrets of his principal, or furnishes documents or any other clarifications, shall be permanently debarred from acting as attorney or advocate in Court.

Article 1362 – **Duty to delegate** - The attorney or advocate, who has a just impediment to continue to represent the party, shall not abandon such representation without sub-delegating the power, if he has the power to do so, or notifying the party, in time to appoint another, failing which he shall be liable for losses and damages.

SECTION VII

DURATION OF MANDATE

Article 1363 – **Causes of determination of mandate** - The power of attorney terminates: 1. By revocation;

2. As a result of renunciation by the attorney;
3. By the death or interdiction of the principal or of the attorney;
4. By the insolvency, or by change of status of the principal or of the attorney, where such change renders the former incompetent to grant the power of attorney and the latter to accept the power of attorney;
5. By the expiry of the period of agency or by the conclusion of the business.

Article 1364 – **Revocation of mandate** - The principal may revoke the power of attorney as and when he desires, despite any condition, agreement or penal clause to the contrary.

§ Sole paragraph - Where the Power of attorney is in writing, the principal may demand that the attorney return it to him, if it is in his possession.

Article 1365 – **Tacit revocation** - The appointment of a new attorney, for the same and sole object, amounts to revocation of the earlier power of attorney, when brought to the notice of the former attorney by the principal.

Article 1366 – **Death of the Principal** – Since the agency expires by the death of the principal, the attorney shall continue in the administration, so long as the heirs do not make provisions regarding the business, if the failure to do so could prejudice them.

Article 1367 – **Death of the attorney** - Where, the power of attorney is terminated upon the death of the attorney, his heirs should inform the principal about the death, and in the mean time shall take possible steps to avoid any prejudice to the principal.

Article 1368 –**Relinquishment by attorney** - In case of relinquishment by the attorney, he shall be bound to continue with the management, if the failure to do so would cause loss to the principal, as long as the principal is not notified, and the principal does not have sufficient time to provide for his interests.

Article 1369 – **Effects of extinguishment of mandate** - Acts done by the attorney, after the termination of the agency, do not bind the principal neither as regards to the agent, nor as to the third parties, except:

1. In the cases foreseen, in articles 1366, 1367 and 1368;
2. Where, the attorney is not aware of the termination of the agency;
3. Where the attorney being authorized to deal with certain and specified person, has contracted with such person, the latter not knowing that the agency has expired, though the attorney was not unaware of the same.

§ 1 - The exceptions in clauses No. 2 and 3 are not attracted, when the agency is terminated by death or by interdiction of the principal, whenever the acts done by the attorney are as to the status or civil capacity of the principal.

§ 2 - In case of No.3, however, the attorney is liable to the principal, for all the losses or damages caused.

CHAPTER IV
CONTRACT FOR PERSONAL SERVICES

SECTION I
DOMESTIC SERVICE[31]

[31] *Articles 1370 to 1390 would be governed by Contract Act, 1872 and any other specialized legislation.*

Article 1370 – **Meaning of domestic service** - Domestic service is that which is rendered temporarily by one individual to another, who lives with him for certain remuneration.

Article 1371 – **Nullity of perpetual contract** - The contract of rendering domestic service made for lifetime of the parties is null and void and may at any time be rescinded by any of the parties.

Article 1372 – **Prevalence of contractual stipulation** - The contract for rendering of services shall be regulated by the will of parties, save the following provisions.

Article 1373 – **Duration of contract** - In the absence of the express agreement over the period of service, it is deemed that the contract is by the year, in respect of agricultural work and by the month in any other service, except where there is a local custom to the contrary.

Article 1374 – **Wages of the employee** - In the absence of express agreement as to the remuneration, which the workman should receive, the local custom shall be observed, according to the sex, age and nature of the work.

Article 1375 – **Purpose of contract** - When the workman is not employed for a certain and specified service, it is deemed that he is to render any service compatible with his strength and conditions.

Article 1376 – **Contract for specified time** - The workman contracted for certain period cannot absent himself or leave service, without just cause, before he fulfills the time agreed.

Article 1377 – **Abandonment of service for just cause** - Just cause is such which follows from: 1. The need to fulfill legal obligations, which are not compatible with the continuation of service;
2. Manifest danger of any damage or considerable ill;
3. Non fulfillment on the part of the employer of the obligations by which he is bound towards the workman;
4. Illness which prevents the workman from fulfilling his service;
5. Change of residence by the employer to a place which is not convenient to the workman.

Article 1378 – **Dismissal for just cause** - The workman, who leaves the service for just cause, is entitled to be paid of all his due wages.

Article 1379 –**Abandonment of service without just cause** - The workman who leaves the service without just cause before the end of the contracted period, shall lose the salary already accrued by this time but not paid.

Article 1380 – **Effects of the contract in relation to the employer** - The employer shall not without just cause terminate the services of the workman, employed for a fixed period, before the expiry of the said period.

Article 1381 – **Lawful reasons for dismissal** - Just cause for termination shall be: 1. The unsuitability of the workman for the contracted service;
2. His vices, illnesses or bad behaviour;
3. Insolvency or lack of resources of the employer.

Article 1382 – **Unlawful dismissal** - The employer, who terminates the services of the workman without just cause, before the expiry of the contractual period, shall be liable to pay full wages.

Article 1383 – **Duties of employee** - The workman is obliged:
1. To obey his employer in whatever is not illicit and which is not contrary to the conditions of his contract;
2. To perform the service incumbent upon him with diligence as compatible with his health; 3. To watch for the things of his employer and to avoid, as far as possible any damage to which they are exposed;
4. To remain liable to any loss and damages which the owner suffers on account of fault of the workman.

Article 1384 – **Duties of the employer** – The employer is bound:- 1. To correct the workman, if he is a minor, as if he were his guardian;

2. To compensate the workman for all losses and damages which he suffers by fault of the employer;
3. To help the workman or provide him treatment at the cost of remuneration of the workman, if the employer does not want to do as a charity, when the workman falls sick, and the workman is unable to look after himself or when he has no family where he is serving, or does not have any other recourse.

Article 1385 – **Extinguishment of the contract by death of the parties** - The contract of domestic service ends upon the death of the employer or of the workman. In the first case, the workman has the right to be paid all remuneration accrued and for fifteen days more; in the second case, only the heirs of the workman may claim the accrued remuneration.

Article 1386 – **Legacy left to the employees** - It is not understood that the bequest made in a will by the employer to the workman is on account of the remuneration, unless expressly so said in the will.

Article 1387 – **Suit for wages** - In a suit for recovery for remuneration accrued and not paid, in the absence of any other proof, the dispute shall be settled by oath of the employer.

form declared in articles 538 and 539.

Article 1388 – **Payment for damages caused by the employee** - The employer may discount from the remuneration of the workman, the amount of damages which were caused by the workman, subject to the right of the workman to oppose the prayer for discount in case of injustice.

§ Sole paragraph - When the employer does not make discount at the time of payment, he shall have no right of action against the workman, except within one month from the termination or end of the contract period.

Article 1389 – **Service contract with minors** - The contract of service of minors may be executed only with the persons in whose charge they are.

Article 1390 – **Minor employee without a representative** - However, in case the minor has no representative, the following shall be observed:

1. If the minor is not more than ten years of age, being of male sex, and twelve of female sex, the employer is obliged to provide only maintenance;
2. Where this age is exceeded, he or she shall earn whatever is the local custom, as to the employees of same nature and age.

SECTION II
SALARIED SERVICE[32]

Article 1391 – **Meaning of salaried service** - Salaried service is that which a person renders to another on daily or hourly basis, against remuneration per day or per hour, which is called salary.

Article 1392 – **Duties of salaried employee** - The salaried worker is bound to render the work agreed upon, as per the instructions and directions of the person to whom the service is rendered. Failing this, he may be dismissed from his services even before the end of the day, upon payment of the salary for the hours of work for which, he actually had worked.

Article 1393 – **Wages of salaried employee** - The employer is bound to pay the remuneration agreed upon, at the end of the week, or at the end of the day, according to the need of the salaried worker.

§ Sole paragraph - The remuneration for the work is always presumed to be in cash, unless expressly agreed to the contrary.

Article 1394 – **Abandonment or dismissal of the employee** - The salaried worker, engaged per day or for the days, necessary for the completion of the services shall not be permitted to abandon the work, nor shall the employer dismiss him, before the expiry of the said day or days, without any just cause.

§ Sole paragraph - If the worker or the employer do the opposite, the former shall lose the salary accrued and the latter shall be bound to pay it in full as if the work was done.

32 *Articles 1391 to 1395 would be governed by Contract Act, 1872 and any other specialized legislation.*

Article 1395 – **Interruption of service due to unforeseen reasons** - Where work agreed for certain days, or until the work lasts, is interrupted by reason of unforeseen circumstances or *force majeure*, the employer is not exempted from the payment for the work actually done.

SECTION III
WORKS CONTRACT[33]

Article 1396 – **Meaning of works contract** - Work as contract takes place when, one or more individuals agree to do some work for another, with the material supplied either by the owner of the work, or by the contractor, for a consideration proportionate to the work carried out.

Article 1397 – **Risk of work before delivery** - Where the contractor, or contractors bind themselves to supply the labour and materials, all the risk of the work shall be borne by the contractors until its

delivery, unless the delivery is delayed by failure of the owner to accept it or unless otherwise expressly provided.

Article 1398 – **Risk in case of labour contract** - Where the contract is only of supply of labour, all the risks shall be borne by the owner, except where there is delay, fault or lack of skill on the part of the contractors, or where, knowing the bad quality of the materials, they have not warned the owner of the work of the risk to which, by their use it would be exposed.

Article 1399 – **Guarantee in the construction of buildings** - In case of contracts for buildings or other sizable constructions, the contractor for the supply of materials and execution of the works shall be answerable for a period of five years, for the security and the solidity of the building or construction in relation to the quality of materials and stability of the ground, unless he has warned the owner in time that he did not find the ground sufficiently firm.

Article 1400 –**Time limit for conclusion of work** - Where the period for the completion of the work, has not been fixed, the contractor is bound to complete the work within a reasonable time.

33 *Articles 1396 to 1408 would be governed by Contract Act, 1872 and any other specialized legislation.*

Article 1401 – **Bar on unwritten escalation clause -** The contractor, who undertakes to prepare the site plan, drawings or description of any work, for a specified price shall not be entitled to demand anything more, even though there may be increase in the price of materials or in the wages, and even though there was a change in the job, in relation to the plan, drawing or the description, if this alteration and the cost thereof have not been agreed in writing with the owner.§ Sole paragraph - Where the increase is above 20 percent and arises from the devaluation of currency, the contractor shall have right to rescind the contract, so long as the owner is not agreeable to compensate the contractor for such excess; and in the reverse case, the owner shall have similar right.

Article 1402 – **Abandonment of work commenced** - The owner of the work may discontinue the work commenced by the contractor, provided he compensates the contractor for all his expenses and for the work executed and for the profit which the contractor would have earned on the work.

Article 1403 – **Death or inability of the contractor** - Where the contractor dies, the contract may be terminated; but the owner of the work shall compensate the heirs of the contractor, for the work and the expenses incurred.

§ Sole paragraph - The same provision shall apply when the contractor is unable to complete the work by impediment independent of his will.

Article 1404 – **Death of the owner** - The death of the owner of the work does not give cause for termination of the contract. The heirs of the owner are bound to fulfill the contract.

Article 1405 – **Right of suppliers or salaried workers of the contractor** - Those who have worked for the contractor, or have supplied him the materials for the work, shall have no right to sue the owner of the work, except to the extent the latter is the debtor of the contractor. Where the owner of the work had made payment to the contractor before the scheduled date, the seller of the materials as well as the workers shall have right to sue the owner for the amount payable, up to the amount which was anticipated by the latter.

Article 1406 – **When the price should be paid** - The price for the job contract shall be paid at the time of delivery of the work, save for the local custom or any agreement to the contrary.

Article 1407 – **Right of contractor to retain** - The job contractor of any work of movables, has right to retain it until he has been paid the price.

Article 1408 – **Lack of skill by the contractor** - The labour contractor who on account of his lack of skill renders the materials supplied unusable and allows them to deteriorate, or does not carry out the

work as per the risk and directions given to him, shall be liable to compensate for the damages caused, even though the work has not been rejected.

SECTION IV
SERVICES RENDERED IN THE EXERCISE OF ARTS AND LIBERAL PROFESSIONS

Article 1409 – **Honorarium to those who exercise liberal professions** - The fees payable to those exercising art and liberal professions shall be agreed between the providers of such services and recipients of the same.

§ Sole paragraph - In the absence of the agreement, the courts shall award the fees, as per the custom of the place. The amount of fees regulated by this custom may however be modified taking into consideration the importance of the services, reputation of the individual providing the service and the means of the recipient of the service.

- This would be governed by Contract Act, 1872 and any other specialized legislation.

SECTION V
CARRIAGE BY LAND, BOAT OR ANIMALS[34]

34*Articles 1410 to 1418 would be governed by Contract Act, 1872 and any other specialized legislation.*

Article 1410 – **Meaning of contract of carriage by land, boat or animals** -There is a contract of carriage by land, boat or animals when someone undertakes to transport by water or land any persons, animals or implements or merchandise of others.

Article 1411 – **Rules regulating the contract** - Such contract shall be governed by mercantile law and administrative regulations when the carriers have created a regular and permanent enterprise or company. In any other case, the matter shall be governed by the general rules of civil contracts, with the modifications as provided in the present section.

Article 1412 – **Liability of transporters** - The carriers by land or carriers by water shall be taken, for all legal purposes to be bailees of the goods carried from the time the goods have been delivered to them.

Article 1413 – **Price due to the transporters** - The carrier by land, by water shall have the right, at the time of the receipt of the goods by him or when the goods are delivered, to receive the agreed or the customary price and any expenses arising from the carriage, if by agreement or custom they are not included in the freight.

Article 1414 – **Right of retention of transporters** - The carrier of goods by land or water shall have lien over the goods carried until the payment of the freight.

Article 1415 –Duties of transporter - The carrier of goods by land or waters, is bound to render the services within the agreed time, failing which, he is liable to pay compensation for losses and damages, unless he is prevented by unforeseen circumstances or *force majeure*.

Article 1416 – **Duties of transporter by horse-hirer** - The hirer of horses is obliged to disclose the vices or defects of the horses, failing which; he will be liable for losses and damages which from the failure to make such disclosure.

Article 1417 – **Risk for the death or injury of animals** - Where the horses die or turn unfit during the carriage, the loss will be at the risk of the hirer of the animals, if it is not proved, that the fault lies with the one who takes on hire.

Article 1418 – **Fraudulent concealment of the defects in hired animals** - Where the hirer hires for some services, horses, which are not able to render them because of pre-existent defects, known to the hirer, but not to the carrier, who takes them on hire, then the hirer will be liable for payment of compensation for the losses and damages he has given cause on account of his bad faith.

SECTION VI
CONTRACT OF LODGING AND BOARDING[35]

Article 1419 – **Meaning of contract lodging and boarding** - A contract for lodging and boarding is where one party provides to another accommodation and food, or only accommodation upon any agreed customary compensation.

§ Sole paragraph - Such contract shall be implied by facts without need for precise stipulation, when the one who provides accommodation is a lodger by profession.

Article 1420 – **Liability of lodge keeper** - The lodger is liable, as if he is a depository for the luggage or for any goods, which the guest has lodged in the lodging.

§ Sole paragraph - Where, however, the things are of small value and capable of only disappearing, the guest shall entrust to the custody of the lodger, failing which the lodger shall not be answerable for their loss and damage and it is not established that fault lies on the lodger.

Article 1421 – **Damages caused by employees or third persons** - The lodger is equally answerable, for the loss caused by his servants, employees or any stranger lodged by the lodger, with right to recover the cost from those persons.

35 *Articles 1419 to 1423 - This type of service is governed by laws regulating hotels and lodging houses. See Chapter VII – Hotels and lodging houses, Sections 36 to 40 of the Goa Buildings (Lease, Rent and Eviction) Control Act, 1968.*

Article 1422 –**Damages not attributable to the lodge keeper** - The lodger, however, is not answerable for the loss arising from the fault of the guest, *force majeure* or unforeseen event for which the lodger had not given in any cause.

Article 1423 – **Compensation to the lodge keeper in case of dispute** - There being dispute between the lodger and the guest, over the quantum of compensation payable by the guest to the lodger, the guest shall deposit the entire amount before the competent court of the jurisdiction where the lodging house is located.

§ Sole paragraph - The dispute shall be resolved, taking into consideration the normal rates prevailing in the locality, the articles supplied and the services rendered to the guest and the debt shall be paid out of the amount deposited. The excess, if any, shall be applied in the manner indicated by the depositor, and in the absence of such indication shall continue in deposit, until the depositor collects or instructs somebody to collect it.

SECTION VII
APPRENTICESHIP[36]

Article 1424 – **Contract of Apprenticeship** - A contract of rendering the service of teaching or contract of apprenticeship, is one which is drawn between majors or between majors and minors duly authorized, by which one of the parties undertakes to teach the other any work or trade. **Article 1425** – **Grounds for determination of contract** - Such contract may be terminated only in the following cases:

1. By reason of non-execution of the obligations contracted by one or the other party;
2. By reason of ill treatment on the part of the teacher; 3. By reason of bad conduct on the part of the apprentice.

§ Sole paragraph - In different cases of this article, there may be ground for a suit for losses and damages, against the one who gave the cause for the rescission of the contract.

36 *Articles 1424 to 1430 – This matter is now regulated by The Apprentices Act, 1961 extended to Goa by Goa, Daman and Diu (Laws) No. 2 Regulation, 1963, vide G.G.I No. 22 dated 29/05/1964.*

Article 1426 – **Causes for rescission of contract** – Any contract of this kind may be rescinded where the apprentice has bound himself to work for such time, that his work would be worth more than double the fees which reasonably would be paid to the teacher, if the fees were paid in cash.

Article 1427 – **Maximum work hours** – None of the apprentices, before attaining the age of fourteen years may be made to work for more than nine hours in every twenty-four hours, nor twelve hours, before attaining eighteen years.

Article 1428 – **Duration of contract** – The teacher may not retain the apprentice beyond the agreed or as customary time. If he does so, without fresh agreement, he is liable to pay for the work rendered by the apprentice.

Article 1429 – **Abandonment by apprenticeship** – If the apprentices leaves the teacher, without just cause, before the expiry of the agreed time, the teacher may sue him or the person who has vouched for him, for compensation arising from breach of contract.

Article 1430 – **Extinguishment of contract** – Such contract ends:

1. Upon the death of the teacher or apprentices
2. When the teacher or apprentices is called upon to perform any public service laid down by law or which may be incompatible with the rendering of the service.

SECTION VIII
CONTRACT OF DEPOSIT[37]

SUB-SECTION I
CONTRACT OF DEPOSIT IN GENERAL

37 *Articles 1431 to 1451 - This type of contracts are now covered by relevant portions of The Indian Contract Act, 1872, extended to Goa by Goa, Daman and Diu (Laws) No. 2 Regulation, 1963, vide G.G.I No. 22 dated 29/05/1964.*

Article 1431 – **Contract of deposit** - There is contract of deposit where someone binds himself to keep and return, on demand, any moveable object, received from another.

Article 1432 – **Gratuitous nature of contract** - This contract by its nature is gratuitous, which otherwise, does not prevent that the depositor may agree to pay some remuneration.

Article 1433 – **Capacity to be depositor or receiver** - Anyone having the capacity to contract may be depositor or depositary, provided following rules are observed:

1. The incapacity of one of the parties does not exonerate the party who accepted the deposit, of the obligations to which the depositaries are subject;
2. An incapacitated person, who accepts the deposit may, wherever demand is made, for compensation of damages, plead nullity of the contract, but may not avail of his own incapacity to escape the liability to return the thing deposited, if it is in possession of the depositary or to restitute with whatever he enriched himself by way of its alienation.
3. Where the incapacitated person is not totally deprived of sufficient intelligence, he may directed to pay compensation for losses and damages, in case he acted in fraud and bad faith.

Article 1434 – **External form** - The deposit of the value exceeding 1,000 $ (one thousand escudos) may be proved by documents signed by depositary himself and the signature attested by the notary; where the value exceeds 2,000 $ (two thousand escudos) only by way of public deed.§ 1 - The deposit made under compulsion on the occasion of any calamity, which may be proved by any mode of proof, whatever may be its value is exempted.

§ 2 - The return of the deposit may be proved by the means admissible for the proof of the deposit.

SUB-SECTION II
RIGHTS AND DUTIES OF THE DEPOSITARY AND THE DEPOSITOR

Article 1435 – **Duties of Depositary** - The depositary is bound:

1. To provide in keeping and in preservation of the thing deposited, the care and diligence of which he is capable, for proper fulfilment of the deposit;

2. To return the thing deposited, when the demand is made by the depositor, with all its fruits and accruals.

Article 1436 – **Responsibility of depositary** - The depositary shall be liable only for the loss occasioned to the thing deposited, on account of unforeseen event or *force majeure*:

1. Where he has specifically assumed such obligation;
2. Where he was in default, when the damage occurred.

Article 1437 – **Bar on use of deposited thing** - The depositary may not use the thing deposited without express permission from the depositor; otherwise he will be liable to pay compensation for the losses and damages.

Article 1438 – **Closed and sealed deposit** - Where the things deposited were handed over closed and sealed, the depositary shall return them in the same condition.

Article 1439 – **Opening of closed deposit** - Where the depositary opens the deposit made in the aforesaid form, the depositary shall be liable to return the contents, based on the oath of the depositor; unless the opening was not attributable to the depositary.

Article 1440 – **Presumption of guilt in the case of opening of closed deposit** – The opening is presumed to have been done by default of the depositary, until the contrary is proved by him.

§ Sole paragraph – After this proof the depositor is bound to prove the value of the deposit. **Article 1441** – **To whom the deposit should be returned** - The return shall be made to the depositor or to his representative.

Article 1442 – **Deposit of thing unlawfully taken** - Where the depositary comes to know that the thing deposited has been stolen, he shall report the same to the owner, if he knows him, or if not to the office of the Public Ministry. And where within fifteen days from the date of informing, the thing deposited has not been claimed judicially, or claimed by the owner, it may be handed over to the depositor, without the depositary incurring in any liability for this reason.

Article 1443 – **Plurality of depositors of indivisible thing** - Where there are many depositors, but not joint, and the thing deposited is capable of being divided, the depositary may not give to each of them other than his respective share.

Article 1444 – **Deposit of indivisible thing** - Where the depositors are joint and the thing is indivisible, the provisions of articles 750 and 751 shall be followed.

Article 1445 – **Return of deposit made in the name of legally disabled person** - When the deposit made in the name of a legally incapable person, by his lawful representative still subsists, even when the legal incapacity comes to an end, the return shall be made to the person in whose name the deposit has been made.

Article 1446 – **Return of deposit in the case of the depositor getting married or becoming disabled** - When the depositor becomes incapable, or if, being a woman, gets married, the thing deposited shall be returned, in the first case, to his lawful representative, and in the second to the husband or to the wife with the consent of the husband.

Article 1447 – **Place of restitution** - The thing deposited shall be handed over at the place where the deposit was made, if there is no agreement to the contrary.

Article 1448 – **Mode of return of deposit** - The depositary shall return the thing deposited, whenever such demand is made by the depositor or his lawful representative, even though specific time was

agreed, except where there is an injunction from Court and the depositary has been notified not to deliver the same.

Article 1449 – **Anticipated return of deposit** - The depositary may return the thing even before the stipulated time, there being just cause, and where the depositor refuses to accept the same, the depositary may approach the court to have it deposited in the court.

Article 1450 – **Duties of the depositor** - The depositor is liable to compensate the depositary for all expenses incurred towards the conservation of the thing deposited or on account of the same.

§ Sole paragraph - The depositary may retain the thing deposited till he is paid.

Article 1451 – **Interference or dispossession of deposit** - The depositary who is disturbed in his possession or is dispossessed of the thing deposited, shall without delay give notice of the same to the depositor, and defend his rights, until he takes steps which he deems fit; and if he does not give the notice, or does not take the defence, he shall be liable to make good the losses and damages.

CHAPTER V
GIFTS[38]

SECTION I
GIFTS IN GENERAL

Article 1452 – Contract of gift – A gift is a contract whereby any person transfers to another gratuitously one part or the totality of his present assets.

Article 1453 –Nullity of gift of future assets - A gift cannot include future assets.

§ Sole paragraph - Future assets means those which are not in the possession of the donor, or to which he or she is not entitled to at the time of the gift.

Article 1454 – **Types of gifts** – A gift may be pure, conditional, onerous or remuneratory.

§ 1 - A pure gift is one which is merely beneficial, and free from any condition.

§ 2 - A conditional gift is one which depends on a certain event or circumstance.

§ 3 - An onerous gift is one which carries with it certain encumbrances.

§ 4 - A remuneratory gift is one which is done in view of services received by the donor which are not in the nature of a recoverable debt.

38 *Articles 1452 to 1505 - Gifts are also regulated by, Chapter VII, Section 122 – 129 of The Transfer of Property Act 1882, extended to Goa by Goa, Daman and Diu (Laws) No. 2 Regulation, 1963, vide G.G.I No. 22 dated 29/05/1964. In Portuguese law, they are regarded as a form of contract. In Indian Law, they are viewed as a mode of transfer of property. Many provisions on gift in this Code are similar to corresponding provisions of The Transfer of Property Act.*

Article 1455 – **Onerous gifts** – An onerous gift may only be considered a gift in the part exceeding the value of the obligations imposed.

Article 1456 – Irrevocable Gifts – Gifts which must produce their effects *inter vivos* are irrevocable as soon as they are accepted, except in cases laid down by law.

Article 1457 - Gifts '*Mortis Causa*' - The gifts, which are to produce their effects upon the death of the donor, have the nature of disposition of the last wishes, and shall be subject to the rules laid down under the title on Wills.

§ Sole paragraph - The provision of this article does not include the gifts for marriage even though they have to produce their effects after the death of the donor.

Article 1458 – **External form -** A gift may be made orally or in writing.

§ 1 - An oral gift can only be made with delivery of the gifted thing if movable. § 2 - A gift of movable things not accompanied by delivery can only be made in writing.

Article 1459 – **External form of gifts of immobile assets** – The gift of immobile assets, if their value does not exceed 1,000$ (one thousand escudos) may be made by private writing with the signature of the donor or of another at his request, if he does not know to write, and two more witnesses who write their name in full; if it exceeds that amount, it can only be done by a public deed.

§ Sole paragraph – These gifts produce effect in relation to third parties only if they are registered.

Article 1460 – **Universal donee -** A gift covering all the assets of the donor, without reserving the right of usufruct, or leaving the donor without means of survival, is null and void.

Article 1461 - **Gift of all movables and immovables** - If the donor gifts all his movable and immovable assets, it shall be presumed that the gift includes the rights and claims.

Article 1462 - Presumed reservation in gifts by married persons - If the donor, being under a matrimonial contract, gifts his assets *mortis causa*, without making any reservation, or reserving some assets without describing them or a definite part thereof, it shall be understood that he/she has reserved the statutory one third share of the gifted assets.

Article 1463 – Presumed reservation in gifts of disposable quota - If the donor, being under a matrimonial contract, disposes of the entirety of his/her disposable portion, it shall be understood that he/she reserve the statutory one third share of his/her moiety.

Article 1464 - Disposal of Legal reserve - If the donor dies without disposing of the legal reserve, this shall be deemed to belong to the donee.

§ Sole paragraph - If, however, the reserve has been made by an explicit provision in the deed of gift, and the donor dies without disposing it, the said reserve shall belong to the intestate heirs within the fourth degree, and only when these do not exist will it belong to the donee.

Article 1465 – **Time limit for acceptance -** A gift lapses if not accepted during the lifetime of the donor except for the provisions of article 1478.

Article 1466 - Acceptance subsequent to the gift - If the gift is not accepted at the time it is made, and the acceptance is not inserted in the text of the document wherein the gift is recorded, it shall be subsequently endorsed in it.

Article 1467 - Right of accretion amongst several donees - If the gift is made jointly to several persons, none of them shall have the right of accretion, except if the donor has expressly stated otherwise.

Article 1468 -Eviction of gifted thing -The donor shall not be answerable for the eviction of the gifted thing if he does not so bind himself expressly, except for the provisions of articles 1142 & 1143.

§ Sole paragraph - The donee shall however stand subrogated in all the rights which may be available to the donor in case there is an eviction.

Article 1469- Gift with the liability to pay donor's debts - If the gift is made with the obligation to pay the donor's debts, this clause shall be understood, in the absence of a different statement, to require the payment of debts existing at the time of the gift, with an authentic or authenticated date.

Article 1470 – Payment of donor's debts in other cases - In the absence of a stipulation concerning the donor's debts, the following shall apply:

§ 1 - If the gift relates to certain and specified assets, the donee shall not be responsible for the donor's debts, except in the case of mortgage or fraud, to the prejudice of the creditors.

§ 2 – If the gift is of all the assets, the donee shall be liable for all the prior debts of the donor unless otherwise stipulated.

Article 1471 - Gifts by husband without consent of wife - Gifts of movable property or money, made by the husband without the wife's consent, shall be taken into account in his moiety, except if they are remuneratory or of small amounts.

Article 1472 – Abolition of formal confirmation of gift - A gift legally made whatever may be its value shall produce juridical effects independently of the formal confirmation or any other formality subsequent to the said gift except for the provisions of sole paragraph of article 1459.

Article 1473 - Reversionary clause - The donor may stipulate the reversion of the gifted thing, in his favour or in favour of other persons in accordance with article 1866 onwards.

Article 1474 - Void reversionary clause - The reversion, stipulated by the donor in favour of a third party in breach of the provisions of the previous article, shall be null and void but shall not render the gift void.

Article 1475 - Lapse of liabilities - The gifted assets, transferred, through the reversion clause, to the person or persons in whose favour the said clause was stipulated, shall stand transferred

free from any encumbrances, placed on them during the time when they were in the possession of the donee.

SECTION II

PERSONS WHO MAY MAKE OR RECEIVE GIFTS

Article 1476 – Persons who may make or receive gifts - All persons who can enter into contracts and dispose their assets may make gifts.

Article 1477 – Capacity to receive gifts - All those who are not expressly barred by law may accept gifts.

Article 1478 – Effectiveness of pure gifts apart from acceptance by the legally incapacitated persons – Persons, who may not contract, cannot accept without the permission of the persons entitled to give it, gifts, conditional or encumbered. However gifts pure and simple made to such persons produce such effect independently of the acceptance in all that benefits the donee.

Article 1479 – Capacity of the unborn - The unborn may acquire by gift provided they are conceived at the time of the said gift and are born alive.

Article 1480 – Gift made by married man to his mistress -Gifts made by a married man to his mistress are null and void. This nullity may only be declared on the application of the wife of the donor or of her legitimate heirs, the respective suit however cannot be filed except within two years after dissolution of the marriage.

Article 1481 - Simulated gifts in favour of incompetent persons – Gifts made to legally incapable persons, be they disguised or made under the appearance of a different contract, or through an intermediate person, shall produce no effects.

§ Sole paragraph - The descendants, ascendants or spouses of the incompetent are considered to be intermediate persons.

SECTION III

REVOCATION AND REDUCTION OF GIFTS

Article 1482 – Revocation and reduction of gifts - Completed gifts may only be revoked, apart from the cases in which any contract may be revoked:

1. Due to supervenience of legitimate children, if the donor was married at the time of the gift; 2. Due to ingratitude of the donee;
3. Due to inofficiousness.

Article 1483 – **Non-revocation of gifts by reason of subsequent birth of children** - The gift shall not be revoked due to supervenience of children:

1. If the donor already had a child or legitimate descendant, living at the time of the gift; 2. If the gift was made for a marriage.

Article 1484 – **Effects of revocation** - If the gift is rescinded due to supervenience of children, the gifted assets or, if the donee has alienated them, their corresponding value shall be returned to the donor.

§ 1 - If the assets are mortgaged, the latter shall subsist; but the mortgage may be paid by the donor, with the right to seek compensation from the donee for the amount the donor spends with such payment.

§ 2 - When the assets cannot be returned in kind, the demandable value shall be that which the said assets had at the time of the gift.

Article 1485 - **Income of gifted assets** - The fruits or income of the gifted assets belong to the donee, up to the day in which the legal action for revocation due to supervenience of children of the donor is initiated.

Article 1486 - **Prohibition of relinquishment of right of revocation** - The donor may not renounce the right of revocation due to supervenience of children.

Article 1487 - **Who may file a suit for revocation of gift** - The legal action for revocation due to supervenience of children is only transmissible to the latter and to their legitimate descendants.

Article 1488 - **Revocation for ingratitude of the donee** - A gift may be revoked due to ingratitude:

1. If the donee is convicted of a crime against the person, the assets or the honour of the donor; 2. If the donee files a criminal complaint against the donor, except if the crime was committed against the donee himself, his wife, his ascendants or his descendants;
3. If, the donor having fallen into poverty, the donee refuses to help him/her in a manner proportionate to the value of the gift, after the *deduction* of its encumbrances.

Article 1489 - **Provisions in respect of revocation for ingratitude** - The provisions of articles 1483(2), 1484 and 1485 are applicable to the revocation of a gift due to ingratitude.

Article 1490 - **Prohibition on relinquishment and limitation in revocation for ingratitude** -One may not renounce in advance the right to file a suit for revocation due to ingratitude, and such suit is time barred one year after the fact on which it is based, or since this fact became known.

Article 1491 - **Proper parties in a suit for revocation** - This suit may not be initiated against the heirs of the ungrateful donee, nor by the heirs of the donor, but it is transmissible to them if it is pending at the time of the donor's death.

Article 1492 - **Revocation or reduction for inofficiousness** - A gift, regardless of who the donee is, may be revoked or reduced as inofficious, if it affects the legitime of the donor's mandatory heirs.

§ 1 - But, if the prejudice to the legitime does not cover the full value of the gift, the gift shall be reduced only to the extent necessary to fulfill the legitime.

§ 2 - In order to determine if there was inofficiousness, the moiety shall be calculated in the manner laid down in the title on successions.

Article 1493 - **Order of reduction** - The reduction of inofficious gifts shall start with testamentary gifts or legacies and it will extend to gifts inter vivos only if the assets bequeathed are not sufficient.

Article 1494 - Partial reduction of legacies - In case partial reduction of legacies is sufficient, the reduction shall be done pro-rata amongst the legatees, except where the testator has provided that for this purpose any of them should have preference or that any one is exempt from such burden.

Article 1495 - Order of reduction as to gifts - If it is necessary to resort to gifts *inter vivos*, the reduction shall start with the last one, in whole or in part; and if this one does not suffice, the reduction shall continue with the one immediately preceding it, and so on, as long as there are gifts.

Article 1496 - Gifts of the same date - When there are various gifts made in the same act, or of the same date, the reduction between them shall be done pro-rata.

Article 1497 - Valuation of gift of mobiliary assets - If the gift consists of mobiliary assets, one shall take into account, in the reduction, the value of these at the time of the gift.

§ Sole paragraph - The provisions of §§ 2 and 3 of article 2107 shall be applicable in this case.

Article 1498 - Reduction of gifts on immobile assets - If the gift consists of immobile assets, the reduction shall be made inkind.

§ 1 - The single sole paragraph of the preceding article shall be applicable to these gifts; § 2 - The value of the gifted immovable assets shall be calculated by reference to the time at which the reduction takes place, the calculation neither taking into account the added value deriving from improvements made by the donee, nor, on the other hand, the decrease of that value deriving from damage attributable to the same donee.

Article 1499 - Indivisible immoveables - Where any immoveable cannot be divided without detriment, the following shall be observed:
§ 1 - When the amount of reduction exceeds half of the value, the donee shall have the remainder in cash.

§ 2 - When the reduction does not exceed the said half the donee shall return the amount of reduction.

Article 1500 - Indivisible immoveables gifted to one co-heir - However, in case, the donee is also a co-heir, he is permitted to retain the gifted immovable, if the value of such immovable does not exceed that of the legitime of the co-heir added to that of the reduced gift. Otherwise, the donee shall bring the gifted property to the estate, and shall be paid of the legitime and of the reduced gift, in accordance with the general rules governing partitions.

Article 1501 - Effects and cases of non-application of reduction - The provisions of article 1484 as well as article 1483, clause 2, shall be applicable to reduction by inofficiousness when the gifts are between spouses.

Article 1502 - Liability of the donee in respect of gifted properties - Where the immovables are not in the possession of the donee at the time of revocation or reduction, he shall be liable for their value of the time of the opening of the inheritance without prejudice to the provision of paragraph 7 of article 2107.

Article 1503 - Limitation in respect of suit for reduction - Such claim shall prescribe in case the suit is not instituted within two years, from the date the forced heir has accepted the inheritance.

Article 1504 - Liability of transferee of gifted moveables - Where the gift consists of movables, and the donee is found insolvent, the parties may claim from the immediate transferee, the value of such movables at the time of acquisition, if the transfer is done gratuitously, and if no prescription has operated.

Article 1505 - To whom the fruits of the gifted things belong - The donee, affected by revocation or reduction by inofficiousness, is liable for the fruits and income only from the date of the demand, except when he is a co-heir, because, in this case, he is liable for them from the death of the donor.

CHAPTER VI

LOAN[39]

SECTION I

GENERAL PROVISIONS

Article 1506 – **Contract of loan** - Loan for use is a contract by which there is delivery of a thing to another, without consideration, so that the person, to whom the delivery is made, may use it with the obligation to return the same in kind or in equivalent thing.

Article 1507 – **Types of loan** –The loan is said to be for use *(Commodatum)* when the thing lent is to be returned in same kind; and for consumption *(Mutuum)* when it is to be consumed and returned by way of another thing of same type, quality and quantity.

Article 1508 – **Loan as Hire and Loan for interest** - Loan is essentially gratuitous. When there is compensation, the loan for use *(Commodatum)* takes the nature ofHire and loan for consumption, becomes Loan for interest *("Usury",* nowarchaic).

Article 1509 – **Devolution of loan** - The rights and the obligations, arising from a loan, devolve on the heirs and representatives of the one who gives the loan, as well as the one who receives the loan.

SECTION II

COMMODATUM - LOAN FOR USE

Article 1510 –**Duty of borrower** - Whoever takes loan for use is bound to return the thing which was lent to him, at the end of the agreed period.

39 *Articles 1506 to 1536 - Loans are now governed by Indian Contract Act, 1872. But here there are peculiar provisions not found in the Indian Law.*

Article 1511 – **Duration of loan** - Where there is no period agreed upon, it is deemed that it is for the time indispensable for the use permitted.

Article 1512 – **Duration of contract where use of object is not specified** - Whenever the use of the thing lent has not been specified, the lender may demand the return whenever he deems fit.§ Sole paragraph - Any doubt which may arise in this respect shall be decided as per declaration of the lender.

Article 1513 – **Anticipated demand of the thing** - The lender may demand the return, even before the expiry of period, where he has urgent need, or the person to whom the loan was given has expired.

Article 1514 – **Preservation of thing lent** - The borrower is bound to look after the maintenance of the thing lent, as if it was his own.

Article 1515 – **Trespass or dispossession of thing lent** - The borrower is also subject, in respect of the thing lent to all obligations cast on the depositary under article 1451, in relation to the thing deposited.

Article 1516 – **Perishing of the thing lent** - If the thing perishes or deteriorates in the course of its proper use, due to an unforeseen event or *force majeure*, the said thing not having been used for a purpose different from that for which it was lent, all the loss would be on account of the owner, unless there is a stipulation to the contrary.

§ Sole paragraph - However even in case of *force majeure* or unforeseen event, if the borrower being able to preserve the thing lent did not save it or preferred to save his own, allowing the thing lent to be lost, all the loss will be on his account.

Article 1517 – **Loss due to unforeseen event or *force majeure*** - Where the unforeseen event or *force majeure* is such that it is obvious, that such event or force, would not have taken place if the thing was in possession of the owner, the borrower, shall be liable to bear half of the losses and damages.

Article 1518 – **Effect of delay in the return of thing** - The borrower is answerable for all the losses and damages from the time there is delay on his part.

Article 1519 – **Expenses with the preservation of the thing** - The borrower is bound to bear the expenses, towards the maintenances of the thing, which are naturally required.

Article 1520 – **Co-borrowers** - Where there are two or more borrowers, they will be joint and severally bound by same obligations.

Article 1521 – **Duties of lender** - The lender is bound to:

1. Compensate the borrower for all expenses of extraordinary and inevitable nature, incurred on the thing lent, without, however, the borrower enjoying the right of retention;
2. To bear the loss which the borrower sustained on account of hidden defects of the thing lent, if the lender, knowing the defects, did not bring them to the notice of the borrower.

Article 1522 –**Limitation for certain suits arising from loan** - The suits for compensation for loss and damages or in connection with the expenses undertaken with the thing lent, are barred by limitation within one month from the date of return of the same thing.

SECTION III

MUTUUM - LOAN FOR CONSUMPTION

Article 1523 – **Formation of contract** - The borrower (mutuary) acquires the thing lent, and he takes all the risks from the time of the delivery of thing to him.

Article 1524 –**Duty of borrower (mutuary)** - The borrower (mutuary) is bound to return the thing by another equivalent in number, quantity and quality, within the agreed time.

Article 1525 – **Contract between parties as regards time to return shall prevail** - Where there is no mention about the time for the return, the following shall be observed.

Article 1526 – **Time limit for return of cereals** - When the loan given is of cereals or any other agricultural products to a cultivator, it is presumed to be given till the next crop of fruits or similar products.

§ Sole paragraph - The same provision is applicable to the borrowers, who though not cultivators, collect similar fruits towards the rent of their own lands.

Article 1527 – **Time limit for money loan** - Where the loan is of money, it will be never presumed that it was for less than thirty days.

Article 1528 – **Time limit for any other loan** - Where the loan is of any other thing, the time of duration shall be ascertained as per declaration of the lender.

Article 1529 – **Place of return** - The return of the loan shall be made at the place agreed upon. In the absence of the agreement, the loan being of commodities it shall be done at the place where the delivery was received, and if it is of money, at the domicile of the lender.

Article 1530 – **Impossibility of return in kind** - Where it is not possible for the borrower to return the thing in kind, he shall pay the value of the loan at the time when it falls due and at the place where the loan was made.

Article 1531 – **Loan in coin** - The return of the loan, made in metallic coin, shall be done in the manner prescribed in article 724 and following.

Article 1532 – **Liability of lender** - The lender is bound by the loss the borrower may sustain, in terms of article 1521, no.2.

Article 1533 – **Consequences of delay** - The borrower is bound to pay interest from the date of default.

Article 1534 – **Proof contract of mutuum** - The loan of an amount exceeding 4000$ may be proved only by document signed by the borrower himself and recognized as authentic; and if it exceeds 8000$ it may be proved only by way of public deed; if there are successive loans, to each of them the above restriction applies.

§ Sole paragraph - To the proof of acquittance is applicable what is provided above for the proof of the loan.

SECTION IV

LOANS TO MINORS

Article 1535 –Natural liability for loan to minor - Where there is a loan given to a minor, without necessary authorization, it is not lawful to demand the same, neither from the borrower nor his surety, if any.

§ Sole paragraph - However, where the minor has paid the loan demanded, either in full or part, he shall have no right to ask for restitution.

Article 1536 – **Where the loan is fully valid** - The provision of article 1531 shall have no effect:-

1. Where the loan given has been ratified by those, whose permission was, otherwise, necessary or by the borrower after his emancipation or majority;
2. Where the minor has properties with free administration, which may be sufficient to repay the loan, to the extent the properties may be sufficient.
3. Where the minor being away from the persons who were to give the authorization was compelled to take the loan for his maintenance.

CHAPTER VII

ALEATORY CONTRACTS[40]

40 *Articles 1537 to 1543 - This topic is also covered by The Indian Contract Act, 1872. There are various peculiar provisions not found in Indian Law.*

Article 1537 – **Definition of aleatory contract** - The contract is aleatory when one party binds himself towards the other or both the parties reciprocally bind themselves to perform or do certain act depending on an uncertain future event.

Article 1538 – **Definition of contract of insurance** - When the performance is in any case compulsory and certain for one of the parties and the other is only bound to perform or do some thing as compensation, upon a specific uncertain event, the aleatory contract is said to be risk or insurance.

Article 1539 – **Contracts of game or betting** - When the obligation to do or perform something is of both the parties and must necessarily fall on one of them, as per the alternative of event, the aleatory contract is called game or betting.

Article 1540 – **Contract of risk or insurance** - The contract of risk or insurance, which is not related to commercial object, shall be governed by general rules of the contracts prescribed in the present Code.

Article 1541 – **Prohibition of gaming contract as a mode of income** – Gaming contract is not permitted as a mode of acquisition.

Article 1542 – **Debts from gaming** - The law grants no sanction for the payment of what is won by gaming, even though with an appearance of another contract or novation. But if the gambler has paid what he has lost he is not entitled to ask for restitution of what has paid, except: 1. Where there is deceit or fraud of the other party, or where any other circumstances arises which according to general rules create obstacles for the contract to come into effect.

2. Where the amount or thing has been paid as a result of loss in gambling.

§ 1 - The contract is said to be of gambling where the loss or win depends entirely on chance and not on combinations, or calculation or skill of the player.

§ 2 - The refund of money, lent for gambling, at the time of the game, cannot be equally demanded.

Article 1543 –**Betting contract** - The provisions of preceding articles are applicable to betting.

CHAPTER VIII
CONTRACT OF PURCHASE AND SALE[41]

SECTION I
PURCHASE AND SALE IN GENERAL

Article 1544 – **Purchase and sale** - The contract of purchase and sale is one in which one of the contracting parties is obliged to deliver certain thing, and the other is obliged to pay for it certain price in money.

Article 1545 – **Distinction between purchase and exchange** - If the price of the thing consists part in money, and part in kind, the contract shall be of sale, when the portion in money is greater of the two; and it shall be exchange or barter, if the part in money is of smaller value.

§ Sole paragraph - When the values of the two parts are equal, it will be presumed that the contract is of sale.

Article 1546 – **Uncertain price** -The parties may agree that the price of the thing may be that which it has on a particular day, or in particular market or place.

Article 1547 – **Specification dependent on choice** - The parties also may agree that the specification of the thing sold may be dependent on choice, and that this may be exercised by any of them or by a third person.

§ Sole paragraph - Where the choice is to be done by third party, and the latter does not want or cannot do it, the contract will be of no effect, if some other thing is not agreed upon.

41 *Articles 1544 to 1591 - This includes sale of movables and immovables and accordingly would have to be viewed alongwith Indian Contract Act, 1872, Sale of Goods Act, 1930 and Transfer of Property Act, 1882. However there are many peculiar provisions which are not found in Indian legislation like Articles 1555, 1556, 1558, 1564, 1565, 1566 and 1567, and various other provisions, often linked to other areas of the Civil Code like Succession, Marriage and Property Law. Sale and purchase in Portuguese Law is a form of contract but in Indian legislation, it is viewed as a mode of transfer of property.*

Article 1548 – **Contract of promise of purchase and sale** - A simple reciprocal promise of purchase and sale, being accompanied by specification of price and description of thing constitutes a mere agreement to perform an act, which shall be governed be general terms of contracts; with the difference, however, that where the earnest money is paid, i.e. any amount received by the promisor vendor, forfeiture of the same or its restitution in double shall serve as compensation for losses and damages.

§ Sole paragraph - In case of immobile assets, the contract must be drawn in writing, and, if made without consent of the wife of promisor vendor, the latter shall be liable to compensate the promisee purchaser for losses and damages.

Article 1549 – **Transfer of property in thing sold** - The thing purchased belongs to the purchaser, from the time the contract is made, as well as, from such time, the seller is entitled to have from the

purchaser the agreed price; but, in relation to third person, the sale, being of immobile assets, shall produce effect, from the time it is registered as prescribed in the respective title document.

Article 1550 – **Risk of thing sold** - The risk of the thing sold shall be governed by the provisions of article 714 and following.

Article 1551 – **Sales after satisfaction** - The sales to the satisfaction of the purchaser, or of the things which are customarily tasted, weighed, measured or tried before their delivery, shall always be considered as sold under condition precedent.

Article 1552 – **Expenses of sale and registration** - The expenditure towards the deed and of registration, if any, shall be borne by the purchaser, in the absence of any declaration to the contrary.

SECTION II

THING PURCHASED AND SOLD

Article 1553 – **Thing purchased and sold** - All the things which may be subject of private individual possession or ownership, and are not excepted by law or administrative regulations, may be object of purchase and sale.

Article 1554 – **Alienations depending on certain formalities** – The following may be sold only in the cases and in the manner prescribed by law:

1. The assets of minors and of interdicted persons and any others which are under administration.
2. The dotal assets.
3. The State, municipal or village assets or those of any public establishment.
4. Assets that are attached.

Article 1555 - Sale of property of another - None shall be entitled to sell except that which is his property or to which he has right; and if he sells anything which belongs to another the contract shall be null and void, and the seller shall be liable for losses and damages, in case he has acted in fraud or bad faith.

§ Sole paragraph - The contract may however be revalidated and the seller may be acquitted of the criminal liability which he had incurred if before there is an eviction or criminal charges, the said seller acquires by any lawful title the ownership of the thing sold.

Article 1556 - Prohibition of succession by contract - The right of inheritance of a living person even with the consent of the said person as also the maintenance due under family law cannot be the object of purchase or sale.

Article 1557 – Sale of things or rights under litigation - Sale of things or rights under litigation is not forbidden; but if the vendor does not declare how the thing sold is under litigation, he shall be liable for losses and damages, if the said thing is evicted or if in the litigation it is proved that he did not have right to the same.

Article 1558 - Sale of non-existent thing - The sale of a thing which no longer exists or cannot exist is null and void and the seller shall be liable for losses and damages if he has acted in fraud or bad faith.

§ Sole paragraph – If however the thing sold has perished only in part, the buyer will have the choice to terminate the contract or to accept it as to the surviving part, the price being proportionately reduced.

SECTION III

PERSONS WHO MAY BUY OR THOSE WHO MAY SELL

Article 1559 – Capacity to sell - All such persons are entitled to sell who are not legally inhibited from disposing their assets either by reason of their status or the nature of the thing.

Article 1560 – Capacity to buy - All persons who are entitled to contract may buy, save for the following exceptions.

Article 1561 – **Legal incapacity of legal persons** - Associations or Corporations of perpetual existence cannot purchase except in the cases and in the form permitted to them by law.

Article 1562 – **Alienation of assets under administration or charge of third party** - The following persons shall not be entitled to purchase either directly or through an intermediate person :-

1. Attorneys, even where they have sub delegated their powers, and the establishments in relation to the assets, the sale or administration of which was entrusted to them.
2. Guardians and pro-guardians in respect of the assets of their wards during the term of the guardianship or pro-guardianship.
3. Executors under a will in respect of the inheritance while the executorship last.
4. Public servants in respect of assets in the sale of which they intervene in their official capacity whether these are assets of the State, Municipality or local authority as also, the assets of minors, interdicted persons or any other persons.

Article 1563 – **Alienation of litigious things** – Those who cannot be assignees according to the provisions of sole paragraph of article 785 cannot purchase a litigious thing except in the sale of hereditary shares where the purchasers are co-heirs or the purchasers possess mortgaged assets for the security of the litigious rights.

Article 1564 – **Sale between married persons** - Married persons may not buy or sell reciprocally among themselves unless judicially separated in respect of persons and assets.§ Sole paragraph - A spouse may however assign or gift to the other in payment of any legitimate debt and this shall not be regarded as a prohibited alienation under this article.

Article 1565 – **Sale to children or grand children** - Parents or grand parents shall not be entitled to sell or mortgage to children or grand children if the other children or grand children do not consent to the sale or mortgage.

§ Sole paragraph - If any of them refuses the consent or is incapable of granting the same or it is not possible to obtain such consent, the consent may be made good through family council constituted and summoned for this purpose in the manner set out in article 207.

Article 1566 – **Right of preference of co-owners** - Co-owners of a thing which cannot be partitioned or has not been partitioned may not sell their respective share to third parties if another co-owner is willing to acquire the same for the same price.

§ 1 - The co-owner who is not notified of the sale may acquire for himself the share sold to third parties, provided he sues for the same within a period of 6 months from the date on which he comes to know of the sale; before taking delivery, the said co-owner shall deposit the price which, according to the terms of the contract, has been paid or has become due.

§ 2 - In case there is more than one co-owner, the provisions of §§ 4 & 5 of article 2309 shall be observed; but if the shares are not equal and the partner of the larger share desires to exercise his right of pre-emption, he shall be given first preference without any auction.

§ 3 - The right of pre-emption in any of the cases shall not be prejudiced by the cancellation of the contract whether done extra judicially or by admission in Court or through compromise in judicial proceedings.

§ 4 - The time limit referred to in sub clause (1) of this article is applicable to all other cases of pre-emption.

Article 1567 – Alienation by violation of preceding articles - The contracts of purchase and sale made either directly or through an intermediary person, in breach of provisions contained in the preceding articles, shall be of no effect.

§ Sole paragraph - It is deemed that the purchase is made through an intermediary person: 1. When it is made by the spouse of the inhibited person, or by a person of whom the inhibited person is a presumptive heir;

2. When it is made by a third party in collusion with the inhibited person, for the purpose of transferring to the later thing purchased.

SECTION IV

DUTIES OF VENDORS

Article 1568 – **Duties of vendors** - The seller is bound :

1. To deliver to the purchaser the thing sold;
2. To answer for the qualities of the thing;
3. To furnish warranty to the buyer against eviction;
4. To answer for loss and damages, in case of non-fulfillment of the obligation which he has incurred of selling or giving preference to specified person.

SUB-SECTION I

DELIVERY OF THING SOLD

Article 1569 –Delivery of movables - The delivery of the movable things is effected by their transfer to the power of the purchaser, or placing the same at his disposition.

Article 1570 – **Expenses of delivery** - The expenses towards the delivery of the thing sold shall be borne by the seller, unless otherwise agreed.

Article 1571 – **Delivery of immovables** - The delivery of the immovable properties and of the rights is deemed to have been done, as soon as the seller hands over to the purchaser the respective title document, surrendering the enjoyment of the thing or of the right, unless otherwise agreed.

Article 1572 – **Delay by the vendor** - Where the seller fails to make the delivery, on account of his default, at the time and at the place agreed upon, the purchaser may seek the delivery of the thing, with the compensation for losses and damages or rescission of the contract.

Article 1573 – **Delay by the purchaser** - Where the sale is made with deferred payment of the price, the seller may demand the price with interest, if it is not paid within the agreed period of time; but he is not entitled to ask for the rescission of the contract.

Article 1574 – **Unpaid seller need not deliver** – The vendor is not bound to deliver the thing sold without the price being paid to him, unless there is an agreement to the contract.

Article 1575 – **Condition in which the thing is to be delivered** - The seller is liable to deliver the thing sold, in the state in which it was at the time of contract, as also the fruits, income, accessions and documents, unless otherwise agreed upon, be it in case of a private sale or sale through Court.

Article 1576 –Sale by numbers, weight or measure - Where the sale is effected on the basis of certain number, weight or measure, the contract may be rescinded by the purchaser, where in the delivery there is considerable shortage or excess, which cannot be separated without detriment to the thing; but where the purchaser desires to maintain the contract, he may ask reduction of the price in proportion of the shortage, and in the same manner, shall increase the price proportionate to the excess.

Article 1577 – **Effect of rescission of contract** - Where the contract is rescinded, in accordance with the provisions of the preceding article, the seller shall be bound to refund the price, if it has been received, and reimburse all the expenses incurred by the purchaser in connection with the contract.

Article 1578 – **Successive sale of same moveable to various person** - Where the same thing is sold by the seller to diverse persons, the following shall be observed: where the thing sold is moveable, the sale prior in point of time shall prevail; where it is not possible to ascertain the priority in point of time, the sale in favour of the person who is in possession of the thing, shall prevail.

Article 1579 – **Responsibility of vendor** - In either of cases mentioned in the preceding article, the seller shall be liable to refund the price, which has been unduly received, and also to pay for loss and damages, in addition to criminal liability incurred by him.

Article 1580 – **Successive sale of same immoveable to various person** Where the thing sold is immovable, the sale registered prior in point of time, shall prevail; and where none of them is registered, whatever is provided in article 1578 shall be observed.

SUB-SECTION II

GUARANTEE AND WARRANTY AGAINST EVICTION

Article 1581 – **Guarantee and warranty against eviction** - The seller is bound to secure to the buyer the ownership and peaceful possession of the property, and to warranty the buyer against eviction in terms of articles 1046 onwards.

Article 1582 – **Defects fatal to contracts** - The contract of sale and purchase is not liable to be rescinded on the pretext of injury or defects of the thing, considered as giving ground for annulment, except where such injury or defects involve error nullifying the consent, in accordance with articles 656 to 668 and 687 to 701 or there being stipulation to the contrary.

SECTION V

DUTIES OF PURCHASER

Article 1583 –**Duties of purchaser** - The purchaser is bound to fulfill whatever is stipulated and particularly to pay the price on time, at the place and in the manner as agreed.

§ 1 - Where there is no stipulation as to time and place, it shall be deemed that they are the same as for the delivery of the things sold.

§ 2 - Where there is doubt as to what is to be performed first, whether the delivery of the thing sold, or the payment of the price, either one or other shall be placed in deposit, in the hands of a third party.

Article 1584 – **Interference in the right or possession of the purchaser** - Where the purchaser, with the deferred payment of price, is disturbed in his right and possession, or has apprehension of being disturbed, so that he has or may have, the right to sue the vendor for warranty against eviction, he may deposit the price in the Court, so long as the vendor does not take steps to stop the disturbance, or does not give guarantee, unless otherwise agreed upon.

Article 1585 – **Irrevocability of sale after delivery of thing** - Once the thing is delivered, may be moveable or immovable, the vendor is not entitled to rescind the contract, on account of non-payment of the price.

SECTION VI

REVERSIBLE SALE

Article 1586 – **Reversible sale** - A reversible sale is one made with a clause or condition that the seller is entitled to undo the contract and recover the thing sold, upon refunding the price received.

Article 1587 – **Prohibition of reversible sale** - Henceforth, the contract of reversible sale is prohibited.

Article 1588 – **Reversible sale prior to the code** - In the contract of reversible sale entered into before the enforcement of this Code, where there is no time stipulated for re-conveyance, such period shall be four years from the date of the promulgation.

SECTION VII

FORM OF CONTRACT OF PURCHASE AND SALE

Article 1589 – **External form of purchase of mobiliary assets** - The contract of purchase and sale of mobiliary assets does not depend upon any special formality.

Article 1590 – **External form of purchase of immobile assets** - The contract of purchase and sale of immobile assets shall always be reduced to writing.

§ 1 - Where the value of the assets does not exceed 1,000$ the same may be effected by way of private document, with the signature of the vendor, or of the signature of any other on his behalf when he does not know to write and of two more witnesses who shall write their name in full. § 2 - Where the value exceeds 1,000$ the same may be effected only by public deed.

Article 1591 – **Effectiveness of purchase and sale in relation to third parties** - The sale of immobile assets, shall have no effect as against third party, if it is not registered as laid down by law.

CHAPTER IX

EXCHANGE[42]

Article 1592 – **Exchange** - Barter or exchange is a contract where one thing is given for another, or one type of currency is given for another type of currency.

§ Sole paragraph - When the money is given for another thing, it shall be of sale or exchange, as provided in articles 1544 and 1545.

Article 1593 – **Eviction from one of the things exchanged** - The party exchanging if he is deprived of the thing received in exchange, may receive back the thing which he gave in exchange, if it is still found in the possession of the co-exchanger, or may demand its value. § Sole paragraph – Where the thing given in exchange has been encumbered by the co-exchanger, with the encumbrances already registered, the same will continue, but the exchanger who

[42] *Articles 1592 to 1594 - this subject would have to be viewed in the light of the Indian Contract Act, 1872 as well as Transfer of Property Act, 1882, Chapter VI – Of Exchanges, Sections 118 to 121. Exchange in Portuguese Law is a form of contract but in Indian legislation, it is viewed as a mode of transfer of property.*

demands the thing has also right to be compensated by the co-exchanger for the decrease of the value, which the thing had as a result of the said encumbrances.

Article 1594 – **Provisions applicable to contract of exchange** - The contract of exchange shall be governed by the provisions of chapter of purchase and sale, except in respect of the price.

CHAPTER X

CONTRACT OF LETTING[43]

SECTION I

GENERAL PROVISIONS

Article 1595 –**Contract of letting** - A contract of letting takes place when anyone transfers to another, for certain period and upon certain payment, the use and enjoyment of a certain thing.

Article 1596 – **Kinds of letting** – The letting is called renting when its object is an immovable

thing; it is hire when it is in respect of a movable thing.

Article 1597 – **Legal capacity to let** - Whoever has capacity to contract and dispose of use and enjoyment of a thing has right to do the letting.

Article 1598 – **Letting of undivided thing** - It is not lawful to a co-owner of a thing under indivision to let it out without consent of other co-owners, or their representatives, except for what is provided in article 2191 in respect of holding of shares.

Article 1599 – **Legal capacity to accept letting** - Letting may be accepted by all those who have capacity to contract, save for the following exceptions:

1. It is forbidden to the magistrates, judges, and other public servants taken on hire or on tenancy, by themselves or through an intermediary person, any assets put for auction by the Court, judicature or office, where they are occupying the post of judges, exercise jurisdiction or hold office.

[43] *Articles 1595 to 1635 – The subject of Leases is now covered by the Transfer of Property Act, 1882, The Goa, Daman and Diu Agricultural Tenancy Act, 1964 as well as Goa (Lease, Rent and Eviction Control) Act, 1968 and also Decree on Leases no. 43525 of 7/3/1961.*

2. It is forbidden to the members of any public establishment to take on hire or tenancy, for self or through an intermediary person, any assets belonging to the said establishment.

§ Sole paragraph - Intermediary persons are those who have been declared in article 1567, sole paragraph.

Article 1600 – **Duration of letting contract** - The letting out may be for any period agreed upon between the parties, except for what is provided in the following two articles.

Article 1601 – **Letting of assets from dowry, usufruct or in *fideicommissum*** - The administrations of the properties under dotal regime and of lifetime usufruct or fideicommissaries may grant tenancy for the period they like; but when the lease still subsists even when the administration of the dowry, the usufruct or the *fideicommissum* ends, the life of tenancy will end with them.

§ Sole paragraph - The usufructuary for a limited period is not entitled to grant the tenancy beyond the period of the usufruct, however, if he does so, on this count the tenancy will not be fully void in totality but only as regards the time it exceeds the duration of the usufruct.

Article 1602 – **Letting of assets of minor and interdicted person** - In the letting out of the assets of minor and interdicted, the provisions of articles 243(6), 263, 264, 265 and 266 shall be followed.

Article 1603 – **Compensation for letting** - The price of letting or rent may consist in certain sum of money or in any other thing in kind, provided it is certain and specific.

Article 1604 – **Letting of State assets** - The form of lease of assets of the Government and any other public establishments is regulated by administrative legislation.

Article 1605 –Sub-letting - Where the contract does not contain any clause prohibiting sub-letting, it is open to the tenant to grant the sub-lease without any restriction, but he will be always responsible for the payment of rent towards the landlord and for other obligations arising from the tenancy.

SECTION II
LEASE AND TENANCY

SUB-SECTION I

RIGHTS AND OBLIGATIONS OF THE LANDLORD AND TENANT

Article 1606 – **Duties of landlord** - The landlord is bound to:

1. Deliver to the tenant the rented property with its appurtenances, in a condition to be used for the purpose for which it is meant;
2. To preserve the thing rented in the same condition during the lease;
3. Not to disturb nor create obstacles in any manner for the enjoyment of the rented property, except for urgent and indispensable repairs, in such case, however, the tenant may claim the damages he may sustain, for being deprived of the use, as was his right.
4. To secure the use of the thing let out against obstructions and disturbances arising from the right which a third party may have in relation to the same thing, but not against obstruction and disturbances caused by a third party.
5. For damages, sustained by the tenant, on account of hidden defects or vices of the thing, of the date prior to the lease.

Article 1607 – **Grounds for eviction** - The landlord may nevertheless, evict the tenant before the expiry of the lease, in the following cases:

1. Where the tenant fails to pay the rent within agreed period.
2. Where the tenant uses the property for a purpose different from that for which it is meant or for which it was leased.

Article 1608 – **Duties of tenants** - The tenant is bound:

1. To pay rent within time and manner agreed upon, or in the absence of any agreement as per the local custom;
2. To be answerable for the damages, caused to the rented thing, on account of fault and negligence of the tenant or his family members or sub-tenants;
3. To use the thing only for the agreed purpose or in accordance with the nature of the thing; 4. To bring to the notice of the landlord the trespasses, attempted or effected by third party and to defend the interests of the landlord, on the terms laid down in the second part of article 1451;
5. To return the thing at the end of the lease, without deteriorations, save those which are inherent to its ordinary use.

Article 1609 – **Encumbrances on the property** – The tenant is not bound to satisfy the encumbrances on the property, unless, the law expressly directs, and even in such cases, the encumbrances shall be paid on the account of the rent, unless otherwise agreed.

Article 1610 – **Delay by the landlord** – Where the landlord fails to hand over to the tenant, the thing let out, within the agreed time, or as per the custom, he may claim damages from the landlord, by rescission of the contract or by compelling the landlord to observe.

Article 1611 – **Repairs** – Where the landlord, upon the demand by the tenant, fails to carry out in the property let out, the repairs necessary for the use to which it is destined, the tenant may rescind the contract, claim losses and damages or have the said repairs carried out at the cost of the landlord, after notice in such, giving a definite time.

Article 1612 –**Deprivation of enjoyment of property on account of unforeseen event** - Where the tenant is disturbed or deprived of the use of the property on account of unforeseenevent or *force majeure*, in respect of the same property and not due to any act of the tenant, he may demand that the rent be reduced proportionate to the deprivation, if otherwise not agreed upon.

Article 1613 – **Eviction from the property let** - Where the deprivation of use arises from eviction from the property, whatever is provided in the preceding article shall be observed, except where it is

found that the landlord has acted in bad faith; because in such case, the tenant shall also be liable for damages.

Article 1614 – **Right of retention for improvements** - It is not lawful to the tenant to refuse to hand over the property at the end of the lease period. Only in case of improvements expressly consented in writing, or authorized by article 1611, he shall have right of retention, until realization of the amount of improvements duly proved.

Article 1615 – **Improvements made on land** - In the case of lease of land for less than twenty years, the tenant, upon his eviction, has the right to have from the landlord the value of agricultural improvements, both necessary as well as useful, even though not expressly consented, unless there is stipulation to the contrary.

§ Sole paragraph - In such case, however, the value of the improvements and interest thereon shall be paid from the increase of annual income, arising therefrom, in the property where the improvements were carried out.

Article 1616 – **Unlawful retention of leased property** - The tenant who unduly retains the property let out, shall be subject to losses and damages.

Article 1617 –**Rent in kind** - In case the rent is payable in kind and has not been paid within time, it shall be paid in cash at the price prevailing at the time of the accrual, with an interest for the period of delay.

Article 1618 – **Presumed renewal of contract** - If, after the tenancy period is over, the tenant continues in the enjoyment of the property without objection, it is presumed that the contract stands renewed in case of land for a period of one year and in case of buildings for a period of one year or for 6 months or for lesser period as per the local custom.

Article 1619 – **Death of contracting parties or transfer of the property** - The contract of lease, date of which is declared in any authentic or authenticated document is not terminated upon the death of the landlord or tenant, not even on account of devolution of the property, either as universal heir or as sole heir, except for the provisions of the subsequent articles.

Article 1620 – **Acquisition of property for public purpose** - Where the transfer results from land acquisition for public purpose, the contract shall be rescinded, with prior compensation to the tenant.

Article 1621 – **Transfer of property on account of execution** - Where the transmission results from execution, the following shall be observed:

§ 1 - The tenancies subject to registration shall subsist provided that the registration of the tenancy is prior to the registration of the act which gave rise to the execution.

§ 2 - The tenancies not subject to registration shall subsist, despite the execution, for all the time for which the contract has been made except if otherwise agreed upon.

Article 1622 – **Tenancy subject to registration** - The tenancies exceeding one year, where there is anticipation of rent, and the tenancies exceeding four years where there is no anticipation, shall be subject to registration.

SUB-SECTION II

SPECIAL PROVISIONS IN RESPECT OF LEASES OF BUILDINGS

Article 1623 – **Duration of lease of buildings** - Where the period of leases of building properties is not specified in the contract, it is deemed that the lease is for six months or one year, or for lesser period, as per the local custom.

§ Sole paragraph - Where there is custom to lease either for year or per semester, it is deemed that the lease is for semester.

Article 1624 –**Presumed renewal of contract** - The lease is deemed as renewed, where the tenant has not vacated or the lessor has not evicted him in the manner provided by the local custom.

Article 1625 – **Fixation of notices** - In places where there is practice of affixation of notices, the tenant who has affixed such notices is deemed to be evicted, and he is bound to allow inspection of the interior of the house to whomsoever wants to see it.

Article 1626 – **Notice of termination of lease** - In places where there is no practice of affixation of notices, the tenant shall intimate the lessor and the latter shall intimate the tenant, about the termination of the lease, with the anticipation of forty days before the end of the lease.

SUB-SECTION III

SPECIAL PROVISIONS IN RESPECT OF LEASES OF LAND

Article 1627 –**Cultivation of land under lease** - The Tenant of lands is bound to cultivate them in such a manner that they are not deteriorated; otherwise he may be evicted and answers for losses and the damages.

Article 1628 –**Duration of lease of land** - Where there is no stipulation as to the period of lease, it is deemed that the lease is made for the period as the custom prevailing in the land, and, in case of doubt what is the custom, the same not being uniform, it shall be never presumed that it has been made for a period necessary for less than one sowing and harvest, depending upon the cultivation made.

Article 1629 –**Notice for cessation of lease of land** - The tenant for an unspecified period, who does not desire to continue with the lease shall inform the lessor with anticipation used in the locality and in the absence of any practice in that regard, 60 (sixty) days before the agricultural year ends, as per the local custom and type of cultivation. The same notice shall be given by the landlord to the tenant if the continuation of the contract does not suit him.

Article 1630 –**Bar on unilateral change in rent** - The tenant is not entitled to ask for reduction of rent on the ground of extraordinary infertility, or substantial loss of pending fruits, on any fortuitous event, unless otherwise agreed upon.

Article 1631 – **Scope of application of provisions relating to lease of land** - The present Code shall govern all the contracts of leases of rural properties, even where in the districts or provinces of the kingdom, before the promulgation of the code; such contracts were governed by special laws.

SUB-SECTION IV

EVICTION

Article 1632 – **Form of procedure for eviction** - The suit for eviction shall always be of summary nature.

SECTION III

HIRE

Article 1633 – **Object of hire** – All the movables of non consumable nature and which are not excluded from commerce may be object of hire.

Article 1634 – **Provisions applicable to the contract of hire** - The provisions of preceding section are applicable to the contract of hire to the extent they are compatible with the nature of mobiliary objects.

Article 1635 – **Cessation of installments or of rents** - The transfer of the right to receive, at the specified time and price, any installment or rents, is governed by provisions contained in articles

785 to 795, save for what is provided in the fiscal laws as to the rents payable to the Government.

CHAPTER XI

USURY[44]

Article 1636 – **Definition of contract of usury -** Contract of usury takes place when anyone lends to another, money or other consumable, with the obligation to return an equivalent sum or an equal object subject to certain compensation in money or things in kind.

[44] *Articles 1636 to 1643 would now be regulated by the Indian Contract Act, 1872 and other specific legislation on Loans and Interests.*

Article 1637 – Consumable which is not money – If the object of the contract is a consumable which is not money and the person bound does not return the same within the stipulated time, he shall pay it in money for the price prevailing at this time.

Article 1638 – **Certain and specific currency** – If the contract is regarding certain and specified currency the restitution shall be done in the same currency and if the same is not available the provisions of articles 724 and 725 shall apply.

Article 1639 – Contract between parties to prevail – The provisions of the preceding two articles shall not prevent that the parties stipulate to the contrary.

Article 1640 – Legal interest – The parties may agree to such compensation as they may think.

§ Sole paragraph - In cases in which it is necessary to compensate or calculate interest in the absence of stipulation this shall be calculated at the rate of 6% p.a.

Article 1641 – Rescission of contract of usury – The contract of usury is rescindable at the option of the debtor unless the said contract is stipulated for a said period, for in such case whatever is agreed shall be carried out. The creditor has the same right; but neither the debtor nor the creditor may exercise his right without notifying the other at least 30 days in advance.

Article 1642 – Bar on compounding of interest - Interest accrued for more than 5 years cannot be claimed nor interest on interest, but the parties to a contract may by a new contract capitalize the interest which is already accrued.

Article 1643 – Proof of the contract – To the proof of this contract the provision of article 1534 and its paragraph shall apply.

CHAPTER XII

RENT OR "CENSO CONSIGNATIVO"

SECTION I

"CENSO CONSIGNATIVO" IN FUTURE

Article 1644 – Definition of *'censo* '[45] – Contract of "censo consignativo" or rent is that by which one person gives to another a certain sum or capital for good, the one who receives it binding himself to pay certain annual interest in kind or in money assigning in some certain and

specific immovables the liability to satisfy the charge.

Article 1645 – Duration of the contract – The contract is by nature a perpetual cession of the capital lent; however the duty to pay the interest stipulated may be either perpetual or temporary.

Article 1646 – External form of the contract - This contract shall be executed through Public Deed and in order to produce effect with respect to third parties shall be registered.

Article 1647 – Compensation, transfer and division of rent contracts – For this contract the provisions laid down in article 1640 and 1662 are applicable.

Article 1648 – Remission of rent – The rent contract whether perpetual or for more than 20 years can be rescinded at the end of this period if at the options the person who receives the capital, by returning the sum taken.

Article 1649 – Non payment of interest - If the person who has agreed to pay the rent (i.e. the person who received the capital) fails to pay interest for 3 consecutive years the creditor may demand return of the capital.

SECTION II

ASSIGNMENT IN RESPECT OF PAST CONTRACTS

45 *'Censo' = census : count of people and their assets for the purpose of collecting revenue; eventually became synonymous with ground rent, annuity or payment of use of land. Even in England there was Census Regalis, the annual revenue or income of the Crown (Wharton's Law Lexicon).*

Article 1650 –Remission of past contracts - The contracts of assignment of the past, existing the date of the promulgation of this Code, may be redeemed by the interest payer, on the following terms:

1. Where the period agreed is fixed and does not exceed twenty years, the redemption may be made at the end of the agreed period;
2. Where it is agreed for more than twenty years, it may be redeemed at the end of this period; 3. Where in the agreement, there is no stipulation of time and twenty years have lapsed, redemption may be made only at the end of this period;
4. In the case of the preceding clause, where the period of twenty years has elapsed before the promulgation of this code, the redemption may be made at any time by the interest payer.

Article 1651 – **Price of redemption** - The redemption money will be the restitution of the principal amount; but when the amount of principal is not known, the redemption will be made at the rate of twenty per one.

Article 1652 – **Non payment of interest** - For the past contracts of assignment what is provided in article 1649 is applicable.

CHAPTER XIII

EMPHYTEUSIS[46]

SECTION I

EMPHYTEUSIS IN FUTURE

SUB-SECTION I

GENERAL PROVISIONS

46 *Articles 1653 to 1705 – Emphyteusis or Aforamento is peculiar to Portuguese Law.*

Article 1653 – **Meaning of Emphyteusis –** The contract of "emprazamento" (giving for a period), "aforamento" or emphyteusis or concession takes place when the owner of any property transfers its

"dominium utile" (literally "useful dominium" – meaning use and enjoyment) to another person binding himself to pay to him annually a certain fee called "foro".

Article 1654 – Perpetuity of the emphyteusis – Remission of fee –The contract of emphyteusis is perpetual in nature. Contracts entered into under the name and form of emphyteusis but stipulated for a limited time shall be treated as ordinary leases and as such regulated by the respective legislation.

§ 1 - The holder of an emphyteusis or sub emphyteusis of more than 20 years duration may remit the liability on the following basis:

(a)The price of remission is of 20 years' annual fee plus any dues, the property being for this purpose valued by deducting the value of the "foro";

(b)If the fee consists in kind the value of this shall be calculated by the average of the prices prevailing in the village, where the fee is to be paid, in the last three agricultural years, in the absence of agreement this price being fixed by the Judge in appropriate proceedings; (c)If the deposit is found insufficient, the depositor may either give up the remission or complete the deposit;

(d)If there is no objection or if the objection is found not legally sustainable, the liability shall be considered as remitted from the date of deposit.

§ 2 - When a sub holder of emphyteusis desires to remit the liability he will have to institute appropriate proceedings both against the holder of emphyteusis as well as the absolute owner of the property; the absolute owner shall receive the amount of the fee or foro alongwith the due which the holder is bound to pay to him and the balance of the emphyteutic fee (foro) not payable to the absolute owner shall be paid to the holder of the emphyteusis.

§ 3 - The provisions of the preceding paragraphs are also applicable to censorial pensions.

Article 1655 – **External form of the contract –** The contract of emphyteusis shall be by public deed and shall produce effect in relation to third person only when registered.

Article 1656 –**Quality and quantity of emphyteutic fee *("foro"* –** The quality and quantity of the emphyteutic fee (*"foro"*) shall be regulated by the agreement between parties provided it is certain and determined.

Article 1657 – **Abolition of additional encumbrances** –No additional encumbrances ordinary or extra ordinary may be stipulated on account of succession (estate) duty or other dues.

Article 1658 – Fee to be compulsorily in money –If the emphyteusis is of a building or land for construction, the fee ("*foro"*) shall always be in money.

Article 1659 – Description of the Emphyteusis –The property given in emphyteusis shall be described by name and boundaries so that its boundaries cannot be confused with the boundaries of the surrounding properties.

Article 1660 – Time and place of payment of " *foro"*– "*Foro"*** shall be paid at the time and place agreed.

§ 1 - For emphytheutic leases prior to 31-12-1920, the fee or part of the same consisting in money, without specification of the metal or coin, shall be paid multiplied by the coefficient 10, and in the contrary case the provisions of articles 724, 725 and 727 and paragraphs shall be observed.

§ 2 - The fee in kind which is not paid in time shall be satisfied in cash at the price prevailing at the time of accrual with interest for the delay.

§ 3 - The provisions of the preceding paragraphs are applicable to the fees for the censorial agreements.

Article 1661 – **Supplementary rules as to time and place of payment of foro** – If there is no stipulation as to the place and time of foro, the following shall be observed :-

§ 1 - The foro shall be paid at the residence of the owner if he resides in the village where the property is situated.

§ 2 - If the owner does not reside in the village and has no attorney therein, the foro shall be paid in the house of the holder of the emphyteusis.

§ 3 - If the foro consists in fruits, the same shall be paid at the end of the plucking of the harvest and in case of money at the end of the year counted from the date of the contract.

Article 1662 – **Indivisibility of Emphyteusis –** Emphyteusis are hereditary like the allodial assets; may not be divided into plots except with the consent of the owner.

§ 1 - The division of the value among the heirs shall be made by estimate the emphyteusis being allotted to one of them as they may agree.

§ 2 - If there is no agreement, the emphyteusis may be put up for licitation.
§ 3 - If none of the heirs wants the emphyteutic property, it shall be sold and the price divided.§ 4 - If the owner consents to the division into plots, each plot shall constitute a separate emphyteutic property and the owner may only demand the respective "foro" from each of the partners according to the division done.
§ 5 -The division or splitting up shall not be valid if not made by a formal registered deed which shall include the consent of the property owner.
§ 6 - In this case, the foro apportioned to each heir may be increased by the amount which owner is entitled to receive due to the inconvenience of the divided recovery.
§ 7 - If the emphyteutic property is partitioned without the written consent of the owner, each plot shall be liable for the full amount of the fee.

Article 1663 – Right of succession to the emphyteutic property – In the absence of testamentary heirs or legal heirs of the last holder of the emphyteusis, the property shall return to the original owner.

SECTION II

ASSETS WHICH MAY BE GIVEN ON EMPHYTEUSIS

Article 1664 – Assets which may be given on emphyteusis – Only alienable immovable assets may be given on emphyteusis subject to the provision that follow.

Article 1665 – Emphyteusis of assets of minor – The emphyteusis of assets of minors and legally disabled persons shall be governed by article 267 onwards.

Article 1666 – Emphyteusis of dotal assets – The emphyteusis of dotal assets shall be governed by article 1149 (2) and (3).

SUB- SECTION III

WHO MAY GIVE AND TAKE ON EMPHYTEUSIS

Article 1667 – Capacity of absolute owner –Emphyteusis may be granted by those who are entitled to alienate their assets.

Article 1668 – Emphyteusis of assets of spouses – Married persons may not grant their assets in emphyteusis without mutual consent whatever may be the nature of the matrimonial contract.

Article 1669 – Capacity to take on Emphyteusis – All those who are entitled to enter into contract may take a property on emphyteusis except:-

1. Legal persons unless permitted by article 35.

2. Those who are not entitled to purchase as laid down in articles 1562, 1564, 1565 and 1566.

SUB - SECTION IV

RIGHTS AND DUTIES OF OWNERS AND HOLDERS OF EMPHYTEUSIS

Article 1670 – Requirement of registration – The absolute owner is duly bound to register the emphyteutic liability so that it produce the effects on third persons and he is entitled to the right to the payment of the fees due to him in terms of articles 880 and 881.

Article 1671 – Failure to pay fee – On default of payment of fee ("*foro"*) the absolute owner even if he stipulates otherwise has no other right except that of recovery of fees in arrears and interest for default.

Article 1672 – **Right of recovery of the property –** If the holder damages the property to the extent that its value is no longer equivalent to the principal amount corresponding to the fee ("*foro"*) plus 1/5th (one fifth), the absolute owner may recover the property without any compensation to the holder.

Article 1673– Rights of the holder – Holder of emphyteusis shall have the right to enjoy the property and dispose of the same as his own subject to the restrictions imposed by law.

Article 1674 – **Violation of the rights of the holder –** If the holder is disturbed in his rights by third person who disputes its ownership and the validity of the emphyteusis, he shall sue the owner of the property if he wants to recover from him the losses and damages that he may suffer in the case of eviction.

Article 1675 – **Encumbrances and taxes over the emphyteusis** – The holder shall be liable for all the encumbrances, taxes, dues and duties which may be imposed on the property or on the person on account of the property.

§ Sole paragraph - The owner should however be liable to the holder for the dues corresponding to the emphyteutic property.

Article 1676 – Right to mortgage and encumber the emphyteutic property –The holder may mortgage and encumber the property with any encumbrances or easements without the consent of the absolute owner provided the mortgage or the encumbrance does not amount to the value of the property corresponding to the foro plus 1/5th (one fifth).

§ Sole paragraph - The owner of the property shall have the right of preference in the case of leases for a period exceeding 10 years.

Article 1677 – Right to gift or exchange the emphyteutic property – The holder may freely gift or exchange the property; but in this case shall inform the absolute owner within 60 days from the date of the transfer. If not, he shall be liable alongwith his assignee for the payment of installments due.

Article 1678 – **Right of preference in the alienation of the property –** If the holder desires to sell or give on payment, the property granted to him on emphyteusis, he shall notify the owner,

informing to him the price offered to him or the price for which he proposes to alienate the property and if, within 30 days, the said owner does not exercise his right of preference and does not pay, the holder may proceed with the alienation.

§ 1 - The holder shall also have the right of preference in case the owner desires to sell the emphyteutic property or give it on payment. For this purpose the said owner shall be subject to the same duties which are imposed on the holder in this article in analogous circumstances.§ 2 - The

emphyteusis shall stand extinguished in case the right of preference is exercised and payment is made whether by the owner or holder.

§ 3 - This right of preference is not admissible in expropriation voluntarily done for public utility.

Article 1679 - Denial of right of preference to legal person –The provisions of the preceding article shall not be applicable to legal persons who shall not be entitled to the rights of preference; but the transferor shall notify the owner about the transfer so as not to incur the liability mentioned in article 1677.

Article 1680 – Indivisibility of preference –In case the emphyteusis covers several properties the owner may not exercise preference in respect of some and reject the others.

Article 1681 – Consequences of non notification of preference –If the holder does not comply with the article 1678 the owner may exercise within the time limit stipulated in article 1566, the right of preference taking the property of the transferee for the price for which it was acquired.§ Sole paragraph - Identical right shall be available to the holder in circumstances mentioned in§ 1 of article 1678.

Article 1682 – Attachment of emphyteutic property – If the emphyteutic property is attached for debts of the holder, it may not be put in public auction unless the owner is notified the date of the auction in which he shall have right of preference in case he desires to take the property for the highest bid.

Article 1683 – Failure of auction –If the property is put in auction and there is no bidder, the absolute owner if he so desires shall have the right of preference in the adjudication for the value for which the same is to be carried out, for which, within 3 days, from the last date of the auction he will have to declare, that he desires to exercise his right of preference, and also, pay the price of the adjudication within another 3 days from the date from which it is adjudicated to him.§ Sole paragraph - This provision is not applicable to those who are not allowed to exercise the right of preference.

Article 1684 – Installment in arrears –The absolute owner may not demand the installment in arrears for more than 5 years except upon an acknowledgement debt signed by the holder with two witnesses or fully written in his own hand or attested in a public deed.

Article 1685 – Suit for recovery of emphyteutic fees –The suit for recovery of emphyteutic dues shall be by summary procedure. The execution when it falls on assets under emphyteusis may be carried out either on the income or the base property as the owner may desire.

Article 1686 – Prescription in relation to emphyteutic leases – Prescription is applicable to emphyteutic leases in the same manner as other immobile assets.

Article 1687 – Total destruction of the property – If the property under emphyteutic is totally destroyed or rendered unusable by *force majeure* or fortuitous circumstances, the contract shall stand extinguished without prejudice of the right of the owner to recover from the holder the value of the *"dominium directum"* (literally direct dominion i.e. legal, not equitable ownership or nominal ownership of the original owner i.e. absolute ownership) when this falls on insured properties and the loss is as a result of fire.

Article 1688 – **Right of Reduction –** If by *force majeure* or fortuitous circumstances, the emphyteutic property is destroyed or rendered useless only in part in such a way that its value becomes less than what was at the time of emphyteusis, the holders may apply that the owner reduces the emphyteutic fee or rescind the lease if he opposes the reduction.

§ Sole paragraph - This provision is not applicable when the destruction is due to fire in insured properties.

SECTION II
EMPHYTEUSIS OF THE PAST

SUB-SECTION I
GENERAL PROVISIONS

Article 1689 –**Emphyteusis of the past** - The emphyteuses of the private assets, prior to the promulgation of the present Code, subsisting either by contract or by any other title, are maintained in accordance with respective title deeds, with the modifications established in the present article.

Article 1690–**Proof of emphyteusis of the past** - The emphyteusis, mentioned in the preceding article, may be proved by all the ordinary means.

Article 1691 – **Choice of species in which pension is to be paid** - Where it is stipulated, that the emphyteutic pension may be paid, in one or other species, it is left to the choice of the emphyteuta, unless there is a declaration to the contrary.

Article 1692 –**Scaling down of uncertain pension** - All the emphyteutic pensions, which consist of unascertained installments, may be made certain, on the application of the emphyteuta.

Article 1693 – ***Laudemium*** - The *laudemium* stipulated in the emphyteuses of the past shall be maintained as agreed. Such *laudemium* is of forty installments, if not otherwise specified in. § Sole paragraph - The obligation to pay the *laudemium* is on the acquirer.

Article 1694 – **Provisions applicable to post emphyteuses** - The provisions of articles 1661, 1662 and 1663 and of sub-section IV of the preceding section are applicable to the emphyteuses of the past.

Article 1695 – **Fees in arrears** - The installments of emphyteutic pension already accrued at the time of promulgation of the Code, may be demanded despite the provision of article 1684, provided that the demand is made within one year from the date of the promulgation.

SUB-SECTION II
GRANT IN THE NATURE OF EMPHYTEUSIS

Article 1696 –**Grants for life before the enactment of the Code** - All the grants for life in the nature of emphyteusis existing at the time of promulgation of this Code are declared simple or hereditary and their transmission is governed by the provisions of article 1662 and 1663.

SUB-SECTION III
GRANTS FOR LIFE TIME AND BY WAY OF APPOINTMENT

Article 1697 – **Grants for life time** - All the grants for lifetime, or by way of appointment for some generations, whether such appointment is free, or restricted or conventional, shall take the nature of grants in the nature of emphyteusis, simple and hereditary in possession of emphyteuta, at the time of the promulgation of the Code, except the provision of subsequent articles.

Article 1698 – **Grants to appointee with reservation of usufruct** - The emphyteusis that at the time of the promulgation of this Code, are in the enjoyment of the appointees or transferred irrevocably, and by authentic instruments, but with reservation of usufruct, shall take the nature of hereditary emphyteusis, when they reach in the hands of the appointees, or in the hands of whom they had been transferred.

Article 1699 –**Revocable grants** - Where the appointment, or transfer made by authentic instrument is revocable, it shall produce effect where the appointer, or transferor has not revoked it.

Article 1700 – **Regulation of grant in article 1698** - The *aforamentos*, referred to in article 1698 shall continue to be governed by the legislation prior to the enforcement of this code, until in accordance with the same article they do not take the nature of *aforamento*.

SECTION III
SUB EMPHYTEUSIS

Article 1701 – Abolition of sub emphyteusis – Contracts of sub emphyteusis or transfer of emphyteusis are prohibited for the future.

Article 1702 – **Regulation of past sub-emphyteuses** - The contracts of sub-emphyteusis of the past shall continue to subsist, and they are governed by what is provided in articles 1689 to 1695, in relation to the emphyteusis of the past, with the following modifications.

Article 1703 – **Right of preference in sub-emphyteuses** - Where any property under sub-emphyteusis is sold or transferred for payment of debt, the right of pre-emption is fully available to the holder of the "*dominiumdirectum*" (owner of the property) and only when he does not want to avail of it, to the emphyteuta.

§ 1 - Where the sale or transfer for payment is of the "*dominium directum"*, the right of pre-emption is available to the sub-emphyteuta and only where he does not want to avail of it, it will pass to the emphyteuta.

§ 2 - In case of sale or transfer for payment of the emphyteutic domain, the right of pre-emption firstly is available to the holder of the "*dominium directum"*, and only when he does not want to avail of it, it shall pass to the sub-emphyteuta.

Article 1704 – Notice of pre-emption - In order to give effect to the provision of the preceding article, the sub-emphyteuta who wishes to sell or transfer for payment of debt the sub-emphyteutic property, besides being bound to give the notice to the holder of the "*dominium directum"*, of the soil in terms of article 1678, shall, when the latter does not avail of the right of pre-emption, give similar notice to the emphyteuta in the same manner.

§ Sole paragraph - Identical procedure will be followed by the holder of the "*dominium directum"*, of the soil, in case of sale of the "*dominium directum"* or its transfer for payment of debt, and by the emphyteuta, in case of alienation of the emphyteutic dominium by any of the aforesaid forms.

Article 1705 – ***Laudemium***[47] **in sub-emphyteusis** - In case of alienation of the sub-emphyteusis, there shall be observed in respect of the "*laudemium"*, whatever, with the concurrence of the holder of the "*dominiumdirectum",* is stipulated in the contract of emphyteusis.

CHAPTER XIV
CENSUS WITH RESERVATION[48]

Article 1706 – **Census with reservation**[49] - An assignment with reservation arises when any person transfers a property, with a simple reservation to pay annually certain pension or installment, which is to be paid by the fruits and income from the property.

Article 1707 – **Abolition of census with reservation** - In future, the contracts of census with reservation are prohibited; the contracts where such a stipulation is found shall be deemed to be emphyteuses.

Article 1708 – Rights of preference in past assignments – To the past contracts of assignment with reservation, the provisions of articles 1678, 1679 and 1681 are applicable.

Article 1709 – **Doubts whether contract is of assignment or emphyteuses** - Where there is doubt as to the nature of the contract, whether it is assignment or it is emphyteusis, it shall be presumed to be of census (assignment), until otherwise proved.

CHAPTER XV
COMPROMISE[50]

47 *Laudemium is a kind of premium paid to the land owner by a successor lessee when he takes over from the earlier lessee.* 48 *Articles 1706 to 1709 - These are peculiar to the Portuguese Law.*

49 *See footnote under Article 1644.*

50 *Articles 1710 to 1721 - regarding Compromise / Settlement of disputes in or out of Court, would now be governed by Civil Procedure Code, 1908 and other legislation regarding settlement of disputes, Alternative dispute resolution, Conciliation, Mediation etc.*

Article 1710 – **Compromise** - A compromise is a contract by which the parties prevent or put an end to a dispute, one of them or both giving up part of their claims or promising one to the other something in return for admitting the contested claim.

Article 1711 – **Types of compromise** - The compromise may be before the court or out of the court; depending upon whether a suit is pending or not.

Article 1712 – **External form of compromise out of court** - The compromise out of the Court may be made by a document in writing, private or public, or by record of conciliation; but when the subject matter is immovable rights, it may be done only by a public deed or by proceedings of conciliation.

Article 1713 – **External form of compromise in court** - The compromise before the court shall be done by way of public deed annexed to the file or recorded in court proceedings.

Article 1714 – **Judgement on compromise in court** - The compromise before the court shall have effect only after the judgement confirming it has become final.

Article 1715 – **Extension of the effects of compromise** - Whoever makes a compromise in respect of his own right and acquires thereafter, by any form, other similar right, is not bound, in respect of the latter, by the previous compromise.

Article 1716 – **Compromise made by only one of the interested parties** - The compromise made by one of the co-interested party does not bind others, nor can it be relied upon by them.

Article 1717 – **Exception in State cases** - The compromise over a civil dispute, arising from criminal act, does come in the way of action instituted by the Public Ministry.

Article 1718 – **Effects of compromise** - The compromise between the parties has the same effect as the decision of the court.

Article 1719 – **Cancellation of compromise** - The compromise may not be rescinded on account of any mistake of law; but it may be rescinded on account of mistake of fact, or account of fraud or coercion, as per the general provisions of law.

Article 1720 – **Discovery of new documents** - The discovery of new title deeds does not invalidate a compromise made in good faith; except in case it is found that one of the parties to the compromise did not have any right over the object of the compromise.

Article 1721 – **Compromise of general nature over diverse objects** - The provision of the last part of the preceding article does not have application to the general compromises that embraces diverse objects, whenever in respect of part of them the compromise may subsist.

CHAPTER XVI
REGISTRATION OF TRANSFERS OF IMMOVABLE ASSETS AND IMMOVABLE RIGHTS

Article 1722 –Registration of transfer of immobile assets and rights - All the transfers of immobile assets or rights are subject to registration, which is regulated by the provisions of article 949 onwards.

BOOK III

RIGHTS ACQUIRED BY MERE ACT OF ANOTHER OR ACQUIRED BY OPERATION OF LAW

BOOK III

RIGHTS ACQUIRED BY MERE ACT OF ANOTHER OR ACQUIRED BY OPERATION OF LAW

TITLE I

MANAGEMENT OF BUSINESS[51]

Article 1723 – **Management of business** - Whoever without authority and voluntarily intermeddles in the management of the businesses of another, becomes liable to the owner of the said businesses and those with whom he has contracted in his name.

Article 1724 – **Taking advantage of the benefits of the management** - Where the owner or one to whom the business belongs, ratifies the management and wants to make use of the conveniences and benefits arising therefrom, shall be bound to compensate the manager for the necessary expenses he has incurred and also loss suffered on account of the said management.

Article 1725 – **Non-ratification of management** - Where the owner does not ratify the management and such management had no purpose of making any profit but to prevent manifest losses, nevertheless, he shall compensate the manager of all the expenses incurred by him with these intentions.

Article 1726 – **Effects of ratification of the management** - Ratification of management shall have same effect as express agency.

Article 1727 – **Disapproval of the management** - Where the owner disapproves the de facto management, the de facto manager shall restore back the things at his cost, in the same state they were before and shall pay compensation to the owner for the loss caused to the extent of the difference.

51 *Articles 1723 to 1734 - This would today be regulated by specialized legislation on the subject.*

Article 1728 – **Impossibility to return things in their original form** - In the event it is not possible to restore the things fully to the previous state and benefits accrued exceeds the damage caused, the owner shall take on his account both the benefit and losses.

Article 1729 – Non ratified management, the benefits of which do not exceed the losses -Where the benefits do not exceed losses, the owner may compel the de facto agent to take the business for himself and demand from him due compensation.

Article 1730 – **Acquiescence by the owner of business** - Where the owner has knowledge, of the de facto management and does not object to the same till the end, he is deemed to have given consent, but incurs no liability to de facto manager, if there is no actual benefit.

Article 1731 – **Management against the will of the owner** - Whoever interferes in the business of another against latter's wishes, shall be liable for all the losses caused including accidental losses, if he does not establish that the damages would have occurred even if there was no intervention of the de facto manager, but when the owner wants to make use of the de facto management, article 1724 will be attracted.

Article 1732 – **Accounts of the management** - The de facto manager shall render exact and faithful accounts of all his acts and income and expenditure of the de facto management.

Article 1733 – **Duty to conclude the management started** - Whoever intermeddles in the business of another shall be bound to conclude the same, if the owner does not direct the contrary.

Article 1734 – **Management of business connected with that of the manager** - Whoever intermeddles with the business of others, because the latter are interlinked with his own and which cannot be separated one from another, shall be deemed to be partner of the other whose business is managed jointly with his own.

§ Sole paragraph - In such case, the owner is bound to pay in proportion of benefits received.

TITLE II
SUCCESSIONS[52]

CHAPTER I
PRELIMINARY PROVISIONS

Article 1735 – **Succession: testamentary and intestate**- Any person may, upon the death of another, succeed to all his assets, or to a part of them as much by, disposition of his last will, as by virtue of the operation of law. In the first instance testamentary succession takes place and in the second statutory succession.

Corresponds to Sections 3 & 4 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1736 - **Concept of heir and of legatee**- Heir is one who succeeds to the totality of the inheritance, or to a part thereof without the valuables or the object being specified. Legatee is a person, in whose favour the testator disposes, specified valuables or objects, or a specific part thereof.

Corresponds to Sections 5, 122 & 126 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1737 - **Content of inheritance** - Inheritance comprises of all the assets, rights and liabilities of the deceased, which are not merely personal or excluded by disposition of the said deceased, or by the law.

Corresponds to Section 6 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1738 - **Simultaneous Death** - Where the deceased and his heirs, or the legatees, die in the same accident, or on the same day, and it is not possible to ascertain which of them died first, it shall be taken that all died at the same time, and the transmission of the inheritance or of the legacy shall not take effect between them.

Corresponds to Section 7 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

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52 *The subject of Succession and Inventory Articles 1735 to 2166 is now dealt with under the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.*

CHAPTER II
TESTAMENTARY SUCCESSION

SECTION I
WILLS IN GENERAL

Article 1739 - **Concept of Will** – A Will is an act by which a person disposes of all or a part of his assets, to take effect after his death.

Corresponds to Section 196 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1740 - **Personal nature of Will** - A Will is a personal act, which may not be made through an attorney, nor may be left to the discretion of another person with regard to the appointment of heirs and legatees, the object of the inheritance or the execution or non-execution of the said Will.

§ Sole paragraph – The testator may, however, entrust to a third party the distribution of the inheritance when he institutes a certain class of persons.

Corresponds to Section 197 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1741 - **Will as per instructions** - A disposition shall have no effect if it is dependent on instructions or recommendations made to another person in secret, if it refers to non-authentic documents or to documents that were not written and signed by the testator, or if it is made in favour of uncertain persons who cannot be ascertained by any means.

Corresponds to Section 198 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1742 - **Disposition in favour of relatives of the testator** - A disposition made in favour of the relatives of the testator or of another person, without naming them, shall be deemed to have been made in favour of the nearest relatives of the testator or of the person indicated, according to the order of legal succession.

Corresponds to Section 199 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1743 - **Impossible conditions** - The testator may dispose either purely and simply or subject to certain conditions, as long as these are neither absolutely nor relatively impossible, nor contrary to the law.

§ Sole paragraph – Conditions which are absolutely or relatively impossible, or contrary to the law, are considered as not having been written, and shall not cause detriment to the heirs or the legatees, even if the testator stipulates otherwise.

Corresponds to Section 200 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1744 - **Performance of condition obstructed by third party** - If the fulfillment of the condition is prevented by someone with an interest in its non-fulfillment, it shall be considered as having been fulfilled.

Corresponds to Section 201 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1745 - **False cause** - The mention of a false cause shall be deemed as not written unless it can be gathered from the Will itself that the testator would not have made such disposition, if he had known the falsity of the cause.

Corresponds to Section 202 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1746 - **Cause contrary to the law** - The mention of a cause, whether false or true, contrary to law, shall always render the disposition null and void.

Corresponds to Section 216 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1747 - **Institution subject to term** - The fixation of time as to when the effect of the institution of the heir should commence or cease, shall be deemed as not written.

Corresponds to Section 203 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1748 - **Violence, deception and fraud** - A Will extorted by violence or obtained by deception or fraud, shall be null.

Corresponds to Section 204 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1749 - **Disqualification of heir or legatee** - Whoever, by deception, fraud or violence, prevents anyone from making his last disposition, shall be punished as per the penal law; and being an intestate heir, he shall further be deprived of his right to the inheritance which shall devolve upon those persons who would be entitled thereto if the said heir did not exist.

Corresponds to Section 204 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1750 - **Knowledge of coercion against one who intends to make a Will** - The administrative authority, who comes to know that someone is preventing another from making a Will, shall, without delay, present itself along with a Notary Public and the necessary witnesses, at the house of the person prevented; and after verifying the existence of coercion, shall cause to write the necessary report to be forwarded to the Public Ministry, and shall set at liberty the said person, to make his Will.

Corresponds to Section 205 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1751 - **Insufficient expression of the Will of the testator** - The Will, wherein the testator has expressed his wish not fully and clearly, but only by signs, or monosyllables in answer to questions put to him, shall be null and void.

Corresponds to Section 206 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1752 - **Effects of the nullities declared by law** - The testator cannot prohibit the Will from being challenged, in cases where there is nullity declared by the law.

Corresponds to Section 207 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1753 - **Prohibition of joint Wills** - Two or more persons shall not make a Will in the same instrument whether for their common benefit, or for the benefit of a third person.

§ Sole paragraph - This paragraph does not apply to joint Wills, which were already made bearing authentic date at the time of the promulgation of this Code, and which have not been revoked.

Corresponds to Section 208 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1754 - **Revocability of the Will** - The Will may be freely revoked, fully or in part, by the testator who shall not renounce such right.

Corresponds to Section 209 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1755 - **Express and implied revocation** - The revocation of a Will, fully or in part, may however be made only, by another Will with the solemn legal formalities, or by public deed or by virtue of the fact that the testator has alienated, before his death, the bequeathed objects.

§ Sole paragraph - Where the revocatory Will contains also disposition of assets, and this part, is annulled for want of some solemn formality, the revocation shall nevertheless, have its effect, if the Will can be treated as a public deed.

Corresponds to Section 209 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1756 - **Tacit revocation**- The making of the second Will, without a mention of the first, revokes the first only to the extent the second is contrary to the first.

§ Sole paragraph – Where there are two Wills bearing the same date, there being no possibility of ascertaining which of them is the later one, and they are mutually contradictory, such contradictory dispositions shall be deemed as not having been written in either of them.

Corresponds to Section 210 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1757 - **Subsistence of the effect of revocation of a Will which lapsed** - The revocation shall take effect, even though the second Will lapses due to the incapacity of the heir or of the legatees newly appointed, or due to the renunciation by the former or the latter.

Corresponds to Section 211 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1758 - **Revival of the Will which is revoked** - The earlier Will shall, however, regain its force, if the testator, having revoked the subsequent one, declares that it is his wish that the first should subsist.

Corresponds to Section 212 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1759 - **Lapsing of testamentary provisions** - The testamentary dispositions lapse, and have no effect, in relation to the heirs or to the legatees:

1. If they die before the testator;

2. If the institution of the heir or the legacy is conditional, and the heirs or legatees die before the condition is fulfilled;

3. If the heirs or the legatees are under disability to acquire the inheritance or the legacy; 4. If the heir or the legatee renounces his rights.

Corresponds to Section 213 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1760 - **Lapsing of the institution of heir by supervenience of the children to the testator** - Where there are children or other descendants of the testator, whom he did not know or thought dead, or where children are born to the testator after his death, or even before his death but after the Will has been made, the Will shall be valid only in relation to the disposable portion and to the legacies, in accordance with paragraphs 1 and 2 of article 1814.

Corresponds to Section 214 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1761 - **Interpretation of Will** - In case of doubt as to the interpretation of the testamentary disposition, whatever seems to be more in consonance with the intention of the testator shall be observed, in keeping with the context of the Will.

Corresponds to Section 215 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1762 - **External form of the Wills prior to the Code** - The Wills bearing authentic date, made prior to the promulgation of this Code, which are not in conformity with the provisions of the same, in relation to the formalities and solemnities, shall have effect, whenever they have not been revoked, if they satisfy the requirements of the legislation in force at the time when they were made.

SECTION II

WHO CAN MAKE AND WHO CAN ACQUIRE THROUGH A WILL

Article 1763 – **Legal capacity to make a Will** - All those not expressly forbidden by law may make a Will.

Corresponds to Section 217 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1764 - **Incapacity to make the Will** - The making of a Will is forbidden: 1. To those who are not in perfectly sound mind.

2. To those below fourteen years of age of either sex.

§ Sole paragraph – The blind and those who cannot or do not know how to read, shall not make a closed Will.

Corresponds to Section 218 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1765 – **Relevant time for determination of the capacity of the testator** - The capacity of the testator shall be governed by the state of the person at the time when the Will is made.

Corresponds to Section 218 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1766 – **Prohibition of disposition of the assets of spouses** - Those married as per the custom of the country shall not, on pain of nullity, dispose of certain and specific assets of the marital estate, except if the said assets have been allotted to them in partition, or are not included in the communion, or if the disposition has been made by one of the spouses in favour of the other, or if the other spouse has given consent by authentic form.

Corresponds to Section 219 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1767 – **Relative incapacity of a minor under guardianship -** The minor shall not make a Will in favour of his guardian, except where he is emancipated, and the guardian has rendered accounts of his management.

§ Sole paragraph – This prohibition does not extend to Wills made in favour of ascendants and of the brothers of the minor.

Corresponds to Section 223 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1768 – **Incapacity of a minor in relation to his teachers -** Minors are similarly prohibited from making Wills in favour of their school masters or teachers, or of any other person in whose custody they are.

Article 1769 – **Relative incapacity of a patient -** The dispositions made by a sick person in favour of physicians who have attended him during his illness, or the confessors, who during his illness have heard his confession, shall not have any effect, if he dies of that illness.

Corresponds to Section 221 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1770 – **Exceptions to previous incapacities -** The prohibitions of the two preceding articles do not include:

1. The remuneratory legacies for services rendered to the minor, or to the sick person;
2. The dispositions made either as universal heir or as legatee in favour of the relatives of the testator upto the fourth degree inclusive, where there are no heirs with a right to legitime.

Corresponds to Section 222 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1771 – **Relative incapacity of the adulterous spouse -** The adulterous spouse shall not dispose of in favour of his accomplice, if the adultery is judicially proved before the death of the testator.

Corresponds to Section 224 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1772 – Incapacity in relation to the notary or to the witnesses to the instrument - The testator shall not dispose of in favour of the Notary Public who records for him the public Will, or certifies the closed Will, nor in favour of the person who writes it for him, nor, finally, in favour of the witnesses who take part in the public Will, or in the record of approval of the closed will.

Corresponds to Section 225 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1773 – Extent of relative incapacities - The provisions of articles 1767, 1768, 1769, 1771 and 1772 shall result in nullity of only that part of the testamentary dispositions to which the said articles refer.

Corresponds to Section 226 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1774 – Prohibition of disposition of legitime - The persons obliged to reserve the legitime may only dispose of the portion which the law permits them to dispose of.

Corresponds to Section 227 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1775 – **Limitation against disposition for suffrages -** No person shall direct that in suffrages for his soul, more than one third of the portion of the properties left by him shall be spent.

Article 1776 – **Passive testamentary capacity -** Only existing beings amongst whom the embryo is included may acquire by Will.

§ Sole paragraph – The embryo is deemed to exist when born alive and with human figure within three hundred days, counted from the death of the testator.

Corresponds to Sections 9(2) (a) & 228 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1777 – Capacity of unborn children - However, the dispositions in favour of children yet to be born, who are descendants in the first degree of certain and specified persons alive at the time of the death of the testator, shall be valid, even though the future heir or legatee is born beyond the period of three hundred days.

Corresponds to Sections 9(2) (a) & 228 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1778 – Relevant time for determination of passive testamentary capacity - The capacity to acquire by Will is that which the person acquiring has at the time of the death of testator and, in the case of the institution of the heir with a condition, or in the case of conditional legacy, also at the time of fulfillment of the condition.

Corresponds to Section 229 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1779 – Testamentary incapacities - The persons incapable of acquiring by legal succession shall not be capable of acquiring through testamentary succession.

Corresponds to Sections 9 & 230 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1780 – Consequence of the refusal to act or removal of the guardian or of the executor - The executor or the testamentary guardian, who refuse to act, or are removed for reasons mentioned in Clause 3 of article 235, shall forfeit whatever is left to them in the Will. Corresponds to Section 231 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1781 – Capacity of legal persons – Legal persons may succeed by Will, as heirs, and as legatees as well.

§ Sole paragraph – However, the corporations formed by the Church may succeed upto one third of the third portion of the testator.

Corresponds to Sections 9 & 232 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1782 - Causes of unworthiness of the heir or of legatee - Those who have been convicted of an attempt on the life of the testator, or of abetting in any manner in such crime, and those who have prevented the testator by violence, or threats, or fraud, from revoking his Will, are barred from taking benefit of the dispositions made in their favour.

§ Sole paragraph – However, in the case of an attempt against the life of the testator, where he survives, the disposition made subsequent to the crime shall be valid where the testator has knowledge thereof, and the prior disposition shall have effect as well if the testator declares by authentic manner that he maintains it.

Corresponds to Sections 10 & 12 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1783 - Dispositions through intermediary - Article 1481 shall be applicable to the testamentary dispositions.

Corresponds to Section 233 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION III
LEGITIME AND INOFFICIOUS DISPOSITIONS

Article 1784 - Indisposable portion - Legitime means the portion of the assets that the testator cannot dispose of, because it has been set apart by law for the heirs in straight line descendant or ascendant.

§ Sole paragraph – This portion consists of half of the properties of the testator, save as provided in Clause 2 of article 1785 and article 1787.

Corresponds to Section 83 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1785 - Claim of legitimate and illegitimate descendants to the indisposable portion -When the testator has, at the same time, legitimate or legitimated children or their descendants with right of representation and children legitimated by recognition or their descendants with a right of representation, the following shall be observed:-

1. Where the children legitimated by recognition were already so recognised at the time when the testator contracted marriage from which he had the legitimate children, legitime of the former shall equal the legitime of the latter less one third;
2. Where the children are legitimated by recognition after the marriage is contracted, their legitime shall not exceed the legitime of the others less one third calculated as per Clause 1, and shall be paid only from the disposable portion of the inheritance, and the dispositions or gifts made prior and subsequent to the legitimation by recognition to the detriment of such legitime shall be inofficious as per the general rules.

Article 1786 - Legitime portion of parents - Where the testator at the time of his death, does not have descendants but has a living father or mother, the legitime of the parents shall consist of half of the inheritance.

Corresponds to Section 83(a) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1787 - Legitime of remaining ascendants - Where the testator, at the time of his death, has only ascendants other than mother or father, their legitime shall consist of one third of the assets of the inheritance.

Corresponds to Section 83(b) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1788 - Option in case of disposition over the disposable portion - Where the testator disposes of a specific usufruct, or any lifetime allowance, whose value exceeds his disposable portion, the forced heirs may carry out the legacy, or deliver to the legatee only the disposable portion.

Corresponds to Section 85 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1789 - Reduction of inofficious gifts and dispositions - Where the testator has gifted or disposed of more assets than he is permitted to dispose, the forced heirs may apply, at the time of the opening of the inheritance, that the gift or disposition, be reduced, as provided in articles 1493 and 1494.

Corresponds to Sections 87 & 89 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1790 - Calculation of disposable portion - The calculation of the disposable portion, for the purpose of reduction, shall be made in the following manner:

§ 1 - The value of all the assets left by the estate-leaver shall be added together after deducting the debts of the inheritance; the value of the assets that may have been gifted by the deceased shall be added to the balance amount and the disposable portion shall be calculated with relation to this total amount.

§ 2 - The value of the assets gifted shall be that which they had on the date of the opening of the inheritance and the same date shall be considered for the computation of the extent of the disposable portion.

§ 3 - Where the thing gifted has perished without the donee having directly contributed thereto, the same shall not be included in the inheritance for the purpose of calculating the legitime, save stipulation to the contrary.

Corresponds to Section 89 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION IV
INSTITUTION OF HEIRS, APPOINTMENT OF LEGATEES, THEIR RIGHTS AND OBLIGATIONS

Article 1791 - Institution of heir - One or more persons may be instituted as heirs, and shall always be considered as such, even though their shares have been allotted to them, in a certain proportion.

Corresponds to Section 122 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1792 - Liability of heir - The heir shall be liable for all the debts and legacies of the deceased, even from his own assets, unless he accepts the inheritance subject to the benefit of inventory.

See Section 123 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1793 - Liability of legatee - The legatee, however, is not liable for the liabilities of the legacy except to the extent of the value of the same legacy.

Corresponds to Section 124 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1794 - Apportionment of the charges of the inheritance solely distributed by way of legacies - Where the inheritance has been entirely distributed by legacies, the debts and charges thereof shall be distributed amongst all the legatees, in proportion to their legacies, except where the testator has provided to the contrary.

Corresponds to Section 125 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1795 - Insufficient estate to cover all the legacies - Where the assets of the inheritance are not sufficient to cover all the legacies, they shall be paid pro rata, except those left in payment of services; for in such a case, they shall be considered as a debt of the inheritance.

Corresponds to Section 125 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1796 - Characterization of legacy - Where the testator has disposed only a specific value, or a specified object, or a certain non-aliquot part of the inheritance, that disposition shall be considered as legacy.

Corresponds to Section 126 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1797 - Collective appointment along with individual institution - Where the testator indicates certain heirs individually and others collectively, and, for example says “I institute as my heirs Peter and Paul and the children of Francis” those indicated collectively shall be deemed to have been indicated individually.

Corresponds to Section 127 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1798 - Institution by the testator of his brothers and sisters in general - If the testator institutes, in general, his brothers and sisters and he has full blood consanguineous and uterine brothers and sisters, the inheritance shall be distributed as intestate.

Corresponds to Section 128 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1799 - Institution of certain person and his children - Where the testator indicates by name a certain person and his children, it shall be understood that all have been instituted simultaneously and not successively.

Corresponds to Section 129 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1800 - Expenditure of administration of inheritance absorbed by legacies - The heir or heirs, who have administered the inheritance, absorbed by legacies, shall only have the right to be

compensated by the legatees for the expenses that they may have incurred with the inheritance, if they have accepted it subject to benefit of inventory.

Corresponds to Section 130 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1801 - Legacy of the thing belonging to another - The legacy of a thing belonging to another is null but, if it appears from the Will that the testator was ignorant that the bequeathed thing did not belong to him, the heir shall acquire the same to carry out the bequest and if this is not possible, he shall pay to the legatee its value.

Article 1802 - Legacy of the thing subsequently acquired by the testator - Where the bequeathed thing, which did not belong to the testator at the time of making the Will, subsequently comes to belong to him under any title, the bequest relating to it, shall have effect as if the thing belonged to the testator at the time of making the Will.

Corresponds to Section 131 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1803 - Legacy of own property of the heir or legatee - If the testator directs, that the heir or the legatee shall deliver to another a thing belonging to any of them, they shall be bound to carry out the disposition of the testator, or to pay the value of the thing, unless they prefer to renounce the inheritance or the legacy.

Corresponds to Section 132 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1804 - Legacy of the thing which belongs only in part to the deceased or his successors - Where the testator, the heir or the legatee is the owner of only a part of the bequeathed thing or has only some right in such a thing, the bequest shall operate only to the extent of such part, or such right, except where it appears that the testator was convinced that the thing wholly belonged to him or to the heir or to the legatee; for, in this case, the provision of article 1801 shall be observed.

Corresponds to Section 133 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1805 - Legacy of the movable thing not specified - The legacy of a movable thing not specified, included in a certain genus or species, shall be valid, even though such a thing does not exist amongst the assets of the testator at the time of his death.

Article 1806 - Legacy of a thing inexistent in the inheritance - Where the testator bequeaths a thing of his own, designating it specifically, the bequest shall be null and void, if at the time of his death such thing is not found in his inheritance.

Article 1807 - Legacy of a thing only partly available in the inheritance - If the thing mentioned in the preceding article is available in the inheritance, but not in the quantity or portion indicated, the legatee shall have whatever is available, neither more nor less.

Corresponds to Section 133 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1808 - Condition to marry or not to marry - The condition which prohibits the heir or the legatee from getting married, or from not marrying, except when the same is imposed on a widower or a widow having children, by the deceased spouse or by his descendants or ascendants, as well as the condition which compels him to take or not to take ecclesiastical vows or a certain and specified profession, shall be deemed as not written.

§ Sole paragraph – The testamentary dispositions which limit the duration of the benefits to the status of bachelor, marriage or widowhood of the respective heir or legatee, are not included in this article.

Corresponds to Section 134 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1809 - Condition to compel reciprocation - The disposition made under the condition that the heir or legatee in his Will shall similarly make a disposition in favour of the testator or of another, shall be null.

Corresponds to Section 135 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1810 - Deferred execution of the disposition - The condition which merely suspends for a certain period of time the execution of the disposition, shall not be a bar for the heir, or legatee to acquire right to the inheritance or to the legacy, and to transmit it to his heirs.

Corresponds to Section 136 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1811 - Legacy without effect - The legacy shall be without effect:

1. Where the testator alienates the bequeathed thing in any manner;
2. Where the bequeathed thing is not capable of being owned or possessed;
3. Where the testator transforms the bequeathed thing in a way that it does not have either the original form or its denomination;
4. Where the testator has been dispossessed of the bequeathed thing or it has wholly perished during the lifetime of the testator, or where the dispossession or extinction takes place subsequently without the heir having contributed towards the same.

§ Sole paragraph – The one who is obliged to carry out the bequest shall be held responsible, however, for the dispossession where the thing delivered has not been specified in species. Corresponds to Section 137 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1812 - Legacy of the things in alternative - Where two things are bequeathed in the alternative, and one of them perishes, the legacy shall subsist in the remaining thing. When only a part of the thing perishes, the remainder shall be due.

Corresponds to Section 138 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1813 - Indivisibility of the disposition - The legatee is not entitled to accept one part of the legacy and reject the other, nor reject an onerous legacy, and accept the other which is not onerous, but the heir, who is at the same time a legatee, may renounce the inheritance and accept the legacy and vice versa.

Corresponds to Section 139 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1814 - Lapsing of the institution in view of supervenience of descendants to the testator - The institution of heirs, made by a person who did not have legitimate children at the time of the Will, or was ignorant of having them, lapses de jure by the supervenience of children or other legitimate descendants, even though posthumous or by the legitimation of the illegitimate children.

§ 1 - The legitimation by recognition of illegitimate children, subsequent to the Will, born before or after it was made, does not annul the institution of heir, but reduces it to the disposable portion of the testator, as per article 1760.

§ 2 - The legacy does not lapse in any of the cases mentioned above, but may be reduced as inofficious as per the same article 1760.

Corresponds to Section 140 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1815 - Supervenient children predeceasing the testator - Where the supervenient children die before the testator, the disposition shall have effect, if it is not revoked by the same testator.

Corresponds to Section 141 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1816 - Legacy of the thing pledged - Where the bequeathed thing has been pledged, it shall be redeemed at the expense of the inheritance.

Corresponds to Section 142 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1817 - Legacy of the ascertained thing ascertainable at the place where it is found -The legacy of thing or quantity, which has to be received at a fixed place, shall have effect to the extent of the portion that is found at that same place.

Corresponds to Section 143 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1818 - Legacy for payment of debt - Where the testator bequeaths a certain thing, or a certain amount, as a debt owed by him to the legatee, the legacy shall be valid, even though that amount or thing was not really due, except when the legatee is incapable of receiving it by way of gift.

Corresponds to Section 144 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1819 - Legacy for the payment of the debt not matured - Where the debt is payable at a certain time, the legatee shall not be obliged to wait until the expiry of such time to demand the payment.

§ Sole paragraph – The legacy shall not have effect, however, if the testator being a debtor at the time when the Will is made, subsequently pays the debt.

Corresponds to Section 144 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1820 - Legacy made to a creditor of the testator -The legacy made to a creditor, without reference to the debt of the testator, shall not be considered as payment of the same debt.

Corresponds to Section 145 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1821 - Legacy of a credit -Where the testator bequeaths any credit that he has, whether against a third party, or against the legatee himself or gives to the latter discharge of the debt, the heir shall carry out the bequest by giving to the legatee the respective documents.

§ Sole paragraph – If the credit is found to have been extinguished by compensation, in whole or in part, the legatee may demand from the heir the equivalent of that credit, or of the part that was compensated; but if the extinction of the debt was due to another reason he/she may not demand anything.

Corresponds to Section 145 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1822 - Institution under condition; administration of the estate - Where the heir is instituted under a condition precedent, the inheritance shall be placed under administration, until the condition is fulfilled or until there is certainty that it cannot be fulfilled.

§ Sole paragraph – The administration shall be entrusted to the testamentary co-heir, appointed without condition, if between the latter and the heir appointed under condition there is room for the right of accretion.

Article 1823 - Case in which the administration belongs to the presumptive legal heir -When there is an heir appointed under condition and there are no other co-heirs, or where there

are other co-heirs, there is no room for the right of accretion between them, the presumptive legal heir shall be entrusted with the administration, except where the heir appointed under condition has a reasonable ground to oppose it.

§ Sole paragraph – The heir appointed under condition may take charge of the inheritance by giving security.

Article 1824 – Bequests to the unborn - The provisions of the two preceding articles are applicable to inheritance left to children yet to be born.

Article 1825 – **Powers of administrator** - The administrators mentioned in the preceding articles shall have the same rights and obligations as the provisional curators of the assets of absentees.

Article 1826 – **Acquisition of pure and simple legacies** - A pure and simple legacy grants the legatee a transferable right, starting from the day the testator dies.

Corresponds to Section 146 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1827 – **Choice of a legacy of generic nature** - When the legacy is of an unspecified thing, included amongst others of the same kind, the choice shall belong to the one who has to give it, the choice being regulated by an average norm with reference to the qualities of the thing bequeathed.

Corresponds to Section 147 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1828 – **Choice left to the legatee** - If the choice is given to the legatee, by an express disposition of the testator, the said legatee shall choose from amongst the things of the same kind, the one which he may think fit and where there is not anything of the same kind, it shall be for the heir to choose the thing which is to be given and which shall be neither of the best nor of the worst quality.

Corresponds to Section 147 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1829 – **Who is to choose in case of alternative legatee** - Where the legacy is in the alternative, the choice shall belong to the heir, if it is not expressly conferred on the legatee.

Corresponds to Section 148 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1830 - **Transferability of the right of choice** - Where the heir or the legatee are unable to make the choice in cases where this right is given to them, such right shall pass on to their heirs, but once made, it shall be irrevocable.

Corresponds to Section 149 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1831 - **Legacy of maintenance** - The legacy of maintenance includes food, clothing and lodging, and, when the legatee is a minor, education.

§ 1 - This obligation of maintenance for education lasts until the person maintained has acquired the expertise or due qualification in the job or profession that he has chosen. When a job or profession has not been chosen, the obligation shall cease.

§ 2 - The provision of article 181 is applicable to the said obligation.
§ 3 - The principle of the preceding paragraphs is applicable to the legacy left solely for expenses of education.

Corresponds to Section 150 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1832 - **Legacy of a house with whatever is contained therein** - When a house with everything found in it is bequeathed, it shall not mean that the credits have also been bequeathed, even though the deeds and documents relating to such credits are found in the house.

Corresponds to Section 151 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1833 - **Legacy of usufruct, without determination of time** - The legacy of usufruct, without fixation of a period, shall be deemed to have been made for the lifetime of the legatee.

Corresponds to Section 152 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1834 - **Legacy of usufruct to a perpetual corporation** - Where the legatee of the usufruct, without fixation of a period, is any perpetual corporation, the legacy shall be for a period of thirty years and not more.

Corresponds to Section 152 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1835 - Legacy when the legatee becomes major - The legacy made to a minor to be received when he attains majority, shall not be demanded by him before such time even though he is emancipated.

Corresponds to Section 153 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1836 - Legacy for charitable purposes - The legacy for charitable purposes, without any other declaration, shall be deemed to have been made for the purposes of welfare and charity.

Corresponds to Section 154 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1837 - Ambiguity over person of the legatee or the thing bequeathed - A mistake by the testator in respect of the person of the legatee or in respect of the thing bequeathed shall not render the legacy null and void, if the intention of the testator can be clearly shown.

Corresponds to Section 155 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1838 - Petition and delivery of the legacy - The legatee shall apply to the heir to carry out the legacy, where he is not in possession of the bequeathed thing.

§ 1 - When there is a delay on the part of the heirs in taking charge of the inheritance, they may be served with summons to accept or renounce it.
§ 2 - When the heirs renounce the inheritance the legatees may apply that a curator be appointed for the vacant inheritance and demand from the latter the delivery of the legacy.
§ 3 - When the legacy consists of a charge on another legacy, the request should be made to the legatee of the latter.

Corresponds to Section 156 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1839 - Who is to carry out the execution of the Will - When the whole inheritance has been distributed by way of legacies and the testator has not appointed an executor, the most benefited legatee shall be treated as the executor of the Will. In equality of circumstances the one appointed by the legatees shall be executor and when there is no agreement or when amongst the legatees there is any minor, absentee or one under interdiction, the executor shall be appointed by the Court.

Corresponds to Section 157 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1840 - Fruits and income of the legacy - The legatee has a right, from the time of the death of the testator, to the fruits and income of the bequeathed thing, as well as to the interest accrued in case of legacy of money, from the expiry of the period to carry out such legacies, except if the testator has provided otherwise.

Corresponds to Section 158 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1841 - Legacy of periodical installment - If the testator bequeaths any periodical installment, the first period shall run from his death, and the legatee shall have right to the said installment, the moment the new period commences, even if he dies before its end.

§ Sole paragraph – The bequest may not, however, be demanded, save at the end of the period, except when it is by way of maintenance as provided in article 184.

Corresponds to Section 159 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1842 - Expenditure on the delivery of the legacy - The expenditure incurred towards the delivery of the bequeathed thing shall be borne by the estate, if the testator does not stipulate otherwise.

Corresponds to Section 160 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1843 - Manner and place of delivery of the legacy - The bequeathed thing shall be delivered with its accessories, at the place where, and in the condition in which it was at the time of the death of the testator.

§ Sole paragraph – If the legacy consists of money, jewellery or other valuables evidenced by documents, whatever may be the latter's nature, it shall be delivered at the place where the inheritance has opened, except where there is a stipulation of the testator or in agreement amongst the parties, to the contrary.

Corresponds to Section 161 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1844 - Extension of the legacy of certain property - If the one who bequeaths any property adds to it afterwards new acquisitions, these, even if contiguous, shall not be part of the legacy without a new declaration of the testator.

§ Sole paragraph – This will not apply however with respect to improvements which are necessary, useful or luxurious made in the bequeathed property itself.

Corresponds to Section 162 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1845 - Legacy of a thing charged with encumbrances - If the bequeathed thing is encumbered with any emphyteutic rent, share in the rent, easement or any other encumbrance inherent thereto, it shall pass to the legatee with the same encumbrance.

§ Sole paragraph – If, however, the thing is burdened with arrears of emphyteutic rent, of shares in the rent or of other onus these shall be paid out of the inheritance.

Corresponds to Section 163 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1846 - Legal mortgage for the benefit of the legatee - The immovables which devolved to the heirs from the testator, are charged with mortgage in terms of article 906, clause 8, for the satisfaction of the legacies.

§ Sole paragraph – If, however, any one of the heirs is particularly liable for that payment, the legatee shall only be able to exercise his right under mortgage on immovables, allotted to the said heir in partition.

Corresponds to Section 164 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1847 - Responsibility of the heirs in the legacy of the property of one of them - If the testator bequeaths a thing belonging to any one of the co-heirs, the others shall have to indemnify him proportionately, in case the testator has not stipulated otherwise.

Corresponds to Section 165 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1848 - Legacy or institution under condition not to do a thing - If the inheritance or the legacy is left subject to the condition that the heir or legatee should not give or should not do a specified thing, the said heir or legatee may be compelled, at the instance of the interested parties, to furnish security for the performance of the condition, save as to what is provided in article 1808.

Corresponds to Section 166 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1849 - Conditional legacy or legacy under term - If the legacy is left subject to condition or to take effect after the lapse of a certain time, the legatee can demand that the person who has to deliver the legacy furnish necessary security.

Corresponds to Section 167 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1850 - Responsibility of heir apparent - If the Will is declared null after the payment of the legacy, such payment having been made in good faith the appointed heir stands discharged of his

responsibility towards the true heir, on delivering the remaining inheritance, save the right of the latter against the legatee.

§ Sole paragraph – The above provision is applicable to legacies with encumbrances.

Corresponds to Section 168 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1851 - Reduction of the encumbrance attached to the legacy - If the legatee with an encumbrance does not receive, due to his own fault, the whole bequest, the encumbrance shall be reduced proportionately and in case he is dispossessed from the bequeathed thing the legatee may demand restitution of what he has paid.

Corresponds to Section 169 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1852 - Right of accretion, in view of lapsing of some institution - If any of the instituted co-heirs dies before the testator, repudiates the inheritance, or becomes incapable or unworthy of receiving it, his portion shall be added to that of the other appointed co-heirs, save if the testator has provided otherwise.

Corresponds to Section 170 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1853 - Right of accretion, due to lapse of legacy - The right of accretion shall also pass on to the heirs if the legatees do not want or are unable to receive the respective legacy.

Corresponds to Section 170 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1854 - Exclusion of right of accretion amongst co-legatees -Amongst the legatees there shall be no right of accretion but, if the bequeathed thing is indivisible, or cannot be divided without deterioration, the co-legatee shall have the option, either to keep the whole, against

payment to the heirs of the value of the lapsed portion or to receive from them the value of that which as a matter of right belongs to him, delivering to them the bequeathed thing.

§ Sole paragraph – If, however, the legacy is encumbered with any obligation, and this lapses, the legatee shall profit from the resulting benefits, if the testator has not stipulated anything to the contrary.

Corresponds to Section 171 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1855 - Effects of accretion - The heirs, who have the portion under accretion, shall succeed to all the rights and obligations of the one who did not wish or could not receive the disposition, had it been accepted by him.

Corresponds to Section 172 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1856 - Renunciation of right of accretion - The heirs in whose favour the accretion has operated may repudiate it, in the event it carries special encumbrances created by the testator; but in such case, the said portion shall revert to the person or persons in whose favour such encumbrances have been created.

Corresponds to Section 173 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1857 - Recoverability of legacy - The legatees have the right to recover from a third party the bequeathed thing, whether mobiliary or immobile, provided it is certain and specified.

Corresponds to Section 174 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION V
SUBSTITUTIONS

Article 1858 - Concept of common substitution - The testator may substitute one or more persons in place of the instituted heir or appointed heirs or of the legatees, in case the heirs or the legatees cannot or do not want to accept the inheritance or legacy; this is called common or direct substitution.

§ Sole paragraph – Such substitution ceases to operate as soon as the heir accepts the inheritance.

Corresponds to Section 175 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1859 - Pupillary substitution - The testator who has children or other descendants under parental control, and who will not be, on the death of the testator, under the control of another ascendant may substitute them with heirs and legatees of his choice, in case the said children or other descendants die, before completing fourteen years of age, without distinction of sex; this is called pupillary substitution.

Corresponds to Section 176 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1860 - Lapsing of pupillary substitution - The pupillary substitution shall be ineffective as soon as the substituted person attains the age mentioned in the preceding article, or dies leaving behind descendants who can succeed.

Corresponds to Section 176 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1861 - Quasi-pupillary substitution - The provision of Article 1859 applies, without distinction of age, in case the child or other descendant is of unsound mind, as long as the unsoundness has been judicially declared; this is called quasi-pupillary substitution.

Corresponds to Section 177 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1862 - Lapsing of quasi-pupillary substitution - The substitution referred to in the preceding article, shall be without effect if the unsound person becomes sound.

Corresponds to Section 177 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1863 - Assets which pupillary substitution or quasi-pupillary substitution may include - The substitution referred to in the articles 1859 and 1861 shall include only the assets that the substitute could dispose, not being impeded at the time of his death, and which have been acquired through the testator.

Corresponds to Section 178 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1864 - Rights and obligations of the substitute - The persons appointed by way of substitution shall receive the inheritance or legacy with the same encumbrances excepting those of a purely personal nature, with which the substituted heirs and legatees would receive it, except where it has been declared otherwise.

Corresponds to Section 179 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1865 - Reciprocal substitution - When the co-heirs or the legatees with equal shares are reciprocally substituted it shall be understood that they have so been in the same proportion.§ Sole paragraph – Where however, the ones instituted by way of substitution are more than the persons substituted and nothing is declared, it shall be understood that they have been substituted in equal shares.

Corresponds to Section 180 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1866 - Fideicommissary substitution - The testamentary disposition whereby any heir or legatee is entrusted with preserving and transmitting the inheritance or the legacy on his death to a third party, is called fideicommissary substitution or *fideicommissum*.

Corresponds to Section 181 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1867 - Restriction of *fideicommissum* - The fideicommissary substitutions for more than one degree are prohibited.

Corresponds to Section 181 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1868 - Lapsing of the substitution - Where the *fideicommissarius* does not accept the inheritance or legacy, or dies before the fiduciary, the substitution shall lapse, and the fiduciary shall be the absolute owner of the assets.

Corresponds to Section 182 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1869 - Nullity of the substitution - The nullity of the clause relating to fideicommissary substitution shall not make the institution or the legacy null and void; only the fideicommissary clause shall be deemed as not written.

Corresponds to Section 183 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1870 - Disposition which are not analogous to *fideicommissum* - The dispositions by which the testator leaves the usufruct to one person and the ownership to another, or the successive usufruct, as provided in article 2199 are not fideicommissary substitutions. The successive usufruct is permissible only in terms of this article.

Corresponds to Section 184 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1871 - Irregular *fideicommissum* - The following shall be deemed to be *fideicommissum* and, as such, valid upto one degree:

1. The dispositions made with a prohibition of alienations inter-vivos.
2. The dispositions which appoint a third person to take what is left from the inheritance or from the legacy on the death of the heir or of the legatee.

§ Sole paragraph – The right to alienate accruing to the fiduciary by virtue of Clause 2 shall be used only when the fiduciary does leave any properties of his own, apart from the building of his usual residence, and after having obtained the permission of the *fideicommissarius* for this purpose or after making good his consent through the Court.

Corresponds to Section 185 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1872 - Encumbrances to the benefit of paupers or establishments of public utility -The dispositions which impose on the heir or legatee the obligation of paying successive instalments of any amount in favour of poor persons, for the dowry to poor girls, or in favour of any institution or foundation of public utility are valid.

§ 1 - In this case, however, the liability shall be covered with charge on specific and defined properties and the heir or legatee burdened with the liability is always permitted to convert the payment of instalments into corresponding capital in money.

§ 2 - The heirs or legatees burdened with such obligation shall not be subject to any special order of succession other than the one provided under the general law.

Corresponds to Section 186 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1873 - Conditional irregular *fideicommissum* - For the purposes of public utility, it is permitted to dispose of properties on the condition, that, in case the institution which had to carry out the Will of the testator, is extinguished, the same properties shall pass to another institution or statutory body nominated by him.

Corresponds to Section 187 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1874 - Applicability of the previous legal provisions - The provisions of the preceding articles shall similarly apply to the past or future *fideicommissum*.

Corresponds to Section 188 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION VI

DISINHERITANCE

Article 1875 – Disinheritance - The legal heirs may be deprived by the testator of their legitime or disinherited in cases expressly permitted by the law.

Corresponds to Section 189 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1876 - Grounds of disinheritance - The following may be disinherited by their parents: 1. The son or daughter, who commits against their persons an offence punishable with imprisonment of more than six months;

2. The son or daughter, who accuses or denounces judicially his parents of an offence, other than against himself or herself or against his or her spouse, ascendants, descendants or brothers or sisters;

3. The son or daughter, who, without good reason, refuses to maintain his or her parents.

Corresponds to Section 190 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1877 - Effects of disinheritance - The descendants of the disinherited person who survive the testator shall have the legitime, which their ascendants were deprived of; but the latter are not entitled to enjoy usufruct thereof.

Corresponds to Section 191 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1878 - Grounds for disinheritance of parents -The parents may be disinherited by the son or daughter when they commit against the latter any of the acts mentioned in Article 1876 and whatever is said therein in respect of sons or daughters applies to the parents; so also the father, when he attempts against the life of the mother, or the latter, when she attempts against the life of the father, and they have not reconciled.

Article 1879 - Grounds for disinheritance of other ascendants and descendants - The provisions of articles 1876 and 1878 shall be applicable to the parents as well as to the other ascendants and to the children as well as to their descendants.

Article 1880 - How the disinheritance is declared - The disinheritance may be declared only in the Will and with clear declaration of its cause.

Article 1881 - Contesting the cause of disinheritance - When the veracity of the grounds of disinheritance is contested, the onus of proving it shall be on those interested in the disinheritance taking place.

Corresponds to Section 192 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1882 - Disinheritance without express cause or irrelevant cause - The disinheritance when declared without clear mention of the cause, or which is not proved, or when ordered for unlawful cause, shall make the dispositions, of the testator void, only to the extent they offend the legitime of the disinherited heir.

Corresponds to Section 193 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1883 - **Right of maintenance of disinherited** - The one who takes the assets, of which the disinherited person has been excluded, is obliged to provide maintenance to the latter, if he has no other source of maintenance, but not beyond the income of the said assets, except where the said maintenance is due for any other reason.

Corresponds to Section 194 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1884 - **Limitation to challenge the disinheritance** - A suit by the disinherited person to contest the disinheritance prescribes within two years from the opening of the Will.

Corresponds to Section 195 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION VII
EXECUTORS

Article 1885 - **Concept of executor** - The testator may appoint one or more persons entrusted with the work of carrying out his Will in whole or in part; such persons are called executors.

Corresponds to Section 259 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1886 - **Who can be executor** - Only those who can contract obligations may be appointed as executors.

Corresponds to Section 260 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1887 - **Incapacity of the married woman** - A married woman shall not be appointed as executrix without authorisation from her husband, except where she is judicially separated in person and properties. Such authorisation may be made good judicially when the woman is married under the regimen of separation of properties.

Article 1888 - **Incapacity of the minor not emancipated** - The non emancipated minors shall not be appointed as executors, even though authorized for such purpose by their parents or by their guardians.

Article 1889 - **Refusal by executor** - The appointed executors may decline to accept the office; but if on account of the executorship, some legacy has been disposed of in their favour, they are debarred from claiming it.

Corresponds to Section 262 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1890 - **Limitation and manner for refusal** - The appointed executor, who desires to excuse himself, shall do so within three days from the date of the knowledge of the Will, before the authority competent to register it, failing which he shall be liable in damages.

Corresponds to Section 263 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1891 - **Refusal subsequent to the acceptance** - The appointed executor, who has accepted the office, shall not quit the office without just cause, and without the respective court's order with prior hearing of the parties; otherwise he will be liable for damages.

Corresponds to Section 264 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1892 - **Remuneration of executor** - The office of the executor is gratuitous except where some remuneration has been fixed by the testator.

Corresponds to Section 265 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1893 - **Execution of Will, in the impediment or refusal of the executor** - In case of impediment or discharge of the executor, it is incumbent upon the heirs to carry out the Will, with following observations:

1. Where the hereditary shares are unequal, the office shall vest in one who is more benefited. 2.

Where they are equal, the executor shall be appointed by the parties and in case of disagreement amongst them, or where any one of the heirs is minor, under interdiction or absentee, the respective court shall appoint one amongst them.

Corresponds to Section 266 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1894 - Powers of the executor - The executors shall have powers which the testator has conferred upon them, within the bounds of the law.

Corresponds to Section 267 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1895 - Possession of inheritance, there being forced heirs - Where the testator leaves forced heirs, he shall not authorize the executor to take charge of the estate but he may direct only that such heirs shall not take the charge thereof, except by way of inventory with summons to the executor.

Corresponds to Section 270 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1896 - Possession of inheritance there being no forced heirs - Where the testator does not leave forced heirs, he may authorize the executor to take charge of the estate, but without dispensing him with the inventory.

Corresponds to Section 271 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1897 - How the heirs can object to the takeover of the inheritance by executor - The heirs, mentioned in the preceding articles, may avoid the taking over of the charge by the executor, by handing over to him necessary sums to meet the expenditure of his responsibility.

Corresponds to Section 271 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1898 - Manner of contributing to the expenditure under the charge of the executor - Where there is no sufficient cash in the estate to meet the expenditure under the charge of the executor and the heirs do not want or are unable to advance necessary sums of money, it shall be lawful for the said executor to cause the sale of the movables, and if they are not enough, the sale of one or more immovables, but always after hearing the heirs.

§ Sole paragraph – If, however, one of heirs is minor, absentee or under interdiction, the sale, of movables as well as of immovables, shall be done by way of public auction.

Corresponds to Section 271 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1899 - General duties of the executor - Where the testator does not specify the duties of the executor, they shall be as follows:-

1. To provide for the burial and the funeral of the testator, and to pay the respective expenses and suffrages, as per the wishes of the same testator or, in the absence thereof, as per the custom of the land;
2. To cause the registration of the Will in the competent register, if it is in his custody, within eight days, from the date of the knowledge of the death of the testator;
3. To take care of the execution of testamentary dispositions and to defend, if necessary, their validity in the Court or outside;
4. To permit the parties to take inspection of the Will, if it is in his custody, and to permit the legal copies to be taken, when so demanded.

Corresponds to Section 268 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1900 - Obligation to enlist the assets of inheritance - Where the heirs are majors, the executor shall not move the court to have the inventory, unless any of the parties so apply for it.§ Sole paragraph – The executor shall not, however, take charge of the assets of the testator without causing

them to be listed through the court clerk or notary, with summons to the parties. Corresponds to Section 269 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1901 - Obligations of the executor, when there are heirs who are minor, disabled or absent - Where there are heirs or legatees, who are minor, under interdiction or absentee, the executor shall inform the respective court about the inheritance or about the legacy.

Corresponds to Section 269 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1902 - Reservation of the inheritance for charitable purpose or public utility - Where the testator has entrusted the executor to utilize the income of a certain part of the estate in some charitable or public utility foundation or institution, the executor shall be likewise bound to take recourse to the inventory and to cause the sale of the said properties by public auction, with summons to the parties, or their legal representatives and with participation of the Public Ministry.

§ Sole paragraph – This provision is not applicable where the inheritance or legacy were left, for the aforesaid purpose, to an already existing corporation with juridical capacity.

Corresponds to Section 272 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1903 - Normal time for execution of the Will - When no time limit has been fixed in the Will for its execution, the executor shall carry it out within one year from the date on which he has taken the charge of the office or from the date on which the litigation, which, perhaps, might have started over the validity or nullity of the Will, has ended.
§ 1 - However, it shall be always lawful for the executor to watch for execution of the dispositions not carried out and apply for any preventive measures, which are found necessary.§ 2 - In case of Article 1902 the executor may further, continue with the execution of the Will during the time necessary to carry out the legacy or legacies, if the testator has so directed.§ 3 - In case the executor being able, does not carry out the directions within the time fixed, he shall lose the remuneration which has been fixed for him and the Will shall be carried out by those who would be bound to execute it, if there was no executor.

Corresponds to Section 272 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1904 - Joint executors - Where more than one executor has accepted the office and thereafter one or more of them have abstained from participating in the execution of the Will, whatever done by others will be held good; but all of them shall be jointly liable for the properties of the estate, of which they have taken the charge.

§ Sole paragraph – Where the executors, who have accepted the office, do not arrive at an accord as to the manner in which the Will is to be carried out, the executorship shall lapse, and the execution of the Will shall pass on to one on whom the same would fall, if there were no executors.

Corresponds to Section 273 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1905 - Accounts by the executors - The executors are liable to render accounts of their management to the heirs or to their legal representatives.

§ Sole paragraph – In case of Article 1902 the accounts shall be rendered as appended to the inventory.

Corresponds to Section 274 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1906 - Non-transferability of the executorship - The office of the executor is neither transmissible to the heirs, nor can be delegated.

Corresponds to Section 275 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1907 - **Right of accretion amongst executors** - Where the testator has bequeathed to the joint executors any remuneration, the part of the one who has excused himself, or of the one who was unable to accept it, shall be added to that of others.

Corresponds to Section 276 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1908 - **Reimbursement of expenditure made by executor** - The expenses incurred by the executor, in fulfilment of his obligations, shall be satisfied from the mass of the inheritance.§ Sole paragraph – The petty expenses for which it is not usual to take receipt, shall be approved on the strength of declaration on oath given by the said executor.

Corresponds to Section 277 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1909 - **Removal of the executor** - The executor, who in performance of his obligations has acted with deceit or bad faith, shall be liable for compensation for damage and may be judicially removed at the instance of the parties.

Corresponds to Section 278 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION VIII
FORM OF WILLS
SUB SECTION I
PRELIMINARY PROVISIONS

Article 1910 - **Types of Wills**

The Will, as to its form, may be:

1. Public;
2. Closed;
3. Military;
4. Maritime;
5. External, or made in foreign country.

Corresponds to Section 234 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION II
PUBLIC WILL

Article 1911 - **Public Will** - The Will is called public when it is written by the notary in his notarial book.

Corresponds to Section 235 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1912 - **Declaration of the Will of the testator** - The testator, who may wish to make a Will in this manner, shall declare his last wish before any notary and five competent witnesses.

Corresponds to Section 236 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1913 - **Identification, mental sanity and liberty of the testator** - The notary as well as the witnesses should know the testator or be able, in some way to ascertain his identity and that the same testator was in his perfect senses and wholly free from any coercion.

Corresponds to Section 327 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1914 - **Deed, reading and date of disposition** - The disposition shall be dated, mentioning therein the place, day, month and year, and shall be read in a loud voice, in the presence of the said witnesses, by the notary or by the testator, if he so wishes, and signed by all.

Corresponds to Section 328 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1915 - **Signature of the witnesses** - Where any of the witnesses does not know to write, he shall put his mark; it is, however, indispensable that three witnesses should sign in full.

Article 1916 - **Testator who does not know or cannot write** - Where the testator does not know, or is unable to write, the notary shall so declare: in such event, the disposition shall be witnessed by six persons, any one of whom shall sign at the request of the testator.

Corresponds to Section 330 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1917 - **Testator who is deaf or illiterate** - One, who is entirely deaf, but knows to read, shall read his Will, and where he does not know to read, he shall appoint a person to read it in his behalf, always in the presence of the witnesses.

Corresponds to Section 331 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1918 - **Continuity in the execution of the Will** - All the formalities shall be carried out continuously, and notary shall state faithfully how the same were performed.

Corresponds to Section 332 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1919 - **Consequence of omission of some formality** - When any of the formalities are lacking, the Will shall be of no effect, but the notary shall be held liable for damages and shall lose his office.

Corresponds to Section 336 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION III

CLOSED WILL

Article 1920 - **Concept of closed Will** - The closed Will may be written and signed by the testator, or by another person at his request, or written by another person at the request of the testator and signed by him.

§ Sole paragraph – The person, who signs the Will, shall initial all its pages. The testator is exempted from signing the Will, where he does not know to sign or he is unable to sign it, and such fact shall be recorded in the same Will.

Corresponds to Section 237 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1921 - **Presentation of closed Will** - The testator shall present to any notary the said disposition declaring how that is his last Will.

Corresponds to Section 334 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1922 - **Record of approval** - Thereafter, and always in the presence of the said witnesses, the notary, after seeing the Will, but without reading it, shall draw up a record of approval, which shall begin immediately next to the signature on the same Will, and shall be continued without interruption in the same page and in subsequent pages. In such record the notary shall declare: 1. Whether the Will is written and signed by the testator.

2. The number of pages which it contains;
3. Whether it is initialed by the person who has signed it;
4. Whether it has or does not have any blot, interlineation, correction or marginal note; 5. That the testator was recognized, and his identity was verified;
6. That the testator was in his perfect senses and wholly free from any coercion;
7. Finally, that the Will was presented to him by the same testator, in the manner required by the law.

§ 1 - The record shall be read, dated and signed in conformity with the provisions of the preceding sub section.

§ 2 - Thereafter, and still in the presence of the same witnesses, the notary shall stitch and seal the Will, drawing up on the external side of the sheet, which serves as cover, a note declaring the name of the person to whom the Will contained therein belongs. The testator may forego such

external formalities; but in such a case, it shall be mentioned in the act of approval that the same were omitted at the request of the testator.

Corresponds to Section 334 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1923 - Incompetency to dispose by closed Will - Those who do not know or cannot read, are not competent to make disposition by way of closed Will.

Corresponds to Section 238 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1924 - Closed Will of deaf and dumb - A deaf and dumb person may make a closed Will, provided that it has been wholly written, signed and dated by his hand and that, whilst presenting it to the notary the testator shall write in the presence of all the five witnesses on the external side of the Will, that it is his last wish, and that it has been written and signed by him.§ Sole paragraph – The notary shall declare in the act of approval how the testator did so write, and in the rest the provision of article 1922 shall be observed.

Article 1925 - Omission of some formality - The closed Will in respect of which any of the above mentioned formalities are lacking shall be of no effect, and the notary shall be held responsible, as provided in article 1919.

§ Sole paragraph – The absence of any of the declarations referred to in clause 3 and 4 of article 1922 shall not invalidate the Will, as long as it is found that it has been really initialled or that it does not have any blot, correction, interlineation or marginal note.

Corresponds to Section 336 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1926 - Delivery of the Will - Once the Will is approved and closed, it shall be delivered to the testator, and the notary shall enter in his book a note containing the place, day, month and year on which the Will was approved and delivered.

Corresponds to Section 337 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1927 - Custody of the Will - The testator may retain the Will with him, entrust it to a person of his confidence, or deposit it in the testamentary archive of any administrative district.

Corresponds to Section 338 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1928 - Custody of the Will in the Secretariat of the Civil Government - For the purpose mentioned in the preceding article there shall be in the secretariat of each civil Government a safe with two keys, one of which shall be with the Civil Governor, the other with the Secretary General.

Corresponds to Section 338 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1929 - Deposit of the Will in the testamentary archives - The testator, who may wish to deposit his Will in the testamentary archive shall present himself along with it before the Civil Governor, and the latter shall cause the drawing up of the record of delivery and deposit in a book of registration kept for the purpose which shall be signed by the Civil Governor, by his Secretary General, and by the testator.

§ Sole paragraph – The presentation, and the deposit may be done through an attorney; but in this case the power of attorney shall be annexed to the Will.

Corresponds to Sections 338 & 339 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1930 - Removal of the Will - The testator may remove his Will, whenever he desires, but the restitution shall be made by following the formalities applicable to the deposit.

Corresponds to Section 345 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1931 - Power of attorney for removal of the Will - The power of attorney for the removal of the Will shall be made by a notary and signed by four witnesses, and registered in the competent book.

Corresponds to Section 340 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1932 - Opening of the Will - The closed Will shall be opened or published in the following manner.

Corresponds to Sections 340 & 341 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1933 - Act of opening or publication - After the death of the testator has been verified, or in the case of article 66, where the closed Will is in possession of a private person, or it

appears amongst the effects of the deceased, it shall be taken to the administrator of the taluka, who, in the presence of the presenter and of two witnesses, shall cause to draw the act of the opening, or of the publishing, wherein the conditions in which the Will is presented shall be mentioned, and whether it is or is not as described in the record of the closing.

§ Sole paragraph – When, for any reason, it is not possible to approach promptly the administrator of the taluka, the Will may be taken to the head official of the village, who, for the purposes of this article, shall take the place of the administrator of the taluka.

Corresponds to Section 341 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1934 - Book of the acts of opening - The record, mentioned in the preceding article, shall be entered in a numbered book, initialled and signed at the end by the Civil Governor.§ Sole paragraph – When the opening is made by the head official of the village, such act shall be drawn up on the external leaf of the Will or in case there is no space left therein, on an annexed leaf and the said Will along with the act shall be forwarded to the administrator of the taluka, within the next twenty four hours, in order to be entered in the appropriate book, and for other purposes, dealt with in article 1935.

Corresponds to Section 343 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1935 - Registration of the Will - Once the act of opening or publication is entered in the book, the administrator shall cause the registration of that Will in an appropriate book, entering on the original the note, initialled by the same administrator, as to how it was opened and registered and whether anything suspicious was noticed or not.
§ Sole paragraph – The original of the Will shall always be kept in the administration of the taluka, with due security, under the responsibility of the administrator.

Corresponds to Section 344 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1936 - Opening of the Will deposited with Civil Government - Where the Will has been deposited in the archive of the civil government, upon verification of the death of the testator, it shall be opened in the presence of the governor, of the one who applied for the opening and of two more witnesses, and in the rest whatever is provided in this regard shall be observed. Corresponds to Section 341 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1937 - Non presentation of Will - Every person, who has in his possession a closed Will, and, in the case of article 66, does not present it, or, in case of death of the testator, does not present it within three days, from the date of the knowledge of the death, shall be liable for compensation for damages. Where the non presentation is due to deceit he shall besides this, lose any right that he might

perhaps have to the inheritance of the testator, apart from being subject; to the punishment that he might have incurred under the penal law.

Corresponds to Sections 10 & 239 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1938 - Fraudulent removal of the Will - One who fraudulently removes the Will from the effects of the testator or from the possession of any person with whom it is deposited, shall be similarly subject to the damages, loss of inheritance and imposition of punishment.

Corresponds to Sections 10 & 240 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1939 - Closed Will which is already open - Where the Will is found open, whether amongst the effects of the testator, or in the possession of someone else, but without any other vitiation, it shall not be annulled for this reason.

§ Sole paragraph – In such case it shall be presented, as it is, to the administration of the respective taluka, where the act with said particulars shall be drawn up and the provisions of articles 1933, 1934 and 1935 shall be followed.

Corresponds to Section 241 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1940 - Defective or torn Will - Where the Will is found open and defective or torn, the following distinction shall be made: where the Will is found cancelled and obliterated, or torn, either in the effects of the testator or in the possession of someone else in such a way that it is not possible to read the original disposition, it shall be deemed as not having been written; but where it is proved that the vitiation was done by any person, other than the testator, the provision of article 1937 which is applicable to the persons who fraudulently hide or remove the Will, shall be applied to such person.

Corresponds to Section 242 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1941 - Presumption as to who did vitiation - The vitiation shall be presumed to have been made by the person to whose care the Will was entrusted, until the contrary is not proved.

Corresponds to Section 243 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1942 - Alterations with errata note and signature of the testator - Where the Will is found only altered, or partly amended by the handwriting of the testator, with an errata note and signature, it shall not be annulled for this fact, and the said amendments shall be taken as a part of the same.

Article 1943 - Torn Will found in the effects of the testator - Where the Will is found to be torn, or reduced to pieces amongst the effects of the testator, it shall be deemed as not written, even though it may be possible to gather the pieces and read the disposition, except where it is already proved, that the fact occurred after the death of the testator or was caused by him when unsound.

Corresponds to Section 244 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION IV
MILITARY WILL

Article 1944 - Military Will - Military Will is that which may be made by soldiers, and by civil employees of the army in military operations outside the country, or even within the country, when they are under siege in closed fortress, or they are residing in the territory, communications to which have been cut off, in the event there is no notary in such fortress or territory.

Article 1945 - Solemnities of military Will - The soldier or the civil employee of the army, who is desirous of making a Will, shall declare his last wish in the presence of three competent witnesses and of the auditor of the respective divisions, or in his absence, of any officer of commissioned rank. The auditor or the officer in his substitution shall write the testamentary disposition.

§ 1 - Where the testator is injured or ill, in the absence of auditor or officer, his duties may be performed by the chaplain or by the physician of the hospital wherein the injured or ill person is found.

§ 2 - The disposition shall be read, dated and signed as provided in articles 1914 and 1915.§ 3 - Such Will shall be forwarded as soon as possible to the Army headquarters and from there to the War Ministry, who will cause it to be deposited in the testamentary archive of the administrative district, where the said Will shall take its effect.

§ 4 - After the death of the testator, the government shall publish the news of his death in the government gazette mentioning therein the archive wherein the Will has been deposited.§ 5 - Such Will shall be of no effect after one month from the date of the return of the testator to the country, or of the cessation of the siege or of the incommunicability of the territory, where the same Will was made.

Article 1946 - Will made in the hand of the testator - Where the soldier or the civil employee knows to write he may make the Will by his own hand, provided that he dates and signs it in full and presents it, open or closed, in the presence of two witnesses, to the auditor or to the commissioned officer who substitutes him for such purpose.

§ 1 - The auditor or officer to whom the said Will has been presented, shall make, in any part thereof, a note containing the place, day, month and year in which it has been presented; such note shall be signed by him and by the aforesaid witnesses and the Will shall be forwarded in the manner mentioned in paragraph 3 of the preceding article.

§ 2 - Where the testator is ill or injured, the chaplain or the physician may perform the duties of the auditor or of the officer.

§ 3 - What is laid down in paragraphs 4 and 5 of the preceding Article is applicable to this kind of Will.

Article 1947 - Omission of some formality - The military Will, in respect of which any of the formalities mentioned in article 1945 and paragraphs 1 and 2, and 1946 paragraphs 1 and 2 are lacking, shall be of no effect.

SUB SECTION V

MARITIME WILL

Article 1948 - Maritime Will - Maritime Will is that which is made in the high seas on board the ships of the State, by soldier or civil employees in public service.

Article 1949 - Execution of the Will - The disposition shall be written by the clerk of the ship or by one who substitutes him, in the presence of three competent witnesses and of the captain, and shall be read, dated and signed, as laid down in the article 1914.

Article 1950 - Will of the captain or clerk - Where the captain or the clerk is desirous of making a Will, their substitutes shall perform their duties.

Article 1951 - Will made in the hand of the testator - Where the soldier or the civil employee knows how to write, he may make the Will by his own hand, provided that he shall date and sign it in full and present it, open or closed, in the presence of two witnesses and of the captain of the ship, to its clerk or to one who substitutes him.

§ Sole paragraph – The clerk of the ship shall make in any part of the same a note containing the place, day, month and year on which it was presented and such note shall be signed by him and by the witnesses and initialled by the captain.

Article 1952 - Duplicate and custody of the Will - The Maritime Will shall be made in duplicate, kept amongst the papers on board, and mentioned in the diary of the ship.

Article 1953 - Deposit of the Will before Portuguese consular authorities - Where the ship enters any foreign harbour having a Portuguese consul or vice-consul, the captain of the ship shall deposit in custody of the said consul or vice-consul one of the copies of the Will, closed and sealed together, with one copy of the note, which should have been recorded in the diary of the ship.

Article 1954 - Delivery of the Will to the national maritime authority - The ship having entered into the Portuguese territory, the other copy or both, if none of them has been kept at another place, shall be delivered to the naval authority of the place, in the manner declared in the preceding article.

Article 1955 - Receipt of the delivery - In any of the cases mentioned in two preceding articles, the captain of the ship shall take receipt of the delivery and shall mention it by way of note in the competent place in the diary of the ship.

Article 1956 - Report of the delivery -The said consul or vice-consul or naval authorities, as soon as they receive the above mentioned documents, shall draw a report of delivery and it shall be forwarded as soon as possible together with the said documents to the Naval Ministry.

Article 1957 - Deposit of the Will - Such ministry shall cause the Will to be deposited in the manner provided at the end of paragraph 3 of article 1945.

Article 1958 - Lapsing of maritime Will - The maritime Will shall produce its effects, only when the testator dies at sea, or within one month from the date of landing of the said testator in Portuguese territory.

Article 1959 - Death of the testator at sea - Where the testator dies at sea what is prescribed in paragraph 4 of the article 1945 shall be observed.

Article 1960 - Omission of some formality - The maritime Will in respect of which any of the formalities mentioned in articles 1949, 1950 and 1951 are lacking, shall be of no effect.

SUB SECTION VI

EXTERNAL WILL OR WILL MADE IN A FOREIGN COUNTRY

Article 1961 - External Will - The Wills made by Portuguese in foreign country will produce their legal effects in the kingdom when drawn authentically in accordance with the law of the country where they have been executed.

Corresponds to Section 246 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1962 - Will received by Portuguese consular authorities - The Portuguese consuls or vice consuls may act as notaries in the execution or approval of the Wills of Portuguese subjects, provided that they are in accordance with the Portuguese law, except in respect of nationality of the witnesses, who may, in such cases be foreigners.

Corresponds to Section 246 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1963 - Copy to be sent to the Ministry of External Affairs - As soon as any Will has been drawn in the book of registration, the consuls or vice-consuls shall transmit one copy to the Ministry of External Affairs, who shall take steps as provided in paragraph 3 of article 1945.

Corresponds to Section 246 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1964 - Formalities to be observed in case of closed Will - In the case of closed Will, the consul or vice-consul, who has drawn the act of approval, shall copy in the respective book the act of approval and shall send such information to the government through Ministry of External Affairs.

§ Sole paragraph – In case the Will has been delivered to the custody of the consul or vice-consul, the depository shall mention such circumstances and shall issue a receipt of the delivery.

Article 1965 - Will made by a foreigner in a foreign country - The Will made by a non-Portuguese subject outside Portugal, will produce its effects in this kingdom even in respect of properties existing therein, when in the execution of the Will the provisions of the law of the country where it has been executed have been observed.

Corresponds to Section 246 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION VII

COMMON PROVISIONS TO VARIOUS FORMS OF WILL

Article 1966 - Persons incompetent to be witnesses, certifiers or interpreters in a Will – The following persons cannot be witnesses, certifiers or interpreters in a Will:

1. Foreigners;
2. Minors who are not emancipated;
3. Those who are not in their perfect senses;
4. The deaf, dumb, blind and those who do not understand Portuguese language;
5. Those who have direct interest in the Will;
6. Husband and Wife together;
7. Ascendants, the husband and the father-in-law or the mother-in-law, respectively in the Will of the descendants, of the wife and of the son-in-law or of the daughter-in-law, and vice- versa;
8. The ascendants, descendants and spouses, as well as the assistants, clerks and employees of the notary who have taken part in the Will, and the notaries for whom the assistants are working.

§ 1 - The intervention as witness, of any of the persons mentioned in clauses 5 and 7 will cause nullity of the respective institution of heir or legatee only.

§ 2 - A common and general mistake in respect of capacity of attesting witness, does not cause the nullity of the respective act.

Corresponds to Section 323 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1967 - Limitation for suit of annulment on account of defect of external formalities -The suit for nullity of Will owing to defect in the form or external solemn formalities prescribes in three years, from the date of the registration of the Will, according to article 1935 or from the date of commencement of its execution when it is not subject to registration.

CHAPTER III

INTESTATE SUCCESSION

SECTION I

GENERAL PROVISIONS

Article 1968 - When and to which extent there is statutory succession - Where any person dies without disposing of his assets, or disposing only a part thereof, or, having made the disposition, the Will is annulled, revoked or lapses, all legal heirs shall have the said assets or part thereof, in respect of which the testator has not made any disposition.

Corresponds to Section 51 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1969 - Order of statutory succession - The legal succession shall devolve in the following order:

1. To the descendants;
2. To the ascendants, except for the provisions of article 1236;
3. To the brothers and sisters and their descendants;
4. To the surviving spouse;

5. To the collaterals not included in clause 3 upto the sixth degree;
6. To the State, except for the provisions of article 1663.

§ Sole paragraph – In case of numbers 1, 2 and 3, the articles and fruits collected or pending, intended and necessary for the consumption of the couple, are considered as own assets of the surviving spouse, provided there is no suit for divorce or separation of persons and assets, pending or decided on the date of the opening of the inheritance.

Corresponds to Section 52 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1970 - Proximity of degree of relationship - The relative closer in degree shall exclude, within each group referred to in the preceding article, the more remote, except the right of representation, wherever it is admissible.

Corresponds to Section 53 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1971 - Succession per capita - The relatives, who are in the same degree, shall inherit per capita, or in equal proportion, save as provided in article 1983.

Corresponds to Section 54 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1972 - Renunciation of inheritance - Where the closer relatives repudiate the inheritance, or cannot succeed, the said inheritance shall devolve to the relatives of the subsequent degree; but where only some of the co-heirs repudiate their part, such part shall accrue to that of the other co-heirs.

Corresponds to Section 55 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1973 - Degrees and lines of relationship - Each generation forms one degree, and the series of degrees constitute what is called the line of relationship.

Corresponds to Section 56 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1974 - Direct and transversal line - The line is called direct or transverse; the direct is constituted by the series of degrees between persons who descend one from the other; the transverse is constituted by the series of degrees between persons who do not descend one from the other, although they derive from a common progenitor or stock.

Corresponds to Section 57 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1975 - Types of relationship in direct line - The direct line is either descending or ascending; descending, when the same is considered to start with the progenitor to the one who proceeded from him; ascending, when it is considered to go up to the progenitor starting from one who proceeded from him.

Corresponds to Section 58 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1976 - Counting of degrees in direct line - In the direct line, the degrees are counted by the number of generations, excluding the progenitor.

Corresponds to Section 59 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1977 - Counting of degrees in transversal line - In the transverse line, the degrees are counted by the number of generations going up by one of the line to the stock and coming down by another, but without counting the progenitor.

Corresponds to Section 60 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1978 - Incapacity to acquire by legal succession - The persons legally incapable of acquiring by Will shall not also acquire by legal succession.

Corresponds to Sections 9 & 61 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1979 - Extent of legal incapacity - The legal incapacity of the heir ceases with him. His sons and descendants, if any, succeed as they would succeed, if the legally incapable person would have died, and such legal incapacity would not have existed.

Corresponds to Section 62 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION II

RIGHT OF REPRESENTATION

Article 1980 - Right of representation - There is right of representation, when the law designates certain relatives of a deceased person to succeed to all the rights to which such person would have succeeded, if living.

Corresponds to Section 63 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1981 - Representation in direct line - The right of representation exists always in a descending direct line, but never in the ascending one.

Corresponds to Section 64 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1982 - Representation in transversal line - In the transverse line, the right of representation exists in favour of descendants of the brothers and sisters of the deceased.

Corresponds to Section 65 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1983 - Right of the representatives - The representatives shall only inherit, as such, what the person represented would have inherited, if living.

Corresponds to Section 66 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1984 - Joint representatives - When there are various representatives of the same person, they shall share equally amongst themselves, what would have come to the person represented, if living.

Corresponds to Section 67 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SECTION III

SUCCESSION OF DESCENDANTS

SUB SECTION I

SUCCESSION OF LEGITIMATE DESCENDANTS

Article 1985 - Succession of legitimate descendants - Legitimate children and their descendants succeed to their parents and other ascendants, without distinction of sex or age, although they proceed from different marriages.

Corresponds to Section 68 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1986 - Succession *per capita* - Where all the descendants are of the first degree, they shall succeed *per capita*, the inheritance being divided into as many shares as the number of heirs.

Corresponds to Section 70 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1987 - Succession ' *per stirpes'* - Where all or some of them compete representatively, they shall succeed by stirpes or by forming branches, amongst whom the inheritance shall be distributed, and sub-divided in the branches where there is more than one heir, always observing the same rule of equality.

Corresponds to Section 71 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1988 - Succession of legitimated children - Children legitimated by subsequent marriage stand included among the legitimated children in accordance with the provision of article 119.

SUB SECTION II

SUCCESSION OF ILLEGITIMATE CHILDREN

Article 1989 - Succession of illegitimate descendants - Illegitimate children and their descendants, being legitimated by recognition or legally recognized, succeed intestate not only to their parents, but also to the other ascendants.

Article 1990 - Exclusive existence of illegitimate children - Where the illegitimate child, whether legitimated by recognition or legally recognized, does not compete with legitimate issues, he shall inherit all the assets of his parents.

Article 1991 - Claim by legitimate and illegitimate children - Where the illegitimate child competes for the inheritance with a legitimate child or children, it shall inherit the assets on terms laid down in article 1785.

Article 1992 - Limitation on total share of illegitimate children recognized after marriage - Where the third part is not sufficient to satisfy the shares as laid down in clause 2 of article 1785, as there are many illegitimate children; all the same they shall not have the right to any other extra thing, and the third part shall be proportionately divided amongst them.

SECTION IV

SUCCESSION OF THE ASCENDANTS

SUB SECTION I

SUCCESSION OF LEGITIMATE PARENTS

Article 1993 - Succession of legitimate parents - Where the legitimate son or daughter dies without descendants, his father and mother shall succeed him or her in equal shares, or in whole of the inheritance where there only exists any one of them.

§ Sole paragraph – What is laid down in article 1236 is saved from the provision of this article.

SUB SECTION II

SUCCESSION OF ILLEGITIMATE PARENTS

Article 1994 - Succession of illegitimate parents - Where the illegitimate son or daughter dies without issue, and without surviving spouse, the entire inheritance shall devolve upon the parents who have acknowledged him or her as their child.

Article 1995 - Usufruct given to surviving spouse - Where, however, the illegitimate son or daughter dies without issues, leaving a surviving spouse, the said spouse shall have, during the life time, the usufruct of half of the inheritance.

SUB SECTION III

SUCCESSION OF ASCENDANTS OF THE SECOND DEGREE AND ONWARDS

Article 1996 - Succession of grandparents and other ascendants beyond them - In the absence of the parents, the inheritance of the parents, the inheritance of the deceased shall devolve to the ascendants of the second degree and onwards.

Corresponds to Sections 72 & 73 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1997 - Division per capita: ascendants in the same degree - If the surviving ascendants are of the same degree, the inheritance shall be divided amongst them in equal shares, whatever may be the line to which they belong.

Corresponds to Section 74 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1998 - Ascendants who are not of the same degree - Where the ascendants are not of the same degree, the inheritance shall devolve to the nearer, without distinction of line.

Corresponds to Section 75 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 1999 - Succession of illegitimate ascendants - What is provided in this division is applicable to the inheritance of the son legitimated by recognition or legally recognized, save the limitation of article 1995.

SECTION V
SUCCESSION OF BROTHERS, SISTERS AND THEIR DESCENDANTS

Article 2000 - Succession of brothers, sisters and their descendants - Where the deceased, being a legitimate child, does not leave descendants or ascendants and has not disposed of his assets, his legitimate brothers and sisters and their legitimate descendants shall inherit his or her estate without prejudice to what is provided in the sole paragraph of article 2003.

§ Sole paragraph – In the absence of legitimate brothers and sisters and their legitimate descendants, the brothers and sisters legitimated by recognition or legally recognized, their descendants and illegitimate descendants of legitimate brothers and sisters shall be the heirs in the same manner, without prejudice to what is provided in the sole paragraph of article 2003. Corresponds to Section 76 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2001 - Claim by full brothers and sisters with consanguineous and uterine ones -Where the deceased leaves at the same time full brothers and sisters and consanguineous or uterine, each of the full brothers or sisters shall have double the share that shall belong of each of the other brothers and sisters.

§ Sole paragraph – The same provision shall be applicable when the descendants of full brothers and sisters compete with descendants of consanguineous or uterine brothers and sisters.

Article 2002 - Succession of illegitimate children - Where the deceased, being an illegitimate child, does not leave descendants, nor ascendants and has not disposed of his assets, all the brothers and sisters and their descendants shall inherit his estate without prejudice to what is provided in the sole paragraph of article 2003 and the differential treatment given to full brothers and sisters in the preceding article shall be followed.

SECTION VI
SUCCESSION BY SURVIVING SPOUSE AND BY COLLATERALS

Article 2003 - Succession of surviving spouse - In the absence of descendants, ascendants, brothers and sisters and descendants of the latter, the surviving spouse shall succeed, if at the time of the death of the other they were not divorced or separated of the persons and assets, by judgment become final for want of appeal.

§ Sole paragraph – In the absence of descendants and ascendants as per the articles 2000 and 2002, the surviving spouse shall be the usufructuary of the estate of the deceased spouse if at the time of the death of the latter they were not divorced or separated of the persons and assets, by judgment become final for want of appeal.

Corresponds to Section 77 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2004 - Succession of legitimate transversals - Where the deceased, being the legitimate child, does not have anyone mentioned in clauses 1, 2, 3 and 4 of article 1969 and has not disposed of his assets, the legitimate collaterals shown in clause 5 of the same article shall inherit his estate.

§ Sole paragraph – In the absence of legitimate collaterals within the sixth degree, the illegitimate collaterals being within the sixth degree, shall inherit his estate.

Corresponds to Section 78 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2005 - Succession of illegitimate transversals - Where the deceased, being an illegitimate child, does not leave anyone mentioned in clauses 1, 2, 3 and 4 of article 1969 and has not disposed of his properties, the estate shall devolve upon his collaterals without distinction up to the sixth degree, as per the general law.

SECTION VII
SUCCESSION BY THE STATE

Article 2006 - Succession of the State - In the absence of all the testamentary or legal heirs, the State shall succeed.

Corresponds to Section 79 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2007 - Juridical position of the successor State - The rights and obligations of the State, with respect to the inheritance, shall be the same as that of any other heir.

Corresponds to Section 80 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2008 - Possession of inheritance by the State - The State shall not take possession of the inheritance without a prior judgment declaring its right, as per the Civil Procedure Code.

Corresponds to Section 81 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

CHAPTER IV
PROVISIONS COMMON TO TESTAMENTARY SUCCESSION AND STATUTORY SUCCESSION

SECTION I
OPENING AND TRANSMISSION OF INHERITANCES

Article 2009 - Opening of inheritance - The inheritance opens by the death of the deceased; the place of the opening of the inheritance shall be established in the following manner:

§ 1 - If the deceased had domicile, the inheritance opens at the place of that domicile.

§ 2 - In the absence of the domicile, the inheritance opens at the place where the deceased has immovable assets.

§ 3 - If the deceased has immovable assets at different places, the inheritance opens where the greater part of such assets is found, such part being calculated on the basis of the respective land revenue.

§ 4 - Where the deceased does not have domicile nor immovable assets at any place, the inheritance opens at the place he died.

Corresponds to Section 8 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2010 - Precautionary measures in respect of movable assets of the inheritance -Where there is just apprehension that the mobiliary valuables from the inheritance may be lost, any judicial authority may, upon the application of any of the parties or of the general curator and even ex-officio, order the sealing, as prescribed in the Code of Civil Procedure.

Article 2011 - Transmission of ownership and possession of inheritance - The transmission of the ownership and possession of the inheritance to the heirs whether instituted or legal, takes place from the moment of the death of the estate-leaver.

Corresponds to Section 13 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2012 - When there is place for inventory - Where the heir is found absent, minor, under interdiction or unknown, recourse shall be taken to inventory and partition through court, wherever the same is required to be made.

Corresponds to Section 14 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2013 - When there is place for extra judicial partition - Where all the heirs are major and none amongst them is an absentee or under interdiction, they may agree in any manner they wish as to the partition, provided that it is done by a public deed or public act.

Corresponds to Section 15 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2014 - Juridical positions of the heirs - The heirs succeed to all the rights and obligations of the estate-leaver, which are not purely of personal nature, or excluded by the law, or by the said estate-leaver.

See Section 6 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2015 - Indivisibility of the inheritance prior to partition - Where many persons are entitled simultaneously to the same inheritance, their right shall be indivisible both in respect of possession as well as ownership, as long as the partition has not been effected.

Corresponds to Section 16 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2016 - Right of petition of inheritance in totality - Each of the co-heirs may demand the totality of the estate, to which he along with others is entitled, without the person demanded against being able to raise objection that the estate does not entirely belong to him.

Corresponds to Section 18 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2017 - Prescription of right to petition for inheritance - The right to petition the inheritance prescribes, in the same time and form, as immobile rights are prescribed.

SECTION II
ACCEPTANCE AND RENUNCIATION OF INHERITANCE

Article 2018 - Forms of acceptance of inheritance - The inheritance may be accepted pure and simply or under the benefit of inventory.

Article 2019 - Liabilities of the heir - The heir is not liable for the charges, beyond the value of the estate.

§ Sole paragraph – However, if the inheritance is accepted pure and simply, the onus is on the heir to prove that it does not consist of assets sufficient for the payment of encumbrance. If it is accepted under the benefit of inventory, and the same takes place, the onus is on the creditors to prove that in the inheritance there are other assets besides those listed in the inventory.

Article 2020 - Acceptance and renunciation of distinct inheritances - One who renounces the inheritance, which comes to him from one source, is not for that reason debarred from accepting that which comes to him from another source.

Corresponds to Section 22 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION I
SIMPLE ACCEPTANCE AND RENUNCIATION OF INHERITANCE

Article 2021 - Liberty to accept or to renounce - The acceptance or renunciation of the inheritance is an entirely voluntary and free act.

Corresponds to Section 23 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2022 - Nullity of partial acceptance or partial renunciation on terms or under conditions - It shall not be lawful for anyone to accept or renounce the inheritance in part, on terms or conditionally.

Corresponds to Sections 21 & 24 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2023 - Capacity to accept or renounce - It shall be lawful to accept or renounce the inheritance by all those who are entitled to free administration of their assets.

Corresponds to Section 25 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2024 - Acceptance or renunciation of one of spouses - It shall not be lawful for a married woman to accept or renounce inheritance validly without authorisation of the husband nor for a husband without consent of the wife. The authorisation of the husband and the consent of the wife may be made good judicially.

Corresponds to Section 26 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2025 - Acceptance of inheritance left to person under disability - The inheritance, left to the minors and to the persons under interdiction, may be accepted by those who represent them only under the benefit of inventory.

Corresponds to Section 27 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2026 - Acceptance of inheritance left to deaf and dumb - The deaf and dumb, who are not under guardianship and who know to write, may accept or renounce the inheritance, either by themselves or by their competent attorney; but where they do not know to write, the inheritance shall be accepted under benefit of inventory by a curator, who shall be appointed through family council.

Corresponds to Section 28 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2027 - Forms of acceptance - Conduct of the heir - The acceptance is express or tacit.

§ 1 - It is express, when the heir adopts such title or qualification in any public or private act.§ 2 - It is tacit, when the heir does some act from which the intention of accepting is necessarily inferred, or it is of such a nature that he could not do it otherwise than in the capacity of heir. Corresponds to Section 29 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2028 - Acts which do not imply acceptance - The acts purely of conservatory nature, or of provisional administration and custody of the estate, do not imply acceptance thereof.

Corresponds to Section 29 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2029 - The cession of inheritance which does not involve acceptance - The cession of the inheritance does not involve its acceptance when made gratuitously in favour of all the co-heirs to whom it would have belonged in the absence of the person who has done the cession.

Corresponds to Section 30 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2030 - Effects of judgment declaring as an heir - One who has been declared to be the heir by judgment become final for want of appeal or against whom a judgment has been passed expressly in that capacity, shall be deemed to be the heir, both in relation to the creditors or to the legatees, who had been parties to the case as also in relation to others.

Corresponds to Section 31 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2031 - Disagreement between co-heirs about acceptance or renunciation - Where the heirs do not agree about the acceptance or about the renunciation of the inheritance, some may accept it and others may renounce it; but where some want to accept simply, and others under the benefit of inventory, the inheritance shall be deemed to have been accepted under the benefit of inventory.

Corresponds to Section 32 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2032 -Transmission of right of acceptance - Where the heir dies without accepting or renouncing the inheritance, the right to do the acceptance or renunciation shall pass to his heirs.

Corresponds to Section 33 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2033 - Indivisibility of renunciation - The heir, who has accepted the inheritance of the deceased, may renounce the inheritance which the latter had not accepted at the time of his death; but the renunciation of the inheritance of the deceased shall bring with it the renunciation of whatsoever inheritance accrued to him.

Corresponds to Section 34 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2034 - Formalities of renunciation - The renunciation shall be made by way of a record signed by the person renouncing or by his attorney, before the judge of the place of the opening of the inheritance.

§ 1 - Such record shall be drawn in a book numbered, initialled and closed at the end by the judge.
§ 2 - Where the renunciation is made by an attorney the power of attorney shall be kept in the respective office.

Corresponds to Section 35 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2035 - Effects of renunciation - It shall be understood that the heir who renounces was never an heir, nor in such a case there is right of representation; but the renunciation of the inheritance does not deprive the person renouncing of the right to have the legacies, which might have been left to him.

Corresponds to Section 36 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2036 - Contesting the acceptance - No one may complain against the acceptance made except:

1. In the case of violence;
2. Having been induced by deceit to do the acceptance;
3. When more than half of the inheritance is absorbed in consequence of Will unknown at the time of the acceptance.

Corresponds to Section 38 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2037 - Contesting the renunciation - The provision of the preceding article is applicable to the renunciation, with the exception of clause 3.

Corresponds to Section 38(2) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2038 - Heir entitled simultaneously by Will and ab intestate - The heir, who is entitled to the inheritance by Will and intestate, and renounces it under the first title, is assumed to have renounced equally under the second one, but if he renounces it as heir intestate, without being aware of the Will, he may well accept it under the latter title notwithstanding the former renunciation.

Corresponds to Section 36(2) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2039 - Necessity of express renunciation in respect of indisposable portion - From the renunciation of the inheritance of the testator, who disposed of his disposable portion, there is no inference of the renunciation of the legitime, which requires to be made expressly.

Corresponds to Section 37 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2040 - Right of subrogation in respect of acceptance of inheritance - The creditors of the person, who renounces the inheritance to their prejudice, may be judicially authorized to accept it in the place and in the name of the debtor, but the remainder of the estate, after the creditors having been paid, shall not go to the person who renounced it, but it shall pass to the immediate heirs.

Corresponds to Section 39 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2041 - Imposition of time limit for acceptance or renunciation - When anyone is interested that the heir should declare whether he accepts or renounces the inheritance, he may apply, after the expiry of nine days, from its opening, to the court of the domicile of the heir that a reasonable time, not exceeding thirty days, be fixed inviting him to make his declaration within the prescribed time, failing which the inheritance shall be deemed as accepted.

Corresponds to Section 44 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2042 - Prohibition of agreement to renounce - No one shall, not even by ante-nuptial contract, renounce the right to the succession of a living person, or alienate or charge the rights, which eventually might have to the inheritance of that person.

Corresponds to Section 40 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2043 - Retrospectivity of acceptance and renunciation - The acceptance or renunciation of the inheritance has retrospective effect from the date of its opening.

Corresponds to Section 41 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION II
ACCEPTANCE UNDER BENEFIT OF INVENTORY

Article 2044 - Time limit for acceptance under benefit of inventory - The major or emancipated heir, in whose possession the estate of the deceased, or part thereof, is found and who wishes to accept it under benefit of inventory, shall apply to the competent court, within ten days, from the death of the estate-leaver, if the latter dies in his company or within twenty days from the time of the knowledge of the death, if the deceased was not living with him, that inventory be initiated.

§ Sole paragraph – In case of testamentary heir such period shall be reckoned from the time of knowledge of the will.

Article 2045 - Counting of time in case the heir is not in possession of inheritance - Where the heir is not in possession of the estate of the deceased or part thereof, his right of acceptance under benefit of inventory is not lost until he has not been caused to make the declaration, as prescribed in article 2041, or until the expiry of twenty days from the date on which he takes possession of the estate or part thereof, or until his right is not lost by prescription, in accordance with what is provided in article 2017.

Article 2046 - Heirs minor and under disability - Where the heirs, or any of them, are minors or under disability, what is prescribed in the article 2025 in respect of the inheritance shall be observed.

Corresponds to Section 27 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2047 - **Disagreement over the form of acceptance** - Where the heirs are numerous, if one or some of them wish to accept the inheritance under benefit of inventory and others do not, the provisions of article 2031 shall be observed.

Corresponds to Section 32 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2048 - **Summons to the parties** - The Court of the inventory shall summon with notice of thirty days by way of substituted service the unknown creditors and the legatees of the deceased, or domiciled outside the jurisdiction of the court, and in person the known creditors and legatees and those domiciled therein, to take part, if they wish, in the inventory.

Corresponds to Section 387(7) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2049 - **Starting and end of inventory** - The inventory shall be initiated within thirty days reckoned from the expiry of time fixed to the creditors and legatees, and shall be concluded within next sixty days.

Article 2050 - **Extension of time for inventory** - Where on account of the properties being situated at long distances; or they being numerous, or for some other just cause, it appears that the said sixty days are insufficient, the judge may extend the time, as he deems fit.

Article 2051 - **Non-observance of prescribed time on account of fault of beneficiary** - Where the inventory is not started, and is not concluded, within the prescribed time, due to the fault of the beneficiary heir, the inheritance is deemed as accepted purely and simply.

Article 2052 - **Precautionary measures** - The beneficiary heir who is in effective possession of the inheritance, shall be maintained in the same, but he may be compelled to furnish security, if there is apprehension of loss; and, if the heir fails to furnish it, the administration shall be handed over by the court to another, after hearing the parties.

§ Sole paragraph – Where the beneficiary is not in effective possession of the estate, the judge shall, when applied for, take necessary steps towards the custody and administration of the same.

Compare with Section 400(8)(c) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2053 - **Withholding of assets by the heirs** - The heirs, who withhold from the inventory some assets of the inheritance, shall lose the privilege of benefit of inventory.

Corresponds to Section 256 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2054 - **Administration of inheritance** - The administrator of the estate, whether he is the heir himself or any other person, shall not exercise, without permission from the court, acts which are not of mere administration.

See Sections 253 & 379 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2055 - **Sale of assets of inheritance** - If it is necessary to proceed with the sale of the assets of the inheritance, it shall be made by way of public auction save when all the heirs, creditors and legatees agree otherwise.

Article 2056 - **Payment of legacies and debts of inheritance** - During the pendency of the inventory the administrator of the estate may pay the legacies and the debts, when all the heirs, creditors and legatees agree for such payment.

§ 1 - When some of the parties do not agree for the payment, the creditors, and the legatees as well, may sue the heirs, and they may be paid after obtaining decree, become final for want of appeal, although the inventory is not concluded, in such case, however, the legatees shall furnish the security.
§ 2 - The payment of the debt and the delivery of the legacy effected otherwise than in the manner established in this article and paragraph, are null and void, and the administrator of the estate who had

effected them, shall be liable for defalcation, which the debt or the legacy may have to suffer, on account of the inheritance being not sufficient for full payment of the debts and of the legacies.

Article 2057 - Rights of creditors in case of execution - In case of execution, any of the creditors may take part in it lodging their protest or preferential claims, and they shall be paid in accordance with the order they are ranked.

Article 2058 - Preference of creditors over legatees - Where no creditor with executable judgment against the estate appears, and the assets of the estate are sufficient for the payment of all the creditors, they shall be paid as per the order in which they appear, and only after all of them being paid of their respective credits, the legatees shall be paid, and the securities furnished by the legatees already paid shall be declared as lapsed.

Article 2059 - Inheritance where debts exceed assets - Where the assets are not sufficient for the payment of debts and legacies, the administrator shall render accounts of his administration to the creditors and legatees and shall be liable for damages suffered by the estate due to his fault or negligence.

§ 1 - In such case, the court shall order the payment of the debts, by bringing to the mass either the whole of the legacies, or part of each of them, proportionate to the shortfall.

§ 2 - If, nevertheless, the whole is not sufficient for the payment of creditors, and they do not agree to be paid pro-rata they may seek relief by ordinary means to obtain the payment.

Article 2060 - Right of beneficiary over the remainder of inheritance - After the creditors and the legatees are paid, the beneficiary heir shall remain in full enjoyment of the estate and in case the estate has been administered by other person, such person shall be liable to render the accounts to him, subject to liability imposed in article 2059.

Article 2061 - Right of creditors over legatees already paid - Where, after the legatees having been paid, other creditors appear, they shall have recourse against the said legatees only when no sufficient assets have remained in the estate for their payment.

Article 2062 - Continuation of inventory started by one who had first accepted it - The inventory, applied for by the heir in the first degree, who afterwards renounces the inheritance, can be availed of by the substituted and by the intestate heirs, but the latter shall have one month to decide, from the date of the knowledge of the renunciation.

Article 2063 - Costs of inventory - The costs of the inventory, of the accounts and, as well as of the suits which the heir has filed, or had been filed against him on account of the estate, shall be borne by the same estate, except where the heir has been ordered in person to pay the costs for his fraud or bad faith.

SECTION III

INVENTORY[53]

53 *The subject of Succession and Inventory is now dealt with under the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012.*

Article 2064 – Compulsory or orphanological inventory - There shall always be inventory, whenever any of the heirs is a minor, a person under interdiction, an absentee or is unknown.§ 1 - In such cases, the inventory shall be concluded within sixty days reckoned from the date on which it was started, save for the provisions of article 2050.

§ 2 - If the cause giving rise to the inventory had ceased, the same shall not be continued, save when there is somebody amongst the co-heirs who applies for it.

Corresponds to Section 14 & 366 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2065 - Inventory amongst majors - Among the majors, who have free administration of their assets, or who are not comprised within the preceding article, the judicial inventory may take place, only when applied for by any of the co-heirs.

Corresponds to Sections 14 & 367 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2066 - Inventory having in view of the acceptance under benefit of inventory -Whenever such an inventory has to produce also the effects of the acceptance of inheritance under benefit of inventory, what is laid down in articles 2044, 2048, 2049, 2050 and 2051 shall be applicable.

SUB SECTION I

ADMINISTRATOR ("*CABECA DE CASAL" – C.C*) - LISTING AND DESCRIPTION OF ASSETS

Article 2067 – Administrator [54] **("*Cabeca de Casal – C.C* ") -** The person who is entrusted with the listing and presenting for description and partition the assets of the inheritance is called the administrator ("*Cabeca de Casal – C.C*").

Corresponds to Section 2(h) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

54*Administrator =* ***'Cabeca de Casal'- 'C.C.'****. The expression Cabeca de Casal literally means 'head of the household'; household in the context, meaning the estate of the household. The expression and its short*

form C.C. have been in widespread use in the State for many decades. Here it has been translated as 'Administrator'.

Article 2068 - Who is administrator *Cabeca de Casal – C.C* ") - Such an office devolves on:-

1. The surviving spouse, save when the spouse does not have a share in any of the assets to be inventoried and none of his or her descendants, still minors, are heirs;
2. To the children enjoying legal capacity, and in their absence, other descendants, enjoying legal capacity;
3. To the other heirs enjoying legal capacity.

§ 1 - Within the categories of clauses 2 and 3, the following shall have preference:

a) The legitimate children shall be preferred to the illegitimate;
b) The heirs who were living with the deceased shall be preferred to others;
c) The males shall be preferred to females;
d)

And there being more than one in the same circumstances, the elder shall have preference.

§ 2 - Only one who was residing permanently in the domicile and company of the same deceased shall be deemed to be the heir living with the deceased.

Corresponds to Section 247 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2069 - Cases in which the office devolves on guardian of person under disability -Where there is no surviving spouse, nor heirs, in terms of the preceding article the office of the administrator shall devolve on the guardian of the heirs under disability and there being more than one group of them with different guardians, on one of the guardians chosen by the judge, and, until there is no guardian appointed, the judge shall appoint provisionally one administrator from amongst the nearer relatives of the heir under disability.

Corresponds to Section 248 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2070 - Assets which were in possession of co-heirs - The co-heirs who, on the date of opening of the inheritance, had the possession of certain assets of the said inheritance, and those who bring under collation the gifted assets shall be deemed to be the administrators in respect of such assets.

Corresponds to Section 250 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2071 - Obligation to take up the inventory - In case there is a co-heir who is a minor or under disability, the administrator shall take recourse to the inventory, in accordance with articles 157 and 189.

Corresponds to Section 251 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2072 - Declarations of the administrator - The administrator shall declare:

1. The name and status of the estate-leaver, the day, month, year on which, and place where, he died;
2. The name, status, age and capacity of the heirs testamentary or legal, without excluding those who might exist in the state of known conception;
3. Where the estate-leaver died with a Will and in such case he shall produce the original or authentic copy of the same Will;
4. Whether the estate-leaver, being married, the marriage was preceded with a deed, and in such case he shall produce one transcript or authentic copy of the same.

Corresponds to Section 376 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2073 - Description of assets of inheritance - The administrator shall present for the description, faithfully, and on oath, a list of all the assets of the inheritance.

§ Sole paragraph – After the description is made any party may apply that half of the income, of the assets not bequeathed, be distributed among the co-heirs taking into consideration the value which has been attributed to them; the administrator who fails to comply with such direction issued by the judge, shall be removed forthwith and will be liable to pay compensation for the damage.

Corresponds to Sections 252 & 399 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2074 - Description of moveables - The moveable assets shall be specified by their characteristic signs and in such a way that they may not be interchanged or confused with others.

Corresponds to Section 399(5) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2075 - Description of immoveables - The immoveable assets shall be described with reference to their boundaries, names and numbers, appurtenances and easements, and, whenever they devolve in preferential manner, the improvements which were introduced therein and which were separable shall be listed.

Corresponds to Section 399(5) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2076 - Description of consolidated funds - The consolidated funds shall be described specifying their nature and the number they bear.

See Section 399(5) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2077 - Description of active debts and passive debts - The description of the active debts and passive debts shall be accompanied by declaration of the supporting instruments.

See Section 399 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2078 - Description of assets to be allotted in preferential manner or belonging to a third party - Where there are in the inheritance some assets belonging to a third person or which devolve to any heir in preferential manner, they shall be listed separately, along with the respective documents.

§ Sole paragraph – The assets belonging to a third person shall not be delivered to him, when there is any doubt, unless the said third person proves his right.

See Section 400(5) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2079 - Withholding of assets by administrator - On account of withholding of the assets of the inheritance, the administrator shall lose, in favour of the co-heirs, the right he may have to any part of the assets withheld, and, if he is not an heir, he shall incur the penalty for theft.

See Sections 256, 380, 381 & 400 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2080 - Fraudulent description of credits, rights and charges - The administrator who fraudulently describes credits, rights or charges based upon simulated, false or forged instruments, shall be liable to make good the damage caused and besides, shall be liable for punishment for theft or forgery, as the case may be.

Corresponds to Sections 257 & 382 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2081 - Fraudulent concealment of certain title deeds - The administrator who fraudulently conceals the title deeds necessary to know the nature or the charges or assets to be partitioned, shall be liable for the damages resulting from such omission.

Corresponds to Section 258 & see Section 381 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2082 - Duration of administration of administrator - The administrator shall continue in the administration of the estate which he has, until the finalization of the partition, except in respect of assets not to be partitioned, and which devolve to other heirs in preferential manner.

Corresponds to Section 383 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2083 - Powers of administrator - The administrator shall use all preventive measures and shall proceed with the recovery and collection of the active debts when such recovery and collection may be defeated by delay.

§ Sole paragraph – Where the administrator files any suit or brings any execution for the purpose of collection of the debts referred to in this article, any of the co-heirs may apply to be joined as parties to the proceedings.

Corresponds to Section 379(d) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2084 - When administrator can be sued - The creditors of the inheritance may equally use against the administrator all preventive measures but they shall not sue him in matters of ownership or recovery of the debts of the inheritance, without joining all the co-heirs.

Corresponds to Section 379(e) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2085 - Rights of the administrator - The administrator, as administrator of the inheritance, shall receive all fruits and income of the assets, of which he is in possession, and shall satisfy all the normal liabilities, with the duty to render the accounts in case the usufruct of the said assets does not belong to him; but he shall not alienate any assets of the inheritance except the fruits and other objects which cannot be preserved without fear of deterioration. Corresponds to Sections 253 & 379 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2086 - Expenditure incurred by the administrator on account of inheritance - The administrator is entitled to be reimbursed for the expenses incurred by him on account of the inheritance, and may demand interest thereof, but he shall not be liable to pay the interest of the amounts received by him on account of the inheritance, except from the time he is in default.

Corresponds to Section 379(f) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2087 - Question which cannot be decided by inspection of certain documents - The disputes which may arise in respect of qualification of the heirs indicated by the administrator, or those who applied to be joined as parties to the inventory, in respect of ownership of the assets of the inheritance or of their non partible nature, which cannot be decided by simple perusal of the authentic or authenticated documents, shall be decided by ordinary remedies without prejudice to the continuation of the inventory and partition.

See Sections 400(6), 400(8)(b) & 450(2) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2088 - Removal of administrator - The administrator, who fraudulently delays the prosecution of the inventory, may be removed at the instance of the parties, and the provisional administration of the inheritance shall be entrusted to another, for which the more competent heir shall be preferred.

Corresponds to Section 384 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION II
APPRAISAL

Article 2089 - Appraisal in inventory amongst majors - The assets of the inventory amongst majors shall be appraised by appraisers appointed by agreement amongst the parties.

§ Sole paragraph – In case of disagreement between the heirs in the matter of selection of appraisers or some of them, those who fall short shall be selected by the judge, but not from amongst those proposed by the heirs.

Corresponds to Section 409 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2090 - Appraisal in inventory amongst minors only - Where the inventory is of the assets of minors only, the appraisers shall be appointed by the family council.

Article 2091 - Appraisal in inventory in which there are majors and minors - Where the inventory is between majors and minors one appraiser shall be appointed by the family council, the other on behalf of the majors and the third by the judge, in case of difference between them.§ Sole paragraph – The appraiser who is appointed as umpire, shall be bound to agree with any one of the appraisers.

Corresponds to Sections 409(1) & 409(2) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2092 - Appraisal of jewellery and precious metals - The jewellery and the objects of gold and silver shall be appraised by assayers and tested, in their intrinsic value, to which half of the value of workmanship will be added, if they deserve to be preserved.

Corresponds to Section 409 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2093 - Appraisal of special objects - The special objects, which the appraisers are unable to appraise, are valued by the experts, or competent persons appointed by the judge except in case of lawful objection of the parties or their representatives.

Article 2094 - Appraisal of lands and buildings - The lands, and buildings shall be valued by the appraisers, taking into consideration their income or produce in an average, in relation to the period during which they can continue to yield the same produce or income, the circumstances of the locality where they are situated, the charges over them, and the expenditure for tilling and maintenance, and they shall declare, in any event, the basis taken for such appraisal.

Article 2095 - Appraisal of right to possession and enjoyment *('dominium utile')* **-** The value of right to possession and enjoyment *('dominium utile')* shall be calculated as per general rules established in the preceding article, deducting the value of the ownership right *('dominium directum')*.

Article 2096 - Appraisal of ownership of soil *('dominium directum')* **-** The value of the ownership of the soil *('dominium directum')* shall be deemed to be equal to twenty annual pensions, and where besides annual pension, some eventual instalment is to be paid the amount of one of such instalments shall be added.

§ Sole paragraph – Where the value of the installment is not known nor is declared in any law, it shall be appraised as per the custom of the land.

Article 2097 - Appraisal of improvements - The improvements, mentioned in the article 2075, shall be only those which in fact have increased the value of the assets, and shall be valued only to the extent of such increase.

SUB SECTION III
COLLATIONS

DIVISION I
COLLATIONS RELATING TO ASSETS SUBJECT TO PARTITION

Article 2098 - Concept of collation - Collation is the return, which the forced heirs desiring to claim inheritance, are bound to do, to the mass of succession, of the values which have been gifted to them by the estate-leaver, for the purpose of calculation of the half and for the equalization of the partition.

Corresponds to Section 90 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2099 - Exemption of collation - The collation may be dispensed with among the forced heirs, if the donor has said so, or if the donee renounces the inheritance, save the right of reduction in case of inofficiousness.

Corresponds to Section 91 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2100 - Obligation of collation on part of grandchildren - When the grandchildren succeed to the grandparents, in representation of the parents, they shall bring to the collation whatever their parents ought to have collated even though they have not inherited it.

Corresponds to Section 93 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2101 - Presumed exemption of collation - The parents are not bound to collate to the inheritance of their ascendants what was gifted by the latter to their children, nor are children bound to collate whatever during the lifetime of their parents, was gifted to them by the ascendants, in case they succeed to them by the right of representation.

Corresponds to Section 94 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2102 - Forced heirs exempted from collation - The ascendants, who claim the inheritance of the descendant donor, are not subject to the collation.

Corresponds to Section 91 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2103 - Gifts made to spouse of son or daughter - The gifts made to the spouse of the son or daughter are not subject to the collation; but when they are made jointly to both the consorts the son or daughter shall be liable to collate one half of the value of the gifted thing. Corresponds to Section 96 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2104 - Expenditure subject to collation - All the expenses, which the deceased had made in favour of his children, whether by way of dowry and bride's outfit, whether as patrimony for ordination, or with higher studies or military services, or for settling them or payment of their debts, shall be collated.

§ 1 - But in the computation of such expenses, it shall always be borne in mind that the ordinary expenses, which otherwise the parents were bound to incur, are to be eliminated, and the same parents may dispense with the collation provided there is no excess over the disposable portion.§ 2 - The money which the children have given to the parents without being by way of gift, are equally to be deducted from the amounts to be collated.

Corresponds to Sections 97(1) to (4) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2105 - Values not subject to collation - The expenses of maintenance and the remuneratory gifts for services, or made to compensate the sons of any assets embezzled by the parents, shall not be subject to collation.

Corresponds to Section 97(5) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2106 - Fruits and profits to be collated - The fruits and the profits of the gifted thing shall be computed in order to enter into the collation, from the date of the opening of the inheritance.

Corresponds to Section 98 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2107 - How collation is done - The collation shall be made as per the value that the gifted things had at the time of the opening of the inheritance, and it may be made in specie in case there is agreement amongst all the parties.

§ 1 - The value of the improvements, introduced by the donee in the gifted assets, and to be deducted from the appraisal of the latter shall be assessed with reference to the date of the opening of the inheritance.

§ 2 - The deteriorations and diminutions of value, caused to the gifted assets by act or negligence of the donee or his representatives are of their responsibility.

§ 3 - In the collations of the self-moving movables, of fungible things or subject to deteriorations by use, the state in which they were found at the time they passed to the possession of the donee shall be taken into consideration, and in the collation of the securities, which are not found in the possession of the donee, the value they had at the time of the alienation shall be taken into account, if it is higher than that at the date of the opening of the inheritance.

§ 4 - Where the value of the gifted assets exceeds the share which the donee has in the inheritance, the return of the excess shall be done in specie and he shall have right to choose from amongst the gifted assets those necessary to satisfy his share in the inheritance and the onus on the gift, without having right to take part in the licitation of the assets which he had to return to other co-heirs. Where, amongst the gifted assets there is any indivisible property, which as a whole does not fit in the share of the donee, the collation will be done in specie, but the donee may take part in the licitation.

§ 5 - The payments in cash made by the donee, the payment of the debts of the donor or of the onus in favour of third parties, including the payment to any co-heirs on account of their part in the value of the gifted assets, shall be brought up to date with reference to the coefficient of valuation or devaluation of our currency between the date of such payments and the date of opening of the inheritance.

The same shall be observed in respect of collations and gifts in cash.

§ 6 - In the deed of gift or subsequently, with the participation of all the parties, it is lawful to fix in an authentic document the value of the gifted assets and the part which may be due to each of them from such value, and, in the event the respective payments are not effected immediately, the oscillations of the value of the currency between the date of the payment and the date of agreement shall be taken into consideration at the time when the payments are effected.

§ 7 - The burden of collation constitutes charge in rem over the gifted immovable assets and the registration of the respective transfer shall not be done without the registration of such charge being simultaneously made.

§ 8 - The provisions of this article and its paragraphs as well as of articles 1497, sole paragraph, 1502, 1790, paragraph 2, 2101 and 2108 and its paragraphs shall be applicable also to the inheritances already opened which are not yet finalised either by voluntary partition or judicial partition become final for want of appeal, without prejudice to any decisions rendered by final order or judgment.

- Corresponds to Sections 99, 100, 101, 115 & 116 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2108 - Collation of common assets gifted by both spouses - When the gift is of common assets made by both the spouses, one half shall be collated at the death of each of them; the assets gifted being exclusive to each spouse, shall be collated in whole upon the death of the spouse.

§ 1 - In respect of assets which have not been gifted, the valuation of common assets once made, is valid for the second partition, bearing in mind the oscillation of the value of the currency between the two acts.

§ 2 - In the event of the partition on the death of both the donors being simultaneous, the common assets gifted shall be appraised only once with reference to the value at the time of the opening of inheritance of the predeceased and such value shall be mentioned in the second inheritance after being corrected as per oscillation of value of the money between the dates of opening of the inheritance of one and the other.

Corresponds to Section 103 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2109 - Manner of satisfying the co-heirs of the donee - The co-heirs of the donee shall be satisfied with assets of the same kind and nature, if possible.

Corresponds to Section 104 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2110 - Compensation to co-heirs of the donee - Whenever it is not possible to satisfy the co-heirs in the aforesaid manner, where the gifted assets are immovable, the said co-heirs shall be entitled to be indemnified in cash, and, there being no cash in the inheritance, as many assets as may be necessary to obtain the due sum shall be sold in auction. However, if the gifted assets are movables, the co-heirs shall be entitled to be satisfied with other movables of the inheritance, as per their just value.

Corresponds to Section 104 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2111 - Gifts which exceed legitime of donee - When the value of the gifted assets exceeds the legitime of the donee, the excess shall be computed in the disposable portion of the donors, and if, nevertheless, there is excess over the legitime and disposable portion, the donee shall be liable to restore such excess.

§ 1 – If there are various donees and the disposable portion is not sufficient for satisfaction of all of them, what is prescribed in articles 1495 and 1496 shall be observed.

§ 2 - In such a case, if the estate-leaver has disposed of the disposable portion in favour of another, such disposition shall be of no effect.

Corresponds to Sections 105 & 106 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2112 - Question as to obligation to collate - Where there is dispute between the co-heirs regarding the obligation to collate or over the objects of the collation the proceedings for partition shall not be withheld for this reason, upon the person bound to collate furnishing security.

Corresponds to Section 107 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

DIVISION II
COLLATIONS RELATING TO ASSETS NOT SUBJECT TO PARTITION

Article 2113 - Improvement on the assets which devolve in preferential manner - The successor of any assets which devolve in a preferential manner, is bound to collate the improvements whereby the value of the assets has been increased.

Corresponds to Section 108 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2114 - Collation of assets which are to devolve in preferential manner acquired with consideration - Where the assets, which are to devolve in a preferential manner, have been acquired with consideration the collation will be done either with reference to the price or by valuation, at the option of the successor.

Corresponds to Section 108 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION IV
PAYMENTS OF DEBTS

Article 2115 - Payment of debts of inheritance - The liability of the inheritance for payment of debts of the estate-leaver is joint and several but, after the partition is made, the co-heirs are only liable in proportion to the share of the inheritance allotted to them.

Corresponds to Section 404 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2116 - Expenses of funeral - The expenses towards funeral shall be paid by the estate yet undivided, whether there are forced heirs or not. The estate or one third thereof is not liable for any other expenses with the suffrages for the soul of the deceased, when they are not directed by will, in accordance with article 1775.

Corresponds to Section 405 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2117 - Approval of debts in inventory of majors - In the inventory amongst the majors, the debts shall be considered when all the parties thereto agree.

Corresponds to Section 416 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2118 - Approval of debts in inventory of minors - In the inventory amongst the minors under interdiction, absentee or unknown, only the debts, payment whereof is authorized by family council with no objection of any of the major co-heir, shall be considered.

§ Sole paragraph – The creditors who are parties to the inventory and demand payment of their credits shall present the instruments on the basis of which the claim is put.

Corresponds to Section 416 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2119 - Manner of payment of debts - Whenever it is admissible, the payment shall be made in the inventory amongst the majors, in cash or in assets separated for this purpose.§ Sole paragraph – Where the creditor is not willing to take the said assets, they shall be sold in public auction and the creditor shall be paid out of the proceeds thereof.

Corresponds to Section 419 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2120 - Manner of payment in inventory amongst minors - In the inventory amongst the minors or similar persons, the payment shall be made in cash, or, whenever there is no cash in the estate, by way of movables or immovables; but in such case, the assets shall be put in auction, and only when there is no bidder, they shall be allotted to the creditor if he is willing to receive them for their value.

Corresponds to Section 419 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2121 - Redemption of certain encumbrances - Where the immovable assets of the inheritance are charged with mortgage, or with redeemable installments, any of the co-heirs may demand, there being cash available in the estate, that the said charges be redeemed before the partition.

Corresponds to Section 406 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2122 - Deduction of encumbrances in rem in the partition - Where the immovable assets are enlisted for the partition alongwith the said charges, or any other charges they shall be valued as if there were no charges; thereafter the capital corresponding to the charge shall be deducted and the heir, who remains with the immovable asset, shall exclusively pay the said charge.

Article 2123 - Right of restitution to the person adversely affected with payment of charge -The co-heir who pays more than what he was liable to pay in the common debt, as a result of the mortgage, charge of which was not deducted, shall have only the right to receive from other co-heirs the part which they were liable to pay, in proportion to their hereditary share and that too when the co-heir, who had paid it, gets subrogated in the rights of the creditor.

§ Sole paragraph – In case of insolvency of any of the co-heirs, his part shall be divided proportionately, if at the time of the partition, the charge was unknown or its existence was disputed.

Article 2124 - Probative value of the instruments against estate-leaver - The instruments based on which execution is filed against the estate-leaver, shall have the same force against the heirs

themselves but the creditors shall not proceed further with the execution, without the heirs being brought on record in such capacity and summoned again to make the payment within ten days or to face the execution proceedings.

Article 2125 - Inheritance where debts exceed assets - Where the admissible debts exceed the mass of inheritance and the creditors agree with their division pro-rata or in accordance with preferential claims which may exist, their agreement shall be observed; in case of disagreement, they shall pursue competent remedies.

Corresponds to Sections 417 & 419 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION V
LICITATION AND PARTITION

Article 2126 - Form of partition and declaration of licitation - After the description and appraisal is done, as aforesaid, the parties shall be heard as to the form of partition, and if any of them is willing to bid for any property or other object, he shall so declare in his reply.

Corresponds to Sections 411, 413 & 415 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012. **Article 2127 - Formalities of licitation and when to be held -** The licitation shall precede the act of partition, after all the parties are summoned, and it shall take place amongst them only, as if it is a case of an auction.

See Sections 429 & 430 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2128 - Objection to the licitation. Second appraisal - Where the declaration, referred to in article 2126, falls on a thing, which by its nature and without its detriment cannot be divided, and in which any co-heir has major part, or it falls on a thing which has to be allotted to him as a head, such co-heir may object to the licitation and apply that the appraisal be rectified.

Corresponds to Section 426(1) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2129 - Licitation over the things value of which exceeds share of person offering the bid in properties to be partitioned - Where the said declaration falls on things, value of which exceeds the share of the declarant in the properties to be partitioned, and the same declarant does not agree to deposit immediately the excess, the object of licitation shall be put in public auction and sold for the highest bid offered above the appraisal value.

§ Sole paragraph – In the absence of bid above the appraisal, the declaration for the licitation shall be deemed as not made and the partition shall be proceeded with as if no declaration was made.

Article 2130 - Licitation in case of persons under disability - In the inventory amongst minors or similar, they shall be admitted to bid, being represented by their guardians or curators, duly authorized by the respective family councils, whenever their existence is mandatory.

Article 2131 - Licitation not to be withdrawn - It is not lawful to withdraw the licitation legally done.

Corresponds to Section 430(4) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2132 - Objection against excessive valuation - Where any of the parties contends that the appraisal of any thing is excessive, he shall so declare at the time of giving reply as to the form of partition, and at the same time he shall declare the highest price that the thing may fetch. See Sections 413 & 425 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2133 - Agreement in respect of new price declared - Where all the parties, being major, agree with the price declared, the partition shall be made on the basis of such price and not by that of the appraisal.

See Section 425 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2134 - Disagreement in respect of new price declared - Where any of the parties is a minor, or when, all being majors, do not agree with the declared price, the thing, pertaining to which declaration was made, shall be put in public auction, with the said price, and sold for the highest bid obtained above the said price, even though the same does not reach that of the appraisal.

See Section 425 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2135 - Acceptance of the thing as per value of appraisal - Where any of the parties being major, declares that he accepts the thing, to which the declaration pertains, by the value given to it in the appraisal, and it fits in the share which he should get in the assets to be partitioned, or in the case it does not fit, he agrees to deposit the excess; and also the inventory being amongst majors, if they agree that it may be allotted without deposit, no auction shall take place, and the proceedings for partition shall be proceeded with, as if no declaration was made. See Section 425 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2136 - Auction open to all parties - In the cases of articles 2129 and 2134 all the parties shall be admitted to bid, including the minors or similar, represented in term of article 2130.

Article 2137 - Deposit of price of auction - Where the adjudication is done to a stranger, he shall deposit in the same act, the price of the auction or shall furnish security for immediate payment; however, where it is done to any of the parties, he shall be liable to deposit, or furnish security, for the value exceeding the share which he is likely to have in the properties to be partitioned.

§ Sole paragraph – The price of the auction whether deposited or not, shall enter into the mass to be partitioned.

Article 2138 - Steps subsequent to licitation - After the licitations are concluded, the partition shall take place, by separating firstly the assets necessary for the payment of debts, which are fit to be considered, and, thereafter, those necessary for filling up the moiety of the surviving spouse, or of the third part, if such separation is to be made.

See Section 435 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2139 - Satisfying shares of those who have not bid or who are not subject to collation- When there have been licitations amongst the co-heirs or collations, those who have not got by licitations or those who have not collated, shall be satisfied with so much of their assets in terms indicated in articles 2109 and 2110.

See Sections 436 & 438(d) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2140 - Sortition of remaining properties - The remaining properties shall be divided by casting lots amongst the co-heirs, in equal lots.

See Section 440 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2141 - Sortition there being heirs with unequal shares - Where the heirs, or some of them, have no right to equal lots, there shall be as many lots as may be necessary, in order that each one may be paid of his share.

See Section 440 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2142 - Composition of lots - The lots shall be formed with the utmost equality, and whenever possible, each of them shall be comprised of equal portion of properties of the same class or of the same kind.

See Section 440 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2143 - Easement arising from division of properties - When there has been division of properties which makes indispensible new easements, due declaration thereof shall be made.§ Sole paragraph – If as a consequence of partition any land or building becomes landlocked, for failure to comply with the mandate of this article, the respective owner may judicially demand the constitution of necessary easements in accordance with article 2309 onwards, and the compensation payable to the servient owner, as well as the expenses with the respective suit, shall be payable by all the parties to the partition.

Article 2144 - Objection against composition of lots - After the lots have been formed the parties may raise objections which they like as to their equality.

- See Section 440 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2145 - What is to be done in case of indivisible things which have not been brought by licitation and which do not fit in the lots - Where amongst the assets to be partitioned there is any thing in respect of which there has not been licitation and which neither can be fitted in the lots nor can be divided due to its nature or without detriment, the parties or their representatives shall deliberate, whether it should be sold and how, or if it should be adjudicated to any of the heirs upon the condition of payment of due owelty or partition, or, finally, whether they would enjoy it in common.

- Corresponds to Section 438(2)(a) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2146 - Sale of thing in public auction - Where any of the parties declares that he does not want to pay owelty of partition he is not bound to do so if the said owelty exceeds one third of his lot, and the sale of the said object in public auction shall take place.

§ Sole paragraph – To such an auction what is laid down in article 2137 shall be applicable.

Article 2147 - Absence of purchaser - Where there is no buyer for the objects and the inventory is amongst majors, whatever is agreed upon by them in respect of the said object shall be done, and in case the inventory is amongst minors, whatever is decided by the family council shall be done.

Article 2148 - Payment of life time annual pensions in inventory of minors - Where the estate-leaver of the inheritance under partition, amongst forced heirs, minor or similar, has bequeathed any life time annual pension to be paid out of his disposable share, without the same being put specially in charge of any heir or legatee, a capital equivalent to twenty pensions shall be separated and such capital shall be delivered to the legatee, who will be subject to all the duties of a mere usufructuary, such capital, however, being partitioned at once amongst the interested parties.

Article 2149 - Payment of said pensions in inventory of majors - Where the bequeathed pension is imposed on the estate to be partitioned amongst various major heirs, and they do not choose amongst themselves one who should take upon himself charge for the payment of the said pension, what is prescribed in the preceding article shall be observed.

Article 2150 - Pension capitalization of which exceeds disposable share - Where in case of article 2148 the properties of the disposable portion are not sufficient to raise the capital mentioned therein, the said portion shall be delivered to the legatee, as usufructuary, and whatever is earned from the said portion shall be the pension.

Article 2151 - Separation of assets for payment of debts in the inventory of minors - Where there is need to separate assets for the payment of debts, in an inventory amongst minors, preference shall always be given for such purpose to movables, and amongst them the less valuable or of more difficult maintenance.

Article 2152 - **Separation for same purpose in inventory of majors** - In the inventory amongst majors, the separation for the payment of debts shall be done as the parties like, and where there is no agreement between them the same rule shall be observed.

Article 2153 - **Delivery of title deeds of the partitioned properties** - As soon as the partition is over, each of the co-heirs, shall be given the title deeds in respect of the objects allotted to them, if such titles do exist.

Article 2154 - **Title deeds of partitioned properties** - The title deeds of the divided properties shall be delivered to the one who holds major part therein with the obligation to share them with his co-owners whenever necessary.

Article 2155 - **Title deeds of co-owners with equal parts** - The title deeds of co-owners with equal parts, or common to all, shall remain in possession of the co-heir who is chosen by the parties or appointed by the court, in the absence of agreement amongst them.

Article 2156 - **Report of delivery of title deeds** - A record of such deliveries shall be drawn in the proceedings of inventory which shall be signed by the judge, and by one who receives the title deeds.

Article 2157 - **Payment of costs of inventory** - The costs of the inventory shall be paid by the administrator who shall deduct them from the shares delivered to the coheirs or shall have them by way of execution.

- See Sections 443 & 456 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

SUB SECTION VI
EFFECTS OF PARTITION

Article 2158 - **Effects of partition** - The partition of the assets legally made in respect of which there had not been any objection, confers on the co-heirs exclusive ownership of the assets partitioned among them.

Article 2159 - **Eviction from partitioned properties** - The co-heirs are liable to be indemnified reciprocally in case of eviction from the partitioned objects.

Article 2160 - **Cases in which the evicted has no right to get compensation** - Such liability ceases when there is agreement to the contrary or if the eviction takes place owing to the fault of the evicted or owing to cause subsequent to the partition.

Article 2161 - **Insolvency of some of the co-heirs of the evicted person** - The evicted person shall be indemnified by the co-heirs, in proportion of their hereditary shares, but in case any of them has become insolvent, the remaining co-heirs shall be liable for his part, in the said proportion, after deducting the share which would correspond to the indemnified.

Article 2162 - **Prescription of suit for damages in respect of eviction** - The suit for the enforcement of the warranty mentioned in preceding articles, prescribes, as per general rules, reckoned from the date of eviction.

SUB SECTION VII
RESCISSION OF PARTITION

Article 2163 - **Rescission in case of extra-judicial partition** - The partitions made extra judicially may be rescinded only in cases in which the contracts can be rescinded.

- Corresponds to Sections 447 & 450 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2164 - **Rescission in case of judicial partition** - The partitions judicially made and confirmed by the judgment become final for want of appeal, cannot be rescinded, except in cases of nullity of proceedings and in those in which a judgement which has become res judicata can be revoked.

- Corresponds to Sections 447 & 450 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2165 - Preterition or lack of intervention of some co-heirs - Where the judicial partitions have been made with preterition of any of the co-heirs, or of one who has been so declared by the Court, they shall not be rescinded without proof of fraud or bad faith on the part of the other parties; but they shall be liable to make up the share of the excluded heir in prevailing currency, taking into consideration the value of the properties on the date of the compounding. Corresponds to Section 448A(1) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

Article 2166 - Additional partition - The omission of some of the objects in the partition is not a ground to nullify the same, and only an additional partition of such objects shall be made.

Corresponds to Section 446 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

PART III
RIGHT TO PROPERTY
SOLE BOOK
(Articles 2167 – 2360)

PART III
RIGHT TO PROPERTY
SOLE BOOK

TITLE I
PRELIMINARY

Article 2167 – **Definition of right to property**[55] **–** Ownership **(**right to property) is the faculty which man has to use for the conservation of his existence and improvement of his condition, all that he has lawfully acquired and which therefore he may freely dispose.

Article 2168 – **Kinds of ownership** – Ownership may be, absolute or terminable, sole or joint, perfect or imperfect.

Article 2169 – **Rights of the owners** –The right to ownership includes :

1. Right of enjoyment;
2. Right of transformation;
3. Right of exclusion and defense;
4. Right of restitution and compensation in cases of violation, damage or encroachment;
5. Right of alienation.

Article 2170 – **Limitations on the right to ownership** – The right to ownership and each of the specific rights which it includes, shall be subject to no other limitations except those which are characteristic to them by the nature of the things, by the will of the property owner or by virtue of express provision of law.

TITLE II

[55] *The term property means both, the object or subject matter (e.g. land, building, etc.) as well as the right to property viz. full ownership and limited rights like emphyteusis, usufruct, use, enjoyment, easement, share, etc.*

ABSOLUTE AND DETERMINABLE OWNERSHIP

Article 2171 – Absolute and determinable ownership –Absolute ownership is that which by virtue of the title on which it is founded cannot be terminated or revoked without the consent of the owner, except in cases of acquisition for public purpose; determinable ownership is that which according to the title on which it is based is subject to revocation independently of the will of the owner.

Article 2172 – **Presumption of absolute ownership** –Ownership is presumed to be absolute, till the contrary is proved.

Article 2173 – **Indicia of ownership** –Ownership of rights acquired are indicated by the exercise or possession thereof, on terms laid down by the law.

Article 2174 – **Effects of termination of ownership** –The effects of termination of right of ownership are set out in the documents of title by which it is constituted.

TITLE III

SOLE PROPERTY AND JOINT PROPERTY

Article 2175 – **Sole and joint property** –Sole property is that which belongs to a single person; joint property is that which belongs to two or more persons simultaneously.

Article 2176 – **Rights of a co-owner** – A sole owner exercises his rights exclusively on the terms declared in the preceding titles; the owner of a property in common (jointly with others), a co-sharer or co-owner exercises jointly with other co-owners all the rights which a sole owner has, in proportion to the share which he has in the common property.

Article 2177 – **Disposal of specified portion of a common property -** A co-owner may not, however dispose of any specific part of the common property, unless the same is allotted to him in partition; and the transfer of the right which he has to the share which belongs to him may be restricted in terms of the law.

Article 2178 – Expenses for the conservation of common thing –Every co-owner has the right to compel his co-sharers to contribute to the expenses for the conservation of the common thing or right, except if they renounce their rights to the portion of the thing which belongs to them.

Article 2179 – **Use and administration of the common thing** – The use and administration of the common thing or right shall be regulated by the provisions of articles 1249 onwards.

Article 2180 –Division of common asset –No co-owner shall be bound to remain in undivided estate and may at any time demand partition except;

1. In the case of marriage or society in accordance with the relevant provisions of this Code. 2. If the thing or the right, by its nature cannot be partitioned.

Article 2181 – Mode of partition –The division of common asset may be carried out amicably or through arbitrators appointed by parties who do not suffer from legal disability.

form lots of perfectly equal value both in quantity as well as quality, avoiding as far as possible owelty in terms of money.

Article 2183 – **Indivisible asset –** If the asset cannot be physically divided and the co-owners do not agree that it may be adjudicated to one of them by compensating the others with money, in such event it shall be sold and the price divided.

Article 2184 – External form of partition of immobile assets –The partition of immobile assets is null if not carried out in a public deed or public proceedings.

Article 2185 – **Agreement not to partition common asset –** Co-owners may not renounce the right of partition but may agree the assets remain undivided for a certain period of time not exceeding 5 years; this period however may be extended by fresh agreement.

Article 2186 – Rights of co-owner after partition –A co-owner to whom a common asset or part thereof is allotted in partition shall enjoy the rights of the heirs in the partition of an inheritance.

TITLE IV
ABSOLUTE OWNERSHIP AND LIMITED PROPERTY

CHAPTER I
GENERAL PROVISIONS

Article 2187 – **Absolute ownership and limited property** – Absolute ownership is the enjoyment of all the rights contained in the right to the property. Limited property consists in the enjoyment of part of these rights.

Article 2188 – **Rights of a holder of a share in the property** –The holder of any fraction of the right of ownership enjoys as far as the fraction is concerned, full right of ownership, subject to the restrictions laid down by law or the title document by which the property is held.

Article 2189 – **Types of limited property** –The following are the types of limited property: 1. Emphyteusis and sub emphyteusis;
2. Rent contract/ life annuity("*censo*");
3. Share or quota;
4. Usufruct, enjoyment and residence; 5. Common pasture;
6. Easements

§ Sole paragraph – The provisions regarding each of the above mentioned forms of property or rights are covered by the subsequent chapters except for emphyteusis and rent contract/ life annuity ("*censo*") which are dealt with under articles 1644 onwards.

CHAPTER II
SHARE

Article 2190 –Concept of share - The right, which any person has to receive a share in the rent of an undivided property, standing in the name of one co-owner, and possessed by him, is known as share.

§ 1 - The co-owner on whose name the property is put into is known as – possessor -, and other co-owners as – share holders:-

§ 2 - The shares in the rent may be equal for all the share holders, or bigger for some of them than for others, depending upon the right they have in this undivided property.

Article 2191 – **Administration of the property** - Only the possessor is entitled to manage and rent out the undivided property; however any share holder may demand that the property be rented out in case the same is managed directly by the possessor, or that the same may be rented out in public auction, in case it is found to be rented out privately, when he is of the view that in the public auction it may fetch higher rent.

§ Sole paragraph - If there is difference of opinion amongst the share holders, the decision of the majority shall prevail. In case of tie, no change will be done until a new deliberation.

Article 2192 – **Improvements: in whose favour do they revert** - The increase of the rent arising from improvements made in the undivided property, at the cost of the possessor shall be appropriated by him; but if the improvements were made by any tenant, the increase of the income shall revert to all the shareholders.

Article 2193 – **All share holders are necessary parties in a title suit** - Any suit in relation to the ownership of the undivided property, or which may have the effect of decreasing the value of the shares, shall be filed against all the shareholders.

Article 2194 – **Right of share holder** - Each shareholder may encumber his respective share; but the undivided property may not be encumbered without the consent of all the shareholders.

Article 2195 – **Preferential rights of possessor and share holders** - All the shareholders have the right to alienate whole or part of their respective share and also the possessor has the right to alienate his possession, in following manner:-

§ 1 - Where any of the shareholders desires to sell or give in payment his share or part thereof, the possessor shall have right of preference and if the possessor does not wish, the right of pre-emption passes to other shareholders. Where more than one of shareholders exercises pre-emption, seller will chose the one he desires.

§ 2 - Similar pre-emption shall have the shareholders when the possessor desires to alienate or give in payment his right of possession, his respective share or part thereof.

§ 3 - The manner of exercising such preference is the same which established in paragraphs of article 2309.

Article 2196 – **Abolition of share in future** - In the future the constitution of share is forbidden; in the event in respect of any property, a form of enjoyment as contained in this chapter is provided, the same shall be regulated in accordance with articles 2176 and onwards.

CHAPTER III
USUFRUCT, USE AND HABITATION

SECTION I
USUFRUCT

SUB SECTION I
GENERAL PROVISIONS

Article 2197 – **Usufruct –** Usufruct is the right to convert to one's own use, the enjoyment or produce of a mobiliary or immobile thing belonging to another.

Article 2198 – **Usufruct, how constituted –** Usufruct may be constituted by an act intervivos, by last Will or by provision of law.

Article 2199 – **Simultaneous and successive usufruct –** There may be usufruct in favour of one or more persons simultaneously or successively, provided they exist at the time in which it becomes effective in favour of the first usufructuary.

Article 2200 – **Forms of usufruct –** There may be conditional usufruct or pure and simple usufruct.

Article 2201 – **Regulation of usufruct –** The rights and duties of the usufructuary are regulated by the legal instrument constituting the usufruct; in the absence of the same or deficiency therein, the following rules shall be observed:

SUB SECTION II
RIGHTS OF THE USUFRUCTUARY

Article 2202 – **Usufructuary's right of fruition –** The usufructuary shall have the right to appropriate all the produce which the thing under enjoyment produces whether the produce be in the form of natural (or agricultural produce), industrial or civil produce.

§ Sole paragraph - Natural, Industrial or Civil produce shall be as defined in article 495(3).

Article 2203 – **Outstanding produce** – Agricultural produce whether natural or produced by human labour outstanding at the time in which the usufruct starts, belongs to the usufructuary; that outstanding at the time of the extinction of the usufruct belong to the proprietor i.e. the absolute (original) owner of the bare property.

§ 1 - In the above cases the usufructuary at the beginning of the usufruct is not bound to offer security to the proprietor for any expenses incurred; but the proprietor is bound to secure at the end of the usufruct the expenses for cultivation, seeds and other such expenses made by the usufructuary with the production of the pending fruits.

§ 2 - The provisions of the preceding paragraph do not effect the rights of a third party acquired at the beginning or at the end of the usufruct.

Article 2204 – **Incomplete factory manufactured industrial products –** As regards Industrial products manufactured in a factory, those which are incomplete at the time of the commencement of the usufruct belong to the usufructuary without the duty to account for any expense; those which are incomplete at the end of the usufruct belong to the owner with the duty to account to the usufructuary, his heirs or representatives for the expenses made with such products.

§ Sole paragraph – The provisions of clause 2 of the preceding article are applicable to the cases covered by the present article.

Article 2205 – **Civil fruits –** Civil fruits belong to the usufructuary on a day to day basis in proportion to the period of duration of his usufruct.

Article 2206 – **Rights inherent to the thing under enjoyment –** The usufructuary has the right to enjoy all the accretioned things, the easements and generally all the rights inherent to the things enjoyed.

Article 2207 – **Other rights of the usufructuary –** The usufructuary may personally enjoy the thing, lend the same, lease or hire it and even alienate the usufruct; but the contracts made shall produce no effect except during the duration of the usufruct.

Article 2208 – **Usufruct of perishable objects** – If the usufruct includes things susceptible to deterioration by use, the usufructuary shall not be bound to do more than returning them at the end of the usufruct, as they are, except if they have deteriorated by an use different from that for which they were meant or by default or negligence of the usufructuary.

§ Sole paragraph - If the usufructuary does not return them, he shall be liable for the value which they had at the stage when the usufruct started, unless he proves that they were consumed in the process of their legitimate use.

Article 2209 – **Quasi Usufruct** – If the usufruct includes consumable things, the usufructuary may consume them; but he is bound to return their value at the end of the usufruct if the said thing has been estimated; if they have not been, they may effect the restitution by delivering other

things of the same kind, quality or quantity or of the same value as these things at the stage at which the usufruct terminates.

Article 2210 – **Usufruct of vines and olive plantations –** The usufructuary of vineyards, olive plantations or any trees or shrubs whether fruit bearing or not, may appropriate the plants which perish naturally but the plants which fall or are uprooted or cut by accident shall belong to the owner; the

usufructuary may however use them for the repairs which he is bound to carry out or demand that the owner remove them and clear the land.

Article 2211 – **Usufruct of woods and pine –** The usufructuary of trees meant for cutting the branches or any other woods, pine groves or of trees meant for cutting, is bound to observe the practices and usages of the owners of the locality; but if he does not cut or make any use of the trees, he shall not by a reason of the same be entitled to be compensated at the completion of the usufruct.

Article 2212 – **Usufruct of plants in nursery –** The usufructuary of plants in nursery is similarly bound to restrict himself to the uprooting of the plants according to the local custom both as regards as to the time and the manner of the said uprooting as well as regarding the time and the manner of trimming the said nursery.

Article 2213 – **Digging of mines and stone quarries –** A usufructuary may not open new mines or stone quarries.

§ Sole paragraph - The provision of this article does not apply to waters and mineral fertilizers to be utilized in the improvements of the concerned properties, as well as stone extraction for repairs or works, which the usufructuary is bound to carry out or which become necessary.

Article 2214 – **Usufruct of manufacturing establishment –** If the usufructuary of a manufacturing establishment opens another one of the same kind he shall stand restrained from using in the new establishment the trade marks, patterns and designs of the factory, distinctive marks, labels, signs and commercial firm name which were unique to the earlier establishment unless there is an express stipulation to the contrary.

Article 2215 – **Additional patent subsequent to the alienation of the usufruct of the invention –** An additional letter of patent to an invention, applied for by the usufructuary of the invention before having sold the usufruct in question, but obtained only thereafter, shall, as of right, benefit the buyer.

Article 2216 – **Treasure found in the property under enjoyment –** If the usufructuary finds in the property under usufruct any treasure, the provisions of this Code relating to the finding of a treasure, in the property of another, shall be observed.

Article 2217 – **Right to make improvements to the object of usufruct –** The usufructuary may make improvements to the object of the usufruct, for utility and comfort as he may deem necessary, provided he does not alter the form or substance of the thing, but shall not thereby be entitled to any compensation; he may however remove the said improvements, without causing any detriment to the thing.

Article 2218 – **Letter of addition to the invention obtained by usufructuary -** The usufructuary of an invention who obtains a letter of addition to the said invention may not prevent that the owner utilize the same addition if he so desires, when the usufruct terminates; but in this case he shall have the right to be previously indemnified.

Article 2219 – **Preservation of the usufruct -** The usufructuary may avail of all the remedies available to an owner in order to retain his usufruct.

§ 1 - The costs of litigation shall however be to the account of the usufructuary if the usufruct has been granted gratuitously.

§ 2 - If the usufruct has been granted by onerous title, whatever has been stated in connection with eviction shall be observed.

Article 2220 - **Compensation for deterioration through improvements -** The usufructuary may set-off the deterioration caused with the improvements made by him.

SUB SECTION III

DUTIES OF THE USUFRUCTUARY

Article 2221 – **Duties of the Usufructuary –** The usufructuary before taking charge of the assets should:-

1. With the notice to or with the help of the owner proceed to take inventory of the said assets, noting down their condition and the value of the movables if any. This inventory may be carried out amicably, but if the interested parties are minors, legally interdicted persons, absentees or unknown, the same shall be done by judicial means;

2.

Furnish security, if demanded, not only for the return of the assets or their value, in case they are consumable as also for repairing any deteriorations which they may incur by fault of the usufructuary.

§ 1 - The provision of no. (2) above is not applicable to the vendor or donor with reservation of usufruct nor to the parents who are the legal usufructuaries of the assets of their children, except for the provisions of article 148; nor are they applicable to the husband for the usufruct of the assets of the wife except for what is provided in respect of the mortgage of endowed assets; nor to the surviving spouse in respect of the usufruct of the assets of the deceased spouse in terms of the sole paragraph of article 2003.

§ 2 - The usufructuary by gift or will may be exempted by the donor or testator of inventorying or furnishing security, incases where rights of third parties are not affected.

Article 2222 – **Non furnishing of security –** If the usufructuary does not furnish security as laid down in the preceding article, the owner may demand that the immovable assets be leased or placed under administration, that the movables be sold and that monies, as also the proceeds of sales may be invested on interest or invested in public funds or in shares of companies which provide security; in such case the rents, interests or the fruits and produce of the assets and administration shall be handed over to the usufructuary.

Article 2223 – **Mode of enjoyment –** The usufructuary shall enjoy the thing as would a prudent owner.

Article 2224 – **Responsibility of the usufructuary for the alienation of the usufruct –** The usufructuary who alienates his usufruct in any manner shall be liable for the damages which the assets may suffer by fault of the person who replaces the usufructuary.

Article 2225 – **Duties of usufructuary of herds and flocks –** If the usufruct consists of a herd or flock of animals, the usufructuary shall be bound to replace by new born animals, the heads which for any reason may be missing.

§ 1 - If the animals perish totally or in part due to fortuitous circumstances without giving birth to others who replace them, the usufructuary shall be bound to return only the remaining heads.§ 2 - The usufructuary shall however be liable for the remains of the animals if such remains have been put to use.

Article 2226 – **Duties of usufructuary of fruit bearing trees –** The usufructuary of vineyards, olive plantations or of other fruit bearing shrubs is bound to plant as many saplings as the number of plants that may perish or to replace the same by another plantation or crop which is equally useful for the owner if it is impossible or harmful to renew the plantation of the same kind.

Article 2227 – **Consent for acts by the owner –** The usufructuary shall be bound to consent to any works or improvements by the owner which are possible in respect of the thing enjoyed, as also in respect of the new plantations if the usufruct is in respect of agricultural property provided this does not result in any reduction of the value of the thing enjoyed.

Article 2228 – **Ordinary repairs –** The usufructuary should carry out the necessary works of maintenance for the preservation of the thing.

§ 1 - Ordinary maintenance shall mean those works which during the year they are required do not exceed 2/3rd of the net income for that year.

§ 2 - The usufructuary may avoid such repairs if he renounces the usufruct.

Article 2229 – **Extra ordinary maintenance –** As regards extra ordinary works of maintenance the usufructuary shall only be bound to notify in time the owner who if he so desires may carry out the same.

§ 1 - But if the owner does not carry them out and if they are of real utility, the usufructuary may carry them out at his cost and demand payment of the value which they may have at the termination of the usufruct.

§ 2 - In such a case however, the usufructuary shall maintain the original form and design of the work.

Article 2230 – Extra ordinary repairs made by the owner -If the owner carries out repairs mentioned in the preceding article, the usufructuary shall have the right to their usufruct without being bound to pay interest for the sums spent by the owner. In case however the net income increases as a result of this repairs, the increase shall belong to the owner.

Article 2231 – **Liabilities of the general usufructuary of an inheritance –** The general or overall usufructuary of an inheritance shall be bound to pay in full any legacy in terms of maintenance or any life time pension.

Article 2232 – **Liabilities of the usufructuary of a share of the inheritance –** The usufructuary of a share of inheritance shall be bound to contribute to the payment of the abovementioned alimony maintenance or life time pension in proportion to his share.

Article 2233 – **Position of the usufructuary of specified items of the inheritance –** The usufructuary of one or more that specific items of an inheritance shall not be bound to contribute for the said alimony, maintenance or pension if this encumbrance has not been specifically laid on him.

Article 2234 – **Usufruct of mortgaged properties –** The usufructuary by a separate title of a property which has been earlier mortgaged is not bound to pay to the creditor in respect of the mortgage transaction.

§ Sole paragraph - If for this reason, the property is attached or sold judicially, the owner shall be liable for the loss which the usufructuary may suffer.

Article 2235 – **Payments of the debts of the inheritance by the usufructuary thereof –** If the usufruct consists of the totality or any part of the inheritance, the usufructuary may disburse the necessary amounts as an advance according to the assets of which he is enjoying the usufruct, for the payment of the debts of the inheritance, and he shall have the right to claim from the owner, at the end of the usufruct, the refund of the amounts spent by him without interest.

Article 2236 – **Payment of the debts of the inheritance by a mere owner –** If the usufructuary does not want to advance the amounts mentioned in the preceding article, the owner may sell out the assets under usufruct those which are necessary for the payments of the debts or pay them from his own funds, in the latter case, he shall be entitled to recover from the usufructuary the corresponding interests.

Article 2237 – **The usufruct of amounts invested on interest, public issues or shares –** The usufructuary of capitals invested on interest or any other return or in public issues or shares of companies may not withdraw the investment except for the purpose of reinvesting the same.§ 1 -The usufructuary may reinvest the capitals enjoyed by him in the following circumstances:-1. If the capitals have been given for a term or for specified business which has been concluded, or which

cannot continue for non-fulfillment of the necessary conditions;

2. If the capitals are under the risk of being lost.

§ 2 - In either of these cases, the usufructuary shall not withdraw the same without the prior consent of the owner. In case of opposition, the consent may be made good judicially but the withdrawal in such case shall not be made without furnishing security in advance, if there is no sufficient security already.

§ 3 - The right established in the two preceding paragraphs shall revert to the owner when the usufructuary does not want to use the same.

§ 4 - The usufructuary may retain if he so desires the capitals withdrawn for enjoying the same as he may deem fit after furnishing necessary security.

§ 5 - In case the usufructuary does not desire to retain the capitals, the owner may have the same after furnishing security without prejudice to the usufructuary, but, if he does not want the same, they shall be put to gain whether on loan with security or on public issues or in shares of well established companies.

Article 2238 – **Ordinary taxes and other annual dues –** Ordinary taxes of general and special nature and any other annual dues in respect of the produce or rents of the assets enjoyed shall be borne by the usufructuary while the usufruct is in force.

Article 2239 – **Outgoings over capitals or property –** Any outgoings levied directly on the capitals or on the property shall be borne during the usufruct on the owner and on the usufructuary, on the following terms:

§ 1 - The owner shall pay the amount and the usufructuary shall pay to the owner while the usufruct is in force, the interest on the amounts which the owner disperses.

§ 2 - If these sums are paid by the usufructuary, he may recover the same from the owner but without interest.

Article 2240 – **Violation of the right to property by third person –** The usufructuary is bound to notify the owner of any act by third party of which he has notice and which may violate the rights of the owner : if he fails to do so, he shall be liable for losses and damages.

SUB-SECTION IV

EXTINCTION OF THE USUFRUCT

Article 2241 – **Causes of the extinction of the usufruct –** The usufruct shall end:

1. Upon the demise of the usufructuary or on the expiry of the term for which the usufruct was granted, if it has not been granted for a life time;
2. By the determination of the rights of grantor of the usufruct or of the right of the usufructuary;
3. By the merger of the usufruct with the property; 4. By prescription;
5. Through relinquishment by the usufructuary;
6. By total loss of the thing enjoyed except in the case mentioned in article 2246(1).

Article 2242 – **Rescission by the creditors of the relinquishment by the usufructuary –**Creditors of the usufructuary may incase of relinquishment have the same rescinded. If it is made to the prejudice of their rights.

Article 2243 – **Partial loss of the thing enjoyed –** If the thing enjoyed is lost only partially, the usufruct shall continue in respect of the remaining part.

Article 2244 – **Duration of usufructuary to the benefit of legal persons –** Usufruct in favour of any establishment, corporation or society shall not last for more than 30 years; but, if before this term such establishment, corporation or society ceases to exist, so shall the usufruct in favour of its owner.

Article 2245 – **Usufructuary granted till certain age of a third party –** The usufruct granted to someone till the certain age of a third person shall last for the prescribed number of years, even if the third person expires before, unless the said usufruct has been expressly granted only on account of the existence of the said person.

Article 2246 – **The usufruct over a building eventually destroyed –** If the usufruct is constituted on any building and the latter is destroyed for any reason, the usufructuary shall have no right to enjoy either the land or the remaining building materials.

§ 1 - If however the usufructuary has contributed alongwith the owner for the insurance of the building, the usufruct shall continue in the case of accident either on the reconstructed building if it is reconstructed or on the proceeds of the insurance if reconstruction does not suit the owner.§ 2 - If the owner on request by the usufructuary has refused to contribute to the insurance of the building and the usufructuary obtains the insurance, the usufructuary shall have the right in case of accident to the proceeds of the insurance in full.

§ 3 - If the usufructuary on the request of the owner has refused to share in the insurance, and the owner obtains the insurance, the said owner shall be entitled to the proceeds of insurance in full in the case of the accident.

Article 2247 – **Destruction of building integrated in rural property under usufruct** –If the usufruct is constituted on any rural property of which the destroyed building is part, the usufructuary may enjoy the soil and the materials.

Article 2248 – **Acquisition of the thing under usufruct for public purpose** – If the thing under usufruct is acquired for public purpose, in full or in part, the compensation shall in the absence of agreement among interested parties be invested in the purchase of government securities for public debt or given on interest with mortgage as the owner may deem fit, in the latter case however the usufructuary being heard over the suitability of the said mortgage and the interest shall belong to the usufructuary while the usufruct last.

Article 2249 – **Misuse of the thing enjoyed –** Usufruct does not get extinguished even if the usufructuary misuses the object thereof; but if the abuse causes substantial prejudice to the owner, he may apply that the thing be returned to him binding himself to pay to the usufructuary the liquid net produce of the said thing after deducting the expenses and the premium which may be awarded through arbitration on account of his administration.

Article 2250 – **Extinction of usufruct favouring many persons –** The usufruct constituted for the benefit of many persons leaving at the time of its constitution only ends upon the demise of the last survivor.

Article 2251 – **Effects of extinction of usufruct –** Upon termination of the usufruct, the thing shall revert to the owner subject to the right of withholding which the usufructuary or his heirs may have, for the expenses for which they had to be paid.

Article 2252 – **Sharing of fruits not plucked –** If the usufructuary sells the fruits close to their ripening, and expires before they are plucked, the sale shall subsist, but the price shall belong to the owner after deducting the expenses made for their production; but if the plucking is partly done and partly to be done, the price shall be divided between the owner and the heirs of the usufructuary in proportion to the part plucked and that which remains to be plucked.

Article 2253 – **Liability of the usufructuary for the fruits collected prematurely –** The usufructuary shall be liable for the fruits which, by fraud, he collects prematurely; but if he has part of them, and leaves another part not plucked in ripe condition, there shall be mutual compensation considering the respective values.

SECTION II

USE AND HABITATION

Article 2254 – **Rights of use and habitation –** The right of use consists in the permission given to one or more persons to use the thing belonging to another for as long as they require, for their daily needs.

§ Sole paragraph - When this right is in respect of residential houses, it is called right of habitation.

Article 2255 – **Mode of Constitution –** The right of use and habitation are granted and extinguished in the same manner as the usufruct and are similarly regulated by the title document by which it is granted: in the absence or in the deficiency of the title document, the following shall be observed.

Article 2256 – **Duties of person using –** The person using or the resident using is liable to make an inventory and furnish security in the same manner as the usufructuary

Article 2257 – **Use of the fruits of the property** – Person who uses the fruits of a property cannot have more than those necessary for his expenses and those of his family whether the latter grows larger or smaller in number.

Article 2258 – **Personal nature of the right to use –** The person who uses or resides may not sell, hire or assign his right in any manner whatsoever.

Article 2259 – **Expenses which are fully to be borne by the person using –** If the person using consumes all the fruits of the property or occupies the full building, he will be subject to the expenses of cultivation, for the repairs for conservation and for the payment of dues in same manner as the usufructuary.

Article 2260 – **Encumbrances which only partially affect the person using –** If the person using takes only part of the fruit or occupies only part of the building, he shall contribute to the expenses mentioned in the preceding article in proportion to his enjoyment.

Article 2261 – **Other provisions applicable to the right of use –** The provisions of articles 2203, 2217, 2240 to 2247 both inclusive and article 2253 are applicable to the right of use.

CHAPTER IV

THE RIGHT OF COMMON PASTURES

Article 2262 – **Right of common pastures** - The right of common pastures consists of communion in pasturage of the properties belonging to different owners.

Article 2263 – **Pasturage in public lands** - The communion of pasturage of public lands, whether belonging to parishes, municipalities or Government or states in entirely regulated by administrative laws.

Article 2264 – **Mode of constitution** - The right of pasturage, established on private properties, by tacit concession, before the promulgation of this Code is abolished. In future such right can be constituted only by express grant from the owners.

§ Sole paragraph – Express grant is which flows from a contract or disposition of last will.

Article 2265 – **Abolition of certain kinds of common pasturage** – In the same manner the right of pasturage, established before the promulgation of this Code, between one group of individuals in general over a group of properties in general stands abolished even though made by express grant. In

future, it is lawful to establish such right in certain and specific properties and also in favour of certain and specific individuals.

§ Sole paragraph - The pasturage established in accordance with this article, is governed solely by the instrument of its constitution.

Article 2266 – **Remission of perpetual encumbrance of pasturage** - The properties burdened with perpetuity for pasturage, by any private document, may be exempted from such burden, upon payment of just value.

CHAPTER V
EASEMENTS / SERVITUDE

SECTION I
GENERAL PROVISIONS

Article 2267 – **Concept of Easement**[56] **–** Easement is an encumbrance laid on any property to the advantage or for the use of another property belonging to another owner: the property subject to the easement is called servient and the one which makes use of the same is called dominant.

Articles 2267 to 2286 – Section 4 of the Goa, Daman and Diu (Extension of Indian Easements Act) Act, 1978, provided that on and from the date on which provisions of the said Act came into force, the corresponding provisions of any law in force in the Territory shall stand repealed.

Article 2268 – **Inseparability of the properties** –Easements are inseparable from the properties to which actively or passively they belong.

Article 2269 – **Indivisibility of Easements** –Easements are indivisible: If the servient property is partitioned among various owners, each portion will be subject to the part of the easement which pertains to it; and if the dominant property is divided, each partner may use the easement without any alteration or change.

56*The Portuguese word '**Servidão'** is often translated as 'Servitude'. Servitude is a somewhat wider term and includes easements, irrevocable licences, profits and real covenants. But the two terms are often used interchangeably as if equivalent to each other: Servitude in Civil Law and Easement in English/Common Law. The Civil Code of Quebec translates it as servitude, but Mexican Civil Code translates it as easement. I have chosen the word easement in order to make it more understandable.*

Article 2270 – **Classification of Easements** –Easements may be continuous or discontinuous, apparent or non apparent.

§ 1 - Continuous easements are those, the enjoyment of which is, or may be unceasing irrespective of any human act.

§ 2 - Discontinuous easements are those which depend on a human act.

§ 3 - Apparent easements are those which are disclosed by works or external signs.

§ 4 - Non-apparent easements are those which do not show any external sign.

Article 2271 – **Sources of Easements** – Easements may arise by act of man, by the nature of things or by operation of law.

SECTION II
EASEMENT ARISING BY ACT OF MAN

Article 2272 – **Mode of Constitution of apparent easements** –Apparent easements, continuous or discontinuous may arise by any of the modes of acquisition laid down by the present Code.

Article 2273 – **Modes of Constitution of non apparent easements** – Non apparent easements may also be constituted by any means except by prescription.

§ Sole paragraph - The exception in this article applies to easements arising before or after the enactment of the Civil Code, except if their existence has been declared by judgment of Court or legal document.

Article 2274 – **Easement by indication by a head of family** – If in two properties of the same owner or in two portions of one property, there is a sign or signs apparent and permanent put by him or by his predecessors in one or in both, which indicate the easementary nature of one with respect to the other, these signs shall be deemed to be proofs of the easements when in respect of the ownership the two properties or the two portions of the same property come to be partitioned, except if at the time of the partition a different declaration is made in the concerned document.

Article 2275 – **Regulation of easements constituted by legal transaction** – Easements established by contract or by Will shall be regulated in terms of the respective title document: in the absence of declaration, the following shall be observed.

Article 2276 – Right to do acts to secure enjoyment – The dominant owner is entitled, to do on the servient property, all acts necessary to secure the enjoyment and maintenance of the easement; but such acts must be done in such manner as not to alter it or make it more onerous.§ 1 - If there are different dominant properties, all the owners shall be bound to contribute to the expenses referred to in this article in the proportion to the part which they have in the advantages of the easement, of which they may be exempted only by relinquishing the easement in favour of others;
§ 2 - If the owner of the servient property also draws utility from the thing over which the easement falls, he shall be bound to contribute in the manner established in the preceding paragraph.

Article 2277 – Works to be carried out by owner of servient tenement – Where the owner of servient tenement is bound by the respective title document, to bear the costs of the required works, he may get himself discharged of this liability, by releasing his tenement to the owner of the dominant tenement.

Article 2278 – Changes of easement – The owner of the servient tenement shall not hinder in any manner the use of a constituted easement; but, if the said easement, at the place originally assigned for its use, becomes prejudicial to the owner of the servient tenement, or prevents him from carrying out important repairs or improvements, he may shift it, provided the owner of the dominant tenement is not put to loss.

§ Sole paragraph – The easement constituted with any restrictions, by title document or by possession, shall not be expanded in its extent or in its frequency.

Article 2279 – Extinction of easements – The easements end:

1. By rejoining of the two tenements, dominant and servient, under the ownership of the same person;
2. By not using for thirty years, whatever be the reason, and not withstanding the incapacity of the dominant proprietor;
3. By renunciation or yielding by the owner of the dominant tenement.

§ Sole paragraph – The easement constituted by prescription may be declared extinct judicially, at the instance of the servient proprietor, after they become unnecessary to the dominant tenement, either because the corresponding needs of this tenement have ceased, or for being impossible to satisfy them through those tenements or because the dominant proprietor can make it by some other equally convenient means.

Article 2280 – Counting of non–user – Indiscontinuous easements, prescription shall run from the day on which it ceased to be used, and in the continuous ones, from the day on which the interruption of the easement commences.

§ Sole paragraph – In relation to the mode of easement, prescription shall run on the same terms.

Article 2281 – Interruption of non–use when there are many dominant proprietors – Where the dominant tenement belongs jointly to many, the use of easement by any one of them shall prevent prescription in respect of the remaining.

§ Sole paragraph – Where, by legal exception, the easement cannot prescribe against any one of the dominant proprietors, the advantage of the law shall benefit all the others.

SECTION III

EASEMENTS CONSTITUTED BY THE NATURE OF THING OR BY LAW

Article 2282 – Legal easement of water drainage – The low lying tenements are bound to receive the waters, which run down naturally and without work of man, from the higher tenements, as well as the mud and rubble, which they carry in their current. Neither the owner of low lying tenement shall carry out works which may hinder this easement, nor the owner of higher tenement works that may aggravate it.

Article 2283 – Protection works to contain waters – The owner of the tenement, where there are protection works to contain the waters, or where it is necessary, due to change of the course of the same waters, to construct them again is bound to carry out the required repairs or to agree that the owners of tenements that suffer, or are exposed to impending losses due to lack of such repairs, carry them out without loss to him.

Article 2284 – Removal of materials which may hinder the course of waters – What is provided in the preceding article is applicable to cases in which it may become necessary to free any property of matter, the accumulation or fall of which hinders the course of waters, with damage or risk to third parties.

Article 2285 – Duty to contribute towards expenses of aforesaid works – All the proprietors who share in the benefit accruing from the works mentioned in the preceding articles, are bound to contribute towards their expenses, in proportion to their interest, without prejudice to the liability that may burden the author of the damage, in cases of fault or deceit.

Article 2286 – Restrictions on the right to property -All the other easements specified as being of public or private interest, are effective restrictions on the right to property and as such regulated at the appropriate place.

TITLE V

RIGHT OF ENJOYMENT

CHAPTER I

GENERAL PROVISIONS

Article 2287 – **Right of Enjoyment –** The right of enjoyment includes:

1. The right to receive all the fruit, whether natural, industrial or civil in nature from the thing itself;
2. The Right of accession;
3. The Right of access

Article 2288 – **Vertical limits of property -** The right of enjoyment of the land consists not only soil in all its depth subject to the provisions of laws relating to minerals and mining but also the

aerial space corresponding to the soil to the height capable of occupation but subject to other laws in force.

CHAPTER II
ACCESSION

SECTION I
GENERAL PROVISION

Article 2289 – **Concept of Accession –** Accession is said to take place when a thing not belonging to a person gets joined and incorporated in another thing which belongs to that person.§ Sole paragraph - Accession may be caused by natural action or by human labour.

SECTION II
NATURAL ACCESSION

Article 2290 - **Natural accession** – All that is added to a thing or property by action of nature or accidentally shall belong to the owner of the said thing or property.

Article 2291 – **Alluvion –** All that is deposited by action of waters and gets joined to or deposited on properties along rivers, rivulets or any water courses shall belong to the owners of the said properties.

Article 2292 – **Avulsion –** But if the current pulls out any plants, carries away any object or diverts a known portion of the land and such things are deposited in the property of another, the owner shall retain right to the same and may demand that the same may return provided the demand is made within 3 months if not judiciably intimated to remove the same within a time fixed by the Court.

Article 2293 – **Land flooded or submerged due to change of the direction of current** –If a current changes direction, the owners of the property flooded or submerged shall acquire right to the land which was the former river bed each one in proportion to the property lost by the variation of the current.

Article 2294 – **Ownership of certain islands and river islands** –The islands formed in the seas adjoining the Portuguese territory and on navigable rivers shall belong to the State and may only be acquired by private person through lawful grant or by prescription.

§ Sole paragraph – However, if at the time of formation of the islands or banks of rivers, any of the property on the river bank suffer loss, the river islands or river bank so formed shall belong to the owners of the property wherein the decrease in area has taken place and in proportion to the same.

Article 2295 – **Islands and Banks in non navigable rivers –** The islands and banks formed in rivers which are not navigable shall belong to the owners of the properties along the river side on whose side they are formed after drawing a dividing line through the middle of the river bank.§ Sole paragraph – to these river island and banks the provision of the sole paragraph the preceding article shall apply.

Article 2296 – **Land flooded by a current which splits up –** If a current splits up into two branches without the old water bed being abandoned, the owner or owners of the flooded properties shall retain the rights which they had to the land which belong to them and which was submerged by the current.

Article 2297 – **Lakes and ponds –** The provisions of the preceding article are applicable also to lakes and ponds on analogous facts which may occur therein.

SECTION III
INDUSTRIAL ACCESSION OR ACCESSION BY HUMAN ACTION

Article 2298 - Industrial accession – Industrial accession takes place when by acts of man objects belonging to different owners get mixed together or when one person applies his labour to materials belonging to another, as a result of which his property gets confounded with the property of another.

§ Sole Paragraph – According to the nature of the objects accession may be mobiliary or immobile.

SUB SECTION I

MOBILIARY ACCESSION

Article 2299 – **Coming together or confounding in good faith** – If anyone, in good faith, unites or merges any object belonging to him with an object belonging to another in such manner that they cannot be separated or, if separated will result in loss to any of the parties, the thing joined together shall belong to the owner of the thing which has the greater value provided he indemnifies the owner of the other or delivers to him an equivalent thing.

§ 1 - The person responsible for the merger shall however be bound to take the thing joined even if it is of greater value if its owner prefers the above mentioned compensation.

§ 2 - If both the things are of equal value and the owners do not agree over which of the owners shall retain the things, there shall be a licitation between them and the auctioned object shall be adjudicated to the one who offers the highest bid for the same, after the amount paid to the other, the higher bidder shall be bound to pay the same.

§ 3 - If the Interested Parties do not want to auction the thing shall be sold and each one of them shall have his rightful share in the proceeds of sale.

Article 2300 – **Coming together or merger in bad faith –** If the merger has been done in bad faith and the thing can be separated without being damaged it shall be returned to the owner with losses and damages.

§ Sole paragraph – If, however, the thing cannot be separated without suffering damage, the person responsible for the merger shall be bound to restore the value with losses and damages when the owner of the thing merged does not want to retain both the things joined together by paying to the person responsible for the merger, the value of the thing which belonged to the latter person.

Article 2301 – **Casual merger** –If the joining together or merger takes place accidentally and the thing so joined or merged cannot be separated without loss to any of them they shall belong to the owner of the more valuable thing who shall pay its fair value and if he does not want to do it, the said right shall belong to the owner of the less valuable thing.

§ 1 - If none of them wants to retain the thing, it shall be sold and each one shall have the part of the price which belongs to him.

§ 2 - If both the things are of equal value, the provisions of Article 2299 (2) & (3) shall be observed.

Article 2302 – **Specification in good faith** – If anybody in good faith by his labour or Industry gives a new form to a movable object belonging to another, he shall assume ownership of the transformed object if the object is not restored to its original form or, it cannot be restored without loosing the value added to it by the transformation.

§ 1 - In the last case, the owner of the material shall be entitled to retain the object if the value of the labour does not exceed that of the material.

§ 2- In both the cases mentioned above, the one who retains the thing shall be bound to compensate the other for the value which belongs to him as of right.

Article 2303 – **Transformation in bad faith –** If the transformation is done in bad faith, the thing transformed shall be returned to the owner in the condition in which it is with losses and damages, without the owner being bound to compensate the person responsible for the transformation, if the value of the transformation has not increased the value of the transformed thing by more than 1/3rd; for, in the latter case, the owner of the thing shall be bound to refund that which exceeds the said 1/3rd.

SUB SECTION II

IMMOBILE ACCESSION

Article 2304 – **Construction in own property with materials belonging to another –** Whoever in his own land constructs anything on the materials belonging to another shall acquire the said materials on paying the value thereof besides losses and damages.

Article 2305 – **Cultivation in own property with seed belonging to another** –Whoever carries out any cultivation in his own property with seeds or plants belonging to another shall acquire the said seeds or plants being subject to the duties cast by the preceding article : if however the owner of the plants prefers that the same be returned, the same shall be restored to it; but in such case shall not be entitled to any compensation without prejudice to any right to criminal action which he may have.

Article 2306 – **Construction or plantation in the land of another** –If the owner of any materials seeds or plants carries out in the land of another, construction works or cultivation or plantation, and if he is in possession of the said land in his own name in good faith and with just title, the following shall be observed.

§ 1 – If the total value which the said works, cultivation or plantation have given to the property where they were carried out is greater than the value which it had before, the true owner shall only have the value which the property had before the said works cultivation or plantation or the value which it would have at the time of eviction as he may desire.

§ 2 – If the value given is equal there shall be licitation between the earlier owner and the person who carries out the construction, cultivation or plantation in the manner laid down in the Article 2301.

§ 3 – If the value given is less, the construction works cultivation or plantation shall belong to the owner of the land with the duty to compensate the person who has done the same for the value which they may have at the stage of eviction.

Article 2307 – **Construction or plantation in bad faith in the land of another –** If in bad faith construction, cultivation or plantation is carried out in the land of another, the owner of the land may demand that this plantation, cultivation or construction be removed and the land be restored to its original condition at the cost of the person who has done it. However, if the owner of the land prefers to retain the construction, cultivation or plantation he may do so by paying to the person who has done the same their value which they may have at this stage or that of the materials and the labour put into it, as he may want.

Article 2308 – **Acquisition of trees belonging to another in own property** – The owner of property in which there are trees belonging to another may acquire the same paying their value except if by contract he has agreed to retain them in the ownership of another for a certain number of years which shall not exceed thirty.

CHAPTER III
RIGHT OF ACCESS OR PASSAGE

Article 2309 – **Easement of passage by operation of law –** The owners of land locked properties, that is, those which do not have any access to the public roads, may demand way or passage through adjoining properties, by compensating for the loss which they may cause by reason of this passage. When, however these properties are of the kind mentioned in Article 456, the concerned owner may avoid these obligations by acquiring the landlocked property for the price that may be fixed judicially after previous valuation.

§ 1 - In the case of sale, private or through Court, gift for payment, emphyteusis or lease for a period above 10 years the owners of land locked properties as also the owners of properties and encumbered with the respective easement, whatever may be the source of title, shall have the right of first preference.

§ 2 - In the case of judicial auction the provisions of Article 848 of the Code of Civil Procedure, shall be observed and the administrator or the decree holder shall indicate the names of the owners of the servient properties in order to notify the same.

§ 3 - In order to exercise the Right of preference in other cases the said owners should be notified under Article 641 of the Civil Procedure Code and in the absence of notification, they may exercise the right conferred on them in terms of Article 1566 paragraph 4.

§ 4 - In case more than one owner turns up claiming such a right, auction shall be held among them and the highest value obtained shall revert in favour of seller.

§ 5 - In case there is more than one owner with right of preference none of them shall be entitled to exercise his right judicially without prior notification to the others in terms of article 641 of the Code of Civil Procedure and in case of any of those notified comes forward to exercise his right of preference licitation shall be opened among those claiming preference, and said right of preference shall be adjudicated to the one who offers the highest price and who, within 3 days,

shall deposit in favour of the seller the excess over the original price of the contract and pay within 30 days the corresponding stamp duty.

- Article 2309 held not repealed in Shri. Karl Fernandes vs. Reginaldo T.C. D'Souza & others (1997(1) Goa L.T. 81.

Article 2310 – **Location of the passage –** Passage shall be given through the side causing minimum disadvantage to the owners of the servient properties.

Article 2311 – **Transfer of land locked property by one of the adjoining owners –** If the landlocked property is transferred by any of the owners of adjoining properties through which passage may be given, the duty to provide easement shall preferably be cast on the property or properties of the one who effects the transfer.

§ Sole paragraph – If the land locking of the property results from partition due to non-observance of Article 2143, the easement shall be through the property or properties of which the land locked property was a part.

Article 2312 – **Content of the Right of Easement** – The person who acquires the right of access does not have ownership of property but only an easement which shall be regulated by the provisions of Articles 2267 to 2285.

Article 2313 – **Cessation of easement –** The duty to provide passage may cease on application of the owner of the servient property, in case the need for easement ceases, or if the owner of the dominant property in any manner has the possibility of equally convenient access to the public road through his own land.

§ Sole paragraph – The provision of the article is applicable to the accesses of passage whatever might have been the source of their acquisition in case there has been a compensation it shall be refunded by the one who is freed from encumbrance.

Article 2314 – **Right of access or transit –** If it is indispensable for the purpose of repairing a building, to erect scaffolding, place any object on the property of another or carry construction materials through the same, the owner of the said property shall be bound to consent provided he is compensated for any loss thereby caused to him. In case of refusal or objection without just

cause, he shall be liable in damages and compensation and the permission shall be made good by the court within the period of 10 days.

- Article 2314 held repealed in Eulalia Rodrigues vs. Gurudas Raikar (1999) (2) Goa L.T. 199.

TITLE VI
RIGHT OF TRANSFORMATION

CHAPTER I
GENERAL PROVISIONS

Article 2315 – **Right of transformation -** The right of transformation includes power to modify or alter in any manner in full or in part or even destroy one's own thing.

§ Sole paragraph – This right belongs to the owner of the thing whether mobiliary or immobile.

Article 2316 – **Limits to the rights of transformation** - The Right of transformation may only be limited by the will of the owner or by provision of law.

CHAPTER II
RESTRICTION ON PROPERTY FOR THE PROTECTION OF PROPERTY OF OTHERS

SECTION I
PLANTATION OF TREES AND BUSHES

Article 2317 – **Plantation of trees and bushes** –Plantation of trees and bushes is lawful at any distance from the boundary dividing the adjoining property from the property in which the plantation is made but the owner of the adjoining property may pull out and cut the roots which enter into his property and the branches spreading out over it provided he does not cross the vertical dividing line by cutting the said roots or branches and if the owner of the tree, on request, does not do it within three days.

Article 2318 – **Plucking of fruits** –The owner of the tree or bush adjoining or contiguous to the property of another has the right to demand that the owner of the said property allow him to collect the fruit which cannot be collected from his side; but he is liable for any damages that this may cause.

Article 2319 – **Ownership of trees along the boundary line** –In case the ownership of trees or bushes along the boundary line is disputed they shall be presumed to be owned in common till the contrary is proved.

Article 2320 – **Uprooting of common trees or bushes** –If any of the owners of trees or bushes owned in common wants to uproot the same the other shall not be entitled to object but shall be entitled to half of the value of trees or bushes or half of the firewood or wood of the tree as may be convenient to him.

§ 1 - If however the tree or bush serves as a dividing mark it cannot be uprooted except by mutual consent.

§ 2 - The tree or bush removed may not be replaced by another except by mutual consent.§ 3 - The fruits of the tree or bush owned in common and the expenses for its cultivation shall be shared in terms of article 2175 onwards.

SECTION II
EXCAVATION

Article 2321 – **Right to dig mines or excavation** – An owner may dig in his property mines or wells or make such excavations as he may deem fit subject to the following provisions.

Article 2322 – **Limitations to the above rights** – No owner without the consent of his neighbour may extend the mines or excavation made by him beyond the vertical boundary line.

Article 2323 – **Restriction on the right to make excavation** – No one shall, in his own property, be entitled to open wells, holes, drains, canals for drainage along the wall, whether common wall or wall belonging to another without maintaining the distance, or doing the works necessary to avoid damage to the said wall.

§ 1 - In this regard the Municipal and administrative laws and regulations shall be observed.§ 2 - As soon as the neighbour suffers damage as a result of the work mentioned above he shall be compensated by the person who does the work except if there has been an express agreement to the contrary.

SECTION III

CONSTRUCTIONS AND BUILDINGS

Article 2324 – **Right to construct or build** –It is lawful for any owner to erect on his soil any construction, structure or building in conformity with the municipal and administrative regulations and subject to following provisions.

Article 2325 – **Easement of air and light –** The owner who erects a compound wall, or other structure on the border at the far end of his property shall not be entitled to open therein any window, door, nor construct any projection balcony or veranda which opens directly over the adjoining property without leaving between any of these works and the said other property a set back of 1 ½ (one and a half) meter.

§ 1 - The provisions of this article do not include gaps, loopholes and openings for light and such openings do not prescribe against the neighbour, who, at any time, may raise his house, building a wall even if it prevents the light to the opening.

§ 2 - In case of two properties which are oblique in relation to one another the distance of 1 ½(one and a half) metre is measured perpendicularly from the property overlooked till the property or structure newly erected; but if the oblique angle is more than 45 degrees the restriction in this article shall not apply.

§ 3 - Works executed in violation of the provision of this article prescribe against the adjoining owner in a period of 10 years being easements only of air and light, and the servient owner may at any time raise any building or structure in his own property provided he maintains between the said property and the said work the minimum set back of 1 ½ (one and a half) metre all along the said works.

Article 2326 – **Properties exempted from the present restriction** –The provision of the preceding article are not applicable to properties separated among themselves by any road, way, street, lane, path or other public passage.

Article 2327 – **Means to avoid dropping of water over adjoining properties** –An owner shall build in such a manner that water from the edge of his roof does not drop over adjoining properties leaving a set back of atleast 5 decimetres between the said property and the edge of the roof if he has no other way to avoid the same.

SECTION IV

COMPOUND WALLS AND COMMON WALLS

Article 2328 – **Forced sharing of compound wall –** Every owner of property adjoining a wall or compound wall belonging to another may acquire common rights therein, in full or in part by paying half of its value and half of the value of the land over which the said wall or compound wall is constructed.

§ Sole paragraph – But if on this wall or compound wall there are balconies, windows or other openings to which the owner is entitled, the said communion shall take place only if the said owner consents.

Article 2329 – **Opening of windows in common wall –** The owner to whom the wall or common wall belongs may not open therein, slits, openings or windows or make any opening or alteration without the consent of his co-owner.

Article 2330 – **Construction over common compound wall –** Any of the co-owners may build over a common compound wall and insert therein rods or planks provided he does not cross the middle of the wall.

§ Sole paragraph – If the wall is of single width that is 50 centimetres or less both the owners may use its full width, being however liable to compensate the other owner for any loss.

Article 2331 – **Raising of common compound wall –** A co-owner may also raise the height of the common wall provided he does it at his own cost, and does not build, introduce rafters or beams beyond the middle of wall even if while raising the height he also constructs the other half.

§ Sole Paragraph – If the wall is of single width the provision of the sole paragraph of the preceding article shall apply.

Article 2332 – **Right and duty to reconstruct the existing wall–** If the compound wall or common wall is not in a condition to bear the load of the increased height, the person who wants to raise the same shall be bound to reconstruct the same at his cost and if wants to increase the width or thickness of the wall, the space for the same shall be utilized from his side.

Article 2333 – **Forced communion in the raised portion of a wall –** A co-owner who has not contributed for the increase in height may acquire co-ownership in the increased portion by paying half of its costs and in the case of increase in width or thickness, one half of the value of the increased space.

Article 2334 – **Repair and reconstruction of common wall** – Repair and Reconstruction of common wall shall be made at the cost of the co-owners in proportion to their respective shares.§ 1 - If the compound wall is in the nature of a fence, the expense shall be divided among the co-owners in equal shares.

§ 2 - If besides the fencing, any of the co-owners derives from the compound wall another benefit which is not common to the other co-owner the expense shall be rateably distributed among them in proportion to the benefit which each one derives.

§ 3 - If the collapse of wall results solely from any act the benefit of which one of the co-owner derives, only the said co-owner shall be bound to reconstruct or repair it.

Article 2335 – **Repairs to various floors belonging to different owners –** If the different floors of a building belong to different owners and the mode of repair and maintenance is not regulated in their respective title document the following shall be observed:-

§ 1 - The common wall and roofs shall be repaired by all in proportion in which it belongs to each one.

§ 2 - The owner of each floor shall pay the expenses of repair of his floor and ceiling.

§ 3 - The owner of the first floor shall pay the expenses for repair of the staircase which he uses; the owner of the second floor shall pay the expenses for repair of the part of the stair case which he similarly uses beginning of the landing of the first floor and so on.

Article 2336 – **Ownership of boundary wall** – When there is a doubt as to whether the compound wall or the wall separating two buildings is common or not, it shall be presumed to be common in its full height if the buildings are of equal height and the height of the lower building if they are not of equal height, unless the contrary is proved.

Article 2337 – **Presumption of communion** – The compound walls between open plots of land or between the compounds or yards of buildings are presumed to be in common ownership unless there is proof or indication to the contrary.

§ 1 - The following signs shall exclude the presumption of communion.

(1) If the edge of the roof is slanting towards only one side.
(2) If the wall in its full length supports any building or construction which is only on one side or on the property of only one adjoining owner.
(3) If there are projections or designs of stone on only one side along the full length of the wall. (4) If the adjoining property does not have compound wall of the same type along the other side.

§ 2 - In the case of no.1 it shall be presumed that the wall belongs to the one on whose side the slope lies, in the other cases the wall shall be presumed to belong to the one on whose side the construction or indications mentioned are to be found.

SECTION V

CONSTRUCTION OF STORAGE DEPOSITS FOR DANGEROUS SUBSTANCES AND OTHER SIMILAR CASES

Article 2338 – **Construction of soak pits along common wall or neighbouring wall –**Whoever wants to open any septic tank, soak pits or sewage drain along any wall whether common or belonging to another; or constructs along the said wall any chimney, fireplace, cooking place or place for storage of salt or of any corrosive substance or that which produces damaging flow shall be bound to maintain the set back and take such precaution and preventive measure as may be laid down by local or special laws and regulations but if there are no such regulations or laws the concerned person may require that all such precautions be taken as may be declared necessary by experts.

TITLE VII

RIGHT OF EXCLUSION AND DEFENCE

Article 2339 – **Right of exclusion and defence –** An owner of property shall be entitled to enjoy the thing held by him to the exclusion of every other person and to employ for this purpose all the means not barred by law; this right shall include the right of demarcation, enclosure and defence.

CHAPTER I

RIGHT OF DEMARCATION

Article 2340 – **Right of demarcation –** The owner as also the usufructuary or possessor in his own name has the right to compel the owner of adjoining property to contribute for the demarcation of respective boundaries between his property and theirs.

Article 2341 – **Basis of demarcation –** Demarcation shall be made in accordance with title documents of each one and in the absence of documents of title sufficient for this purpose in terms of the possession of the adjoining owners.

Article 2342 – **Demarcation in case the title or possession is not sufficient –** If the title documents do not show the boundary and the area belonging to each owner and the question cannot be resolved by the possession or by other means of proof before the competent court, the demarcation shall be made by distributing the land in dispute in equal parts.

Article 2343 – **Title document in conflict with the area of the land –** If the documents of the title of adjoining owners taken together indicate an area bigger or lesser than the one which the totality of land covers, the excess or the short fall shall be allotted proportionately to the share of each one.

Article 2344 – **Mistake in fixation of boundary marks –** If the boundary marks have been placed based on a common title document not disputed by the parties, and if there is an error in their fixation, the error shall be corrected and objection on the ground of prescription shall not be available.

Article 2345 – **Right to demarcation not subject to prescription–** The right to seek demarcation is not subject to prescription, subject however to the right of prescription in respect of the property itself.

CHAPTER II

RIGHT TO ENCLOSE PROPERTY

Article 2346 – **Right to enclose property –** Every owner of property may enclose the same by a wall, by a trench or ditch, any kind of fence or by any other means in accordance with the provisions of this section.

Article 2347 – **Opening of trenches or ditches around property–** A property owner who proposes to dig a trench around his property shall retain a border of soil with the width equal to the depth of the trench and if he wants to dig a canal he shall provide for the flow of the water outwards, subject in either case to any local custom or usage to the contrary.

Article 2348 – **Canals and water outlets presumed to be held in common** –The canals and water outlets between the properties of different owners not conforming to the requirements of the preceding articles shall be deemed to be held in common unless there is any proof or indication to the contrary.

Article 2349 – **Indications that holding is not in common** – Where a canal or water outlet has no external border and the mud of the excavation or cleaning thereof is dumped only on one side for more than one year, it shall be presumed that the canal or outlet belongs to the owner on whose side the mud is kept.

Article 2350 – **Conservation and cleaning of common canal** –The conservation and cleaning of a canal or water outlet held in common shall be regulated by the provisions of Article 2178. **Article 2351** – **Presumption regarding ownership of fence of living plants** – If two properties are separated by a fence or hedge of living plants, it shall be presumed that it belongs to the one who needs it the most and if both are in the same situation it shall be taken to be common, if there is no local custom by which the ownership of such fences is decided.

Article 2352 – **Conservation and replanting of common fence** –A common fence shall be conserved and replanted at the cost of the joint owners in terms of Article 2178.

Article 2353 – **Raising of wooden fences and hedges** – Wooden fences or "stockades" may be placed on the limits of properties, provided they are not inclined beyond perpendicular line drawn from the dividing line; hedges may not be planted without boundary marks being placed to identify the property from the neighbouring properties line, either by agreement or by way of demarcation through Court.

CHAPTER III
RIGHT OF DEFENCE

Article 2354 – **Right of defence** –Every owner of property has right to defend his property, repelling the use of force by force or taking recourse to competent authority.

Article 2355 – **Bar on new work** – If the violation arises from some the new work started by somebody, the person offended may take preventive measures and secure his right, by seeking preventive injunction against the proposed new work.

TITLE VIII
RIGHT OF RESTITUTION AND COMPENSATION OF VIOLATED RIGHTS

Article 2356 – **Right of restitution and compensation of violated rights –** Every person whose property or rights are violated or encroached upon shall be restituted and compensated on the terms declared by the present Code and the Code of Procedure.

TITLE IX
RIGHT OF ALIENATION OR TRANSFER

Article 2357 – **Modes of alienation or transfer** –An owner may alienate or transferhis property by any of the means by which it may be acquired.

Article 2358 – **Need for express alienation** – Alienation is not presumed except in cases where the law specifically establishes such a presumption.

Article 2359 – **Primacy of right of alienation** – The right of alienation or transfer is inherent to property and no one can be compelled to alienate or not to alienate except in the circumstances and in the manner laid down by law.

Article 2360 – **Acquisition for public purpose** – The owner of property may be deprived of the same in performance of duty towards another, or the same may be acquired, or he may be deprived of the enjoyment thereof, in full or in part, on the grounds of a public purpose, subject to payment of appropriate compensation.

PART IV

VIOLATION OF RIGHTS AND REMEDIES

(Articles 2361 – 2538)

PART IV
VIOLATION OF RIGHTS AND REMEDIES

BOOK I
CIVIL LIABILITY

TITLE I
PRELIMINARY

Article 2361 – **Duty to compensate for violation of the right of another** - Whoever violates or infringes upon the rights of another is bound to compensate the wronged person for all losses caused to him.

- Articles 2361 to 2403 – This group of sections covers the law of Torts, compensation and damages for which there is no corresponding statutory law in our country. In Torts, we follow English Common Law (Case law).

Article 2362 – **Mode of violation of rights** - Rights may be violated by acts or omissions.

Article 2363 – **Types of liability for unlawful acts and omissions** - Acts and omissions in violation of law may result in Civil or Criminal liability or in both simultaneously.

Article 2364 – **Concept of Criminal and Civil Liability** - Criminal Liability is the duty cast on the person who committed the act or omission, to submit to certain penalties laid down by law, which are the reparation for the damage caused to society in the moral order.

Civil Liability is the duty cast on the person who committed the act or omission, to restore the affected person to state prior to the wrong and to compensate for the losses and damages caused to him.

Article 2365 – **Connection between Criminal and Civil liability** - Criminal liability is always accompanied by civil liability; but civil liability is not always accompanied by criminal liability. The cases in which the latter is accompanied by Civil liability are laid down by law.

Article 2366 – **Heritability of right to compensation** - The right to demand compensation as also the duty to pay the same is heritable except where otherwise laid down by law.

TITLE II
CIVIL LIABILITY CONNECTED WITH CRIMINAL LIABILITY

CHAPTER I
FIXATION OF RESPONSIBILITY

Article 2367 – **Principle of self defence -** Whoever is assaulted by another by violent acts which may violate his inherent rights or deprive him from the enjoyment of his acquired rights or disturb enjoyment in any manner, is permitted to repeal the force by force, provided he does not exceed the limits of fair defence.

Article 2368 – **Duty to assist the victim -** It is the duty of those witnessing such aggressive acts to help the victim, without exceeding the limits of fair defence of the latter, and if, despite not running risk, they fail to oppose such act, they shall also incur liability for losses and damages.

Article – **Determination and assessment of the limits of fair defence -** Courts shall assess and decide whether the victim and those who assisted him in defence, exceeded the limits of fair defence.

Article 2370 – **The legitimacy of self defence -** The provisions of Arts. 2367 and 2368 are applicable only when it is not possible for the victim or those who are defending him to approach the public authorities for the purpose of avoiding the present damage or preventing impending damage.

Article – **Liability of the persons incharge of public security -** Those responsible for the maintenance of public security who, despite being informed permit the abovementioned attempts shall be responsible for the losses and damages jointly with the perpetrators of the offence against whom they shall thereof have recourse.

Article 2372 – **Joint responsibility of offenders -** If the violation of rights is committed by more than one individual, all shall be jointly responsible except for the right of the person who pays for others to recover from them their respective shares.

§ 1 - These shares shall be proportionate to the criminal liability of each one of the accused if this liability is differently graded.

§ 2 - This proportion shall be regulated by the Courts in the same act in which the criminal liability is graded if the victim has applied for necessary compensation.

Article 2373 – **Court having jurisdiction to order civil compensation -** Civil compensation or damages connected with criminal liability in terms of Articles 2382 to 2392 shall be claimed in the respective criminal proceedings. In all other cases, the said two liabilities may be claimed separately.

Article 2374 – **Civil damages to person who was not party to the criminal case -** If the victim was not party to the criminal proceedings, he will not be barred from applying for civil damages, but in such case may only avail of ordinary civil remedies.

Article 2375 – **Security for the right to compensation -** The assets of the accused shall be the security for discharging the liability to compensate the damage.

Article 2376 – **Security for compensation for married offender** - If the offender is married, none of the assets of the other spouse whether from the moiety, or not, shall be security for the compensation resulting from the act of the delinquent spouse.

Article 2377 – **Grounds for exemption from criminal responsibility but not from civil compensation** - If the person who causes the damage is acquitted from criminal liability by a reason of complete drunkenness or lunacy, he shall not for these reasons be freed from the liability for civil compensation, unless he is under the guardianship or legal control of another. In such case, the guardian or curator shall be liable unless it is proved that there was no default or negligence on his part.

§ Sole paragraph – If the guardian or curator is found not liable, the liability of the perpetrator shall subsist.

Article 2378 – **Limits of compensation in case of a person of unsound mind -** In all cases in which there has to be compensation out of the assets of any person of unsound mind, the necessary maintenance and basic needs according to the state and condition of the said person shall always be exempted.

Article 2379 – **Civil liability of minor -** Minority is not relevant for civil liability; but if person who commits the damage on account of his age is not subject to criminal liability, his parents shall be civilly liable for the same or the liability shall devolve on the person under whose care and supervision the guilty person is entrusted unless it is proved that there was no default or negligence on their part.

§ Sole paragraph – The provision of Article 2377 shall apply in the case of minors.

Article 2380 – **Liability for damages caused by employees or agents -** Where damage is caused by servants or persons entrusted with certain tasks or commission, in the course of the performance of their services or tasks, the said servants or persons, shall be liable alongwith their employers or principals subject to the recourse by the latter against the former when they have exceeded the orders or instructions given to them.

Article 2381 – **Damages caused in guest houses or hotels -** If damages are caused in Guest Houses or Hotels or in such other places where accommodation is provided for consideration, the owners of the establishment shall be jointly liable if the damages are caused by a person whom they have provided accommodation without following the police and other legal regulations and guidelines.

CHAPTER II
DEGREE OF LIABILITY ARISING FROM CRIMINAL ACTS

Article 2382 – **Types of damages -** Damages resulting from an offence may relate to primary rights or acquired rights.

Article 2383 – **Violation of primary rights and acquired rights -** Damages which arise from the violation of primary rights may relate to physical personality or moral personality; while damages relating to acquired rights relate to external material interest.

Article 2384 – **Compensation in case of voluntary homicide -** Compensation of losses and damages in cases of homicide committed voluntarily shall consists of the following:-

1. In the reimbursement of all the expenses incurred to save the life of the victim and of his funeral;
2. In providing maintenance to the widow of the victim while she is alive, and needs the same, or does not enter into second marriage, unless she herself is an accomplice in the murder; 3. In providing maintenance to the descendants or ascendants whom the deceased was bound to support, except if they have been accomplices in the murder.

§ Sole paragraph – Apart from the above, no relative or heir may seek compensation for murder.

Article 2385 – **Compensation for culpable homicide** - If the homicide is not voluntary but in circumstances which still renders it punishable according to Penal law, there will be compensation only for minor children and disabled ascendants of the deceased who may need the same.

Article 2386 – **Compensation in the case of voluntary hurt -** In the case of voluntary hurt, the offender shall be bound to compensate the injured person for the expenses incurred in the treatment and for the loss of income as a result of the injuries; but if from the said injuries disability or deformity results, the injured person shall be compensated for the losses resulting from the said disability or deformity.

Article 2387 – **Injuries not caused voluntarily -** In the case of injuries not caused voluntarily but punishable, there shall be compensation for the expenses of treatment, or for the benefits which the injured lost for this reason; and if the injured person suffers a defect or other irreparable damage, he shall be entitled to half the compensation fixed in the preceding article if he needs the same.

Article – **Acts in violation of personal liberty -** Compensation as a result of acts violating personal liberty shall consists in compensation for the losses and damages suffered for this reason.

Article – **Wrongs against good name and reputation -** Compensation for injury or other offence against the good name and reputation shall consist in compensation for the losses which are actually suffered by the victim and also the judicial condemnation of the offender.

Article 2390 – **False accusation or allegation of any crime -** In case the offence results from the accusation or allegation judicially made of any crime; and it is proved that there was fraud in the said allegation or accusation, the compensation shall consist in making up for the losses and damages; but if there is no fraud, the compensation shall consists in the payment of the costs of the proceedings.

§ Sole paragraph – The manner as to how these provisions are to be given effect to, shall be governed by Code of Procedure.

Article 2391 – **Violation of honour and virginity -** Compensation for violation of honor and virginity shall consist in the dowry which the offender has to give the victim according to the condition and state of the same, if he does not marry her.

Article 2392 – **Encroachment or violation of rights -** Compensation for violation of acquired rights, if there is encroachment or violation, shall consist in the restitution of the encroached rights with losses and damages and if there is damage or deterioration in compensation for the losses and damages resulting therefrom

§ 1 - If restitution of the thing is not possible the wrongdoer shall refund the value of the same.§ 2 - If the value cannot be ascertained the valuation shall be substituted by the statement of the wronged person on oath.

TITLE III
LIABILITY OF PURELY CIVIL NATURE

CHAPTER I
LIABILITY FOR FAILURE TO PERFORM OBLIGATIONS

Article 2393 – **Contractual Liability** – Responsibility arising from non-performance of contract, shall be regulated by the provisions of Article 702 onwards; responsibility arising from any other obligation shall be regulated by the same principles in everything to which these are applicable.

CHAPTER II
LIABILITY FOR DAMAGE CAUSED BY ANIMALS AND OTHER PRIVATELY OWNED THINGS

Article 2394 - **Liability for damages caused by animals or by other private things** – Those whose animals or other things belonging to them, cause loss to others, shall be responsible to compensate for the damage, unless it is proved that on his part there was no default or negligence.

Article 2395 - **Damage caused by collapse of a building which was in danger of collapsing -**If any building in danger of collapsing, actually collapses and causes damage to anybody the owner of the said building shall be responsible if it is proved that there was neglect on his part in repairing the same or in taking the precautions necessary to prevent its collapse.

CHAPTER III
LIABILITY FOR LOSSES AND DAMAGE CAUSED IN ORDER TO AVOID OTHER DAMAGES

Article 2396 – **Damages caused out of necessity** - If, in order to avoid eminent damage, which could not be otherwise avoided, damage is caused to the property of another, compensation for the same shall be made by the one for whose benefit the act was done.

§ Sole Paragraph - If the damage is done for the benefit of more than one person the compensation shall be paid by all of them in proportion of the benefit received by each of them.

Article 2397 – **Damage ordered by Public authority** - When the benefit is extended to a locality or when the damage is ordered by Public authority in exercise of its powers, the compensation shall be paid by the persons for whose benefit the damage was done and shall be apportioned and paid in accordance with the relevant administrative regulations.

TITLE IV
LIABILITY FOR LOSSES AND DAMAGES DUE TO NON OBSERVANCE OF REGULATIONS OR DUE TO NEGLECT OR LACK OF PRUDENCE

Article 2398 – **Losses caused by non-observance of regulations or by negligence** - The entrepreneurs or those executing constructions, whether owners or contractors for the work, owners of industrial, commercial or agricultural establishments and the companies or individuals constructing roads or railways and other public works, as also operators of transport by steamers or by any other means of transport shall be responsible, transport operators by land or by sea, shall be responsible not only for the damages or losses caused to the property of another but also for the accidents which due to their faults or fault of their agents, may be caused to any person, whether the damages proceed from acts or omissions, if the acts are contrary to the general regulations or to the specific regulations applicable to such works, industries, activities or enterprises and the omissions are in respect of the requirements of the said regulations.

§ 1 - The same liability shall attach to those who in the execution of the works or the carrying out of the enterprises, professions or trades indicated in this article cause to the properties of others or to persons, any losses or damages, when it is found that they have voluntarily failed to observe the common rules or practices, normally followed to avoid such inconveniences.

§ 2 - If the fault or negligence or the person affected or of another person contributed for the existence of the damage or prejudice the compensation shall be paid by deducting in the former case and in the latter case apportioned proportionately to the fault or negligence as laid down in Article 2372 (1) &(2).

TITLE V
LIABILITY FOR LOSSES AND DAMAGES CAUSED BY PUBLIC SERVANTS IN THE PERFORMANCE OF THEIR DUTIES

Article 2399 – **Damages caused by public servants in performance of duty -** Public servants of any rank or grade are not liable for the losses and damages caused in the performance of their duties cast upon them by law unless they exceed their powers or fail in any manner to observe the provisions of the same law, in which case the entity to whom they are subordinate shall be jointly liable alongwith them.

Article 2400 – **Damages caused by public servants exceeding their lawful powers** – If the said public servants by exceeding their lawful powers commit acts which result in losses and damages to another, they shall be answerable in the same manner as ordinary citizens.

Article 2401 – **Liability of Judge for their judgements -** The judges shall not be liable in respect of their judgements except in cases in which by means of competent appeals their judgements are set aside or modified for illegality and liberty is expressly granted to the affected persons to recover losses and damages or if the said judges are fined or costs are awarded against them in accordance with the Code of Civil Procedure.

Article 2402 – **Crimes, abuses and judicial errors by judges -** The provisions of the preceding article shall be no bar for proceedings which may be filed against judges for crimes, abuses and professional errors which they commit in the exercise of their functions.

Article 2403 – **Compensation due to an accused acquitted in Revision for a criminal sentence already executed -** If a criminal sentence is executed and if it is afterwards proved through appropriate legal means that the condemnation was illegal, the condemned person or his heirs shall have the right to secure the compensation for losses and damages which will have to be made by the public exchequer, after a decree in a regular suit filed against the Public Ministry of the State.

BOOK II

PROOF OF RIGHTS AND THEIR RESTITUTION

BOOK II

PROOF OF RIGHTS AND THEIR RESTITUTION

TITLE I

PROOFS

CHAPTER I

PROOFS IN GENERAL

Article 2404 – **Definition of proof** – Proof is the demonstration of the truth of the facts pleaded in judicial proceedings.

- Articles 2404 to 2440 stand substituted by the provisions of Code of Civil Procedure, 1939 and Articles 2441 to 2491 have been repealed by the Code of Civil Registration, 1912.
- Articles 2404 – 2440, 2492 – 2501, 2506 – 2534 – The entire contents of this Book II (Articles 2404 – 2538) were later elaborated and amended by the Code of Civil Procedure 1939 and the Code of Civil Registration, 1912. This group of Sections deal with Evidence now governed by Indian Evidence Act, 1872 and extended by Goa Daman and Diu (Laws) no. 2 Regulation, 1963, of which Section 4 reads as follows :

  4. (1) Any law in force in Goa, Daman and Diu or any area thereof corresponding to any Act referred to in section 3 or any part thereof shall stand repealed as from the coming into force of such Act or part in Goa, Daman and Diu or such area, as the case may be.

Article 2405 – **Onus of proof** -The burden of proof lies on the one who alleges the facts; except where there is any presumption of law in his favour.

- Substituted by articles 519 and 520 of the Code of Civil Procedure, 1939.

Article 2406 – **Proof of local or foreign law** – In cases where any statute or municipal bye -law of this country or any foreign law is cited, the existence of which is disputed, the one who has cited such statute, bye-law or law shall be bound to prove its existence.

Article 2407 – **Means of proof** – The only modes of proof admitted by this Code are:-1. Admission by parties;

2. Examination by experts and inspection by Judge alongwith experts;

3. Documents;
4. Res judicata;
5. Deposition of witnesses;
6. Oath;
7. Presumptions

 By Article 580 of Code of Civil Procedure, 1939, oath as a means of proof was abolished.

CHAPTER II
ADMISSION BY THE PARTIES

Article 2408 – **Definition of admission** - Admission is the clear acknowledgment by a party of the right claimed by the opposite party or the truth of the fact pleaded by the latter.

 Substituted by article 560 of Portuguese Civil Procedure Code, 1939.

Article 2409 – **Types of admission** - Admission may be judicial or extrajudicial.

Substituted by article 561 of Portuguese Civil Procedure Code, 1939.

Article 2410 – **Meaning of judicial admission** - Judicial admission is that which is made before a competent Court, by way of record in the proceedings, in the pleadings, or in the deposition by the party himself or by his attorney with special powers.

 Substituted by article 562 of Portuguese Civil Procedure Code, 1939. As to admission by the attorney refer to article 38 and Sole paragraph of article 305 of the Portuguese Civil Procedure Code, 1939.

Article 2411 – **Deposition by party** - Judicial admission may be spontaneous, or may be made in the examination applied for by the opposite party; but such a request may be made:-

1. From persons who can sue and can be sued;
2. On personal facts, certain and specific, relating to the object in controversy, or of which the deponent may have knowledge.

§ Sole paragraph: A party summoned to depose on pain of being deemed to have admitted, shall be taken as such, if he refuses to appear without any just cause.

 Substituted by articles 563 and 564 of Portuguese Civil Procedure Code, 1939.

Article 2412 – **Probative value of judicial admission** - The judicial admission constitutes full proof against the maker thereof, except:-

1. If the admission is declared insufficient by law, or it relates to a fact in respect of which the law forbids cognizance or investigation.
2. If it has effect of loss of right which the deponent is forbidden to renounce or in respect of which compromise is not permitted.

 Substituted by article 565 of Portuguese Civil Procedure Code 1939.

Article 2413 – **Revocation of judicial admission** - Judicial admission may be revoked on error of fact.

 Substituted by article 567 of Civil Procedure Code, 1939.

Article 2414 – **Meaning of extrajudicial admission** - Extrajudicial admission is that which is made by means different from that established by article 2410.

Article 2415 – **Modes of effecting extrajudicial admission** - Extrajudicial admission may be authentic or may be private. Authentic is that which is made by way of public instrument or public record; private is that which is done orally or by private instrument.

 Substituted by article 568 of Civil Procedure Code, 1939.

Article 2416 – **Probative value of extrajudicial admission** - Extrajudicial admission, which is merely oral, is inadmissible in cases where the oral evidence by witnesses is not admissible; in the cases where oral evidence is admissible, it is left to the wisdom of the adjudicator to assess its effects

depending upon the circumstances of the case and other evidence in the proceedings. The admission by private instrument may be appreciated as per provisions of articles 2431 to 2440.

Substituted by article 569 of Civil Procedure Code, 1939.

Article 2417 – **Admission should be taken as a whole** - An admission is indivisible; the party who wants to avail of the same is not permitted to accept that which is favourable to him, and reject that which may be prejudicial to him, except where the admission includes facts which are otherwise proved to be false.

Substituted and altered by article 57 of Code of Civil Procedure, 1939.

CHAPTER III
VERIFICATION OF FACTS IN RESPECT OF IMMOVABLES AND MOVABLES

Article 2418 – **Evidence by verification of facts in relation to immovables and movables** - Evidence by verification of facts in relation to immovables and movables, is meant to investigate facts which have left vestiges or may be subject to inspection or visual examination.

Substituted by article 581 and 584 of Portuguese Civil Procedure Code, 1939 and also 524 and 601 of Portuguese Civil Procedure Code, 1939.

Article 2419 – **Probative value of verification of facts in respect of movables and immovables** - Evidence arising from verification of facts in respect of immovables and movables, shall be assessed by the Court, according to the circumstances and remaining evidence in the case.

Substituted by article 582 of Portuguese Civil Procedure Code, 1939.

CHAPTER IV
DOCUMENTARY EVIDENCE

Article 2420 – **Definition of documentary evidence** - Documentary evidence is that which follows from a written document.

See article 527 onwards of Portuguese Civil Procedure Code, 1939.

Article 2421 – **Types of documents** - For the purposes of evidence, documents may be authentic or private.

Substituted and modified by article 527 of Portuguese Civil Procedure Code, 1939, wherein a new category called authenticated document is introduced (vide Article 536 of the said Portuguese Civil Procedure Code, 1939.)

SECTION I
AUTHENTIC DOCUMENTS

Article 2422 – **Meaning of authentic document** – An authentic document is one which is issued by a public officer, or through his intervention as prescribed by law.

Substituted by article 528 of Portuguese Civil Procedure Code, 1939.

Article 2423 – **Kinds of authentic documents** - Authentic documents are either official or extra official.

§ 1 - Authentic official documents are those which are drawn or issued by government offices, municipal councils, or church authorities entrusted with administration of dioceses and also judicial acts and all the documents recorded in the registers of all public offices, either extinct or existing.

§ 2 - The following are considered as public registrations, in order to decide whether the documents qualify as authentic, the Archives of extinct ecclesiastical corporations, preserved in any public office when they have been compiled by virtue of royal decrees and in the manner provided therein.

§ 3 - Authentic extra-official documents are the instruments, acts or deeds, drawn by public officials or with their intervention, in cases where such intervention is prescribed by the law, and meant for confirmation of contracts or the conservation or to the transfer of rights.

- This provision stands substituted by article 529 of the Civil Procedure Code.

Article 2424 – **Documents separately kept at ' *Torre de Tombo'*** [57] - Miscellaneous documents preserved in the general archives of the kingdom, known as *'Torre de Tombo',* or in any other government offices may be treated as authentic only if they are found in the conditions prescribed in 1st paragraph of preceding article.

- Substituted by paragraph 2 of article 529 of Portuguese Civil Procedure Code, 1939.

Article 2425 – **Probative value of authentic official documents** - Authentic official documents generally constitute full proof.

- Substituted by article 530 of Portuguese Civil Procedure Code, 1939.

Article 2426 – **Probative value of authentic extra-official documents** - Authentic extra-official documents constitute full proof, as to the existence of the act, to which they refer, except in that which may affect rights of third persons, who were not parties to the same act.

- Substituted by the 1st part of article 530 and 2nd part of article 531 of Portuguese Civil Procedure Code, 1939.

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57 '*Torre de Tombo' = 'tower of records', is the Portuguese National Archives.*

Article 2427 – **Declarations not covered by probative value of authentic documents** – The proof which results from authentic documents, does not embrace enunciatory declarations, which do not directly refer to the subject matter of the act.

- Vide article 530 of Portuguese Civil Procedure Code, 1939.

Article 2428 – **Indispensable nature of proof by authentic document** – The absence of authentic documents cannot be substituted by any other kind of proof, except in cases expressly laid down by law.

Article 2429 – **Reconstitution of misplaced or spoilt documents** - The instruments, which are misplaced or spoilt, may be reconstructed through the Court.

Article 2430 – **Probative value of authentic documents issued in foreign countries** –Authentic documents issued in a foreign country, in accordance with the law of that country, shall constitute proof in this kingdom, as the documents of same nature issued in the kingdom, would have made.

SECTION II

PRIVATE DOCUMENTS

Article 2431 – **Definition of private documents** – Private documents are those written or signed by any person, without intervention of a public official.

- Substituted and changed by article 537 of Code of Civil Procedure.

Article 2432 – **Private documents written and signed by their author –** Private documents, written and signed by person in whose name they are made, which are acknowledged by the parties or have been deemed judicially as recognized, shall have, as between the signatories and their heirs and representatives, the same force as authentic documents, except in cases in which the law declares otherwise.

- Substituted and modified by article 542 and 538 of the Code of Civil Procedure.

Article 2433 – **Probative value of private documents signed by the author or witness** –Private documents, only signed or "affirmed" by the person in whose name they are made, shall constitute proof against the signatory, if they are acknowledged by him or by his heirs and legal representatives;

but if they are signed also by two witnesses, whose names have been mentioned in the text of the document, shall constitute prima facie proof, which may be confirmed by their oral evidence before the Court.

Article 2434 – **Private documents signed on request or by cross** – Private documents, which are signed at the instance of a party or by sign of cross, are governed by the provision of preceding article

- Substituted and modified by article 540, 542 and 543 of the Code of Civil Procedure.

Article 2435 – **Burden cast on person to whom a writing is attributed** – Anyone confronted in Court, with any document apparently executed or signed by him, shall be bound on demand by the presenter, to declare whether the document or signature are in fact his.

- Substituted by article 546 of the Code of Civil Procedure

Article 2436 – **Date of private documents in relation to third person** – Private documents as against third parties are deemed to be dated, on the day any of the following events take place: 1. Authentic acknowledgment of the writing.

2. Death of any of the signatories.

3. Production of the document in the Court or in any public office.

§ Sole paragraph – Authentic acknowledgement is one which is done by a notary in the presence of parties and two witnesses.

- Substituted by article 545 of Code of Civil Procedure.

Article 2437 – **Private writing which does not hold against its author** – A private writing does not constitute proof against the person who wrote and signed it, when the latter has been always in possession of the same writing.

- Substituted and lightly modified by sole paragraph of article 545 of Code of Civil Procedure.

Article 2438 – **Notings by creditor in document creating obligation** –A note, written by a creditor, in the margin or at the reverse of any writing or obligation, even though not dated or signed constitutes proof in favour of the debtor.

- Substituted by article 544 of Code of Civil Procedure.

Article 2439 – **Value of personal household documents** – Records, registrations, and any other personal household documents do not constitute proof in favour of its author; but constitutes proof against him, if they declare clearly the receipt of any payment.

- Substituted and modified by article 545 of Code of Civil Procedure.

Article 2440 – **Personal household documents to be taken as a whole** – In case of the preceding article, the persons, who want to avail of such records, registrations or writings, need to accept them equally in the portion which is prejudicial to them.

- Substituted by article 542 of Code of Civil Procedure.

SECTION III
PROOF OF BIRTHS, MARRIAGES AND DEATHS

Article 2441 – **Proof of births, marriages and deaths** – The facts of birth, marriage and death are proved by way of public registration, established for the purpose.

- The subject of law of Civil Registration is dealt with primarily in articles 2441 to 2444 of the Civil Code. But at the present the subject of Civil Registration is governed by the Code of Civil Registration dated 9/11/1912.

- Article 2441 –As far as Marriages are concerned, this matter is governed by Code of Civil Registration, 1912 applicable to Goa Daman and Diu. Births and Deaths are now regulated by Registration of Births and Deaths Act 1969, extended by Gazette of India, 21/11/1970, Part 2, Section 3 (i) pg. 4276 of which Section 31 reads as follows :

31. Repeal and Saving – (1) Subject to the provisions of section 29, as from the coming into force of this Act

in any State or part thereof, so much of any law in force therein as relates to the matters covered by this Act shall stand repealed in such State or part, as the case may be.

Article 2442 – **Proof of unregistered facts** – There being no public registration, or where the above facts are not entered in the register, or if there is registration, or not in proper form, any other kind of proof may be admissible, save for the provisions in article 114 to 118.

- Article 2442 was re-enacted as Article 5 of the Code of Civil Registration, 1912.

Article 2443 – **Acts prior to the Code** – The births, marriages and deaths occurred prior to the promulgation of this code, and to the establishment of the Civil Registration directed by the same, may be proved by the same documents, by which till then they were admitted to prove such facts.

- Article 2443 was re-enacted as Article 7 of the Code of Civil Registration, 1912.

Article 2444 – **Details to be included in certificate** – In the certified copies issued from the books of Civil registration, the endorsements or marginal notes shall always be included.

- Article 2444 was re-enacted as Article 296 of the Code of Civil Registration, 1912.

SUB-SECTION I

CIVIL REGISTRATION

DIVISION I

GENERAL PROVISIONS

Article 2445 – **Scope of Civil Registration** – Civil Registration includes:-

1. Registration of births;
2. Registration of marriages;
3. Registration of deaths;
4. Registration of acknowledgment and legitimation of children

- All the articles from 2441 to 2491 both inclusive of the Civil Code, have been expressly repealed by the Code of Civil Registration of 9/11/1912 which was approved and published in the Official Gazette. By the same decree, also the provisions of articles 1075 to 1082, both inclusive have been repealed.
- Article 2445 – The subject of civil registration is governed by Code of Civil Registration, 1912. See its articles 2, 3 and 58.

Article 2446 – **Serial number for registration entries** – In each of those categories of registration, the entries shall be accompanied by a serial number. Such numbering will start every year.

- Article 2446 was re-enacted as Article 67 of the Code of Civil Registration, 1912.

Article 2447 – **Reading of record** –The record, before, being signed below, shall always be read in the presence of the parties who are obliged to sign it, of which express mention shall be made in the recording of the entry.

- Article 2447 was re-enacted as Articles 105 – 108 of the Code of Civil Registration, 1912.

Article 2448 – **Requirement of records** – In all Civil Registration entries, there shall be mentioned:-

1. The place where they have been made, time, date, month and year in which they are written; 2. The names, surnames, status, profession, place of birth and residence of the parties and of the witnesses who intervene in the same;
3. Any other particulars required by law, in respect of each categories of entries.

- Article 2448 – Later covered by Articles 103, 104, 150, 225 & 255 of the Code of Civil Registration, 1912.

Article 2449 – **Particulars mentioned in the record** – No entry shall contain more or less particulars than laid down by the law. Such particulars shall be entered in conformity with the information furnished by the persons interested in doing the registration, the documents produced by them, or, own observations of the official of registration services, unless otherwise laid down directed by law.

- Article 2449 was re-enacted as Article 92 of the Code of Civil Registration, 1912.

Article 2450 – **Corrections or additions to the record** – No declaration, correction, rectification, addition, or alteration of any nature whatsoever may be made in the Civil Registration entries, otherwise than by virtue of judgement passed by the Court, which has become res judicata with exception of what is provided in article 1088.

§ Sole paragraph – On the margin of the respective entries, record shall be made of the effect of the said judgment, in brief, which should contain the substance of the decision, date of the judgment, the Court which pronounced it and the respective office of the Court, where the proceedings were processed.

- Article 2450 was re-enacted as Articles 97 & 98 of the Code of Civil Registration, 1912.

Article 2451 – **Initialing of documents presented** – All the documents produced shall be initialed by the official of the registration services and placed in a bundle with the number of entry in the record of the respective registration.

- Article 2451 was re-enacted as Article 100 of the Code of Civil Registration, 1912.

Article 2452 – **Duplicate registration** – Registration shall always be done in duplicate.

- Article 2452 was re-enacted as Article 65 of the Code of Civil Registration, 1912.

Article 2453 – **Archives of closed books** – As soon as any Registration book is closed, the respective duplicate shall be remitted to the Municipality of the respective Taluka, where the same will be archived.

- Article 2453 was re-enacted as Articles 71, 72, 76 & 77 of the Code of Civil Registration, 1912.

Article 2454 – **Transcription in the Civil Registration Office of the domicile of parties** – All the acts affecting the Civil status, which were made outside the domicile of the interested parties may, at their request be transcribed in the Civil Registration office of their domicile, on the basis of authentic certified copies, issued by competent person.

- Article 2454 – The subject of transcription was re-enacted under Articles 42, 121, 122, 158, 159, 179, 236, 237, 239, 245 & 271 of the Code of Civil Registration, 1912.

Article 2455 – **Records made at residence** – The records of the civil registration may be drawn, at the residence of the interested parties, when they so apply to the registration officials.

- Article 2455 was re-enacted as Articles 140, 217 & 218 of the Code of Civil Registration, 1912.

Article 2456 – **Registration of civil acts concerning foreigners** – The acts concerning civil status of foreigners residing in Portugal may be entered in the civil registration records, if they so apply, by following the provisions of this Code in the part applicable to them.

- Article 2456 was re-enacted as Articles 42, 43, 248 & 265 of the Code of Civil Registration, 1912.

Article 2457 – **Organization of Civil Registration system** – The organization of the offices of civil registration services, the duties of the functionaries entrusted with the registration and their form shall be prescribed by special regulations.

- Article 2457 is covered as follows in the Code of Civil Registration, 1912.

Chapter II – Functionaries and offices of civil registration, Articles 15 – 37.

Chapter III – Jurisdiction powers and remuneration of the functions of civil registration, Articles 38 – 57.
Chapter IV – Books of civil registration and their reform, Articles 58 – 88.

Chapter V – Civil registration services in general, Articles 89 – 123.

Article 2458 – **Penalties for violation** – The penalties to be imposed for the breach, on the part of public servants or any other citizens, of the rules established for the Civil Registration, shall be such as laid down in the respective penal legislation.

- Article 2458 was covered by Chapter XII – General penal and transitory provisions, Articles 342 – 358.

DIVISION II

REGISTRATION OF BIRTHS

Article 2459 – **Birth record** – When there is any birth in Portuguese territory, the new born child shall be presented, within the time stipulated in the regulations of Civil Registration, to the official concerned, in order to effect the respective record.

§ Sole paragraph – In case of sickness of the new born child, or in other grave circumstances, whereby there may be danger in taking the child to the Officer of Civil Registration; it is incumbent upon the Official to go up to this place where the new born child is found, and there he shall make the record of the birth.

- Articles 2459 – 2474 – was covered by Chapter VI – Registration of Births, Articles 124 – 179 of the Code of Civil Registration, 1912. With effect from 01/01/1971, Registration of Births and Deaths Act, 1969 was extended to Goa Daman and Diu, of which Section 31, reads as follows:

31. Repeal and Saving – (1) Subject to the provisions of section 29, as from the coming into force of this Act in any State or part thereof, so much of any law in force therein as relates to the matters covered by this Act shall stand repealed in such State or part, as the case may be.

Article 2460 – **Persons liable to declare the birth** – Following are the persons bound to make declaration about the birth, in first place, the father; in his absence or impediment, the mother; in the impediment of both the closest relative of the recently born child, being major, and residing where the birth has taken place; in his absence or impediment, the doctor or nurse who assisted delivery: and lastly the male owner of female owner of the house where the birth had taken place outside the domicile of the mother.

§ Sole paragraph – Where the birth has taken place in any public establishment or building, or belonging to any corporation, the person who is in-charge of the establishment, is also, alternatively and in the last place subject to the duty cast in this article.

Article 2461 – **Declaration of the existence of foundlings or abandoned children** – The declaration about the existence of foundlings and of the abandoned new born children shall be done, in relation to the former by the administrator of the establishment, where they have been abandoned, and in respect of the latter, by the persons who found them, and they are liable to present them to the official of Civil Registration, with the garments and other particulars with which they were found.

Article 2462 – **Official competent to receive birth declaration** – The official of the civil registration services of the place where the child was born, or where the child was left or found, or its parents are domiciled, when they are known, is competent to take declaration of the birth.

Article 2463 – **Signing of birth record** – The birth record must be signed, besides the public official, by the declarant and by two witnesses. When the declarant does not know to sign at his instance, one more witness will sign.

Article 2464 – **Special requirements of birth registration** – The birth records, besides declaration mentioned in article 2448 shall contain:-

1. The time, day, month, year and place of birth;
2. The sex of the new born child.
3. Name which was given or which will be given.
4. Names, surnames, profession, place of birth and place of domicile of the father, mother and grandparents, when the names of the father, mother and grandparents, are required to be mentioned, and of the witnesses.
5. Whether the newly born child is legitimate or illegitimate.

§ 1 - In case of birth of twins, two separate records will be prepared, one for each of them, giving them serial number, as per the priority of the birth of the twins.

§ 2 - If the newly born child has or had one or more brothers of the same name, their order in the filiations shall be indicated.

Article 2465 – **Requirements for birth record of abandoned children** – In the birth records of the abandoned children, mention shall be made:-

1. Of the day, time, and place where the abandoned child was found.
2. Of its apparent age;
3. Of any sign or defect of formation, which distinguishes the child; 4. Of any declaration which was accompanying the child;
5. Of the garments, clothes, in which it was found or was found covered; 6. Lastly, of any other indicia which is found.

Article 2466 –Birth registration of children who died before registration – If the dead body of any new born child is produced before the official of Civil Registration services, the child with information that child died after birth, he shall enter the birth record, with all the declarations prescribed in this Code; declaring, however, in the same record, the child was produced to him without life.

§ Sole paragraph – Immediately, the record of the death shall be made in the relevant register of deaths.

Article 2467 – **Particulars of parents and grand-parents** – In the records of the Civil Registration, no declaration as to parents or grandparents of illegitimate children will be admitted, except when the father, or the mother, personally, or a duty appointed attorney, makes such declaration and sign the same.

Article 2468 – **Presumption of legitimacy of children born during subsistence of marriage** – Where the child is born during subsistence of marriage, no declaration to the contrary shall be admitted in the Civil Registration record, even though the mother states that the child is not of her husband or the latter states that the child is not his own, except where there has been actual separation for a period of not less than three hundred days before the birth.

Article 2469 – **Entries of legitimation and recognition** – The legitimation of children, by subsequent marriage of the parents, and the recognition of illegitimate children, done by public deed, will or any other solemn act shall be noted at the margin of the respective birth records, with prior decision of the Court declaring so.

§ 1 - In the same manner, all the judgements passed in suits for declaration of filiations shall be annotated observing all the requirements of sole paragraph of article 2450.

§ 2 - The duty to apply for annotation is cast:-

1. In case of legitimation by subsequent marriage, on the husband;

2. In case of recognition by way of public instrument, or by any solemn act, on the person who does this legitimation;
3. In case of recognition by way of will, on the child who is recognized, if he or she is major, or if he or she is minor, on his or her tutor;
4. In suits for filiations on the Plaintiff or on his tutor.

DIVISION III

BIRTH RECORDS IN SPECIAL CASES

Article 2470 – **Birth records of those born in homes for lepers** – If the birth has occurred in a home for lepers, the inspector, or director of the establishments, shall enter within 24 hours, the respective birth entry, safeguarding, in all the rest, the prescription of the Code.

§ Sole paragraph – The record shall be written in the book of registration, and therefrom, an authentic copy will be issued, which within twenty four hours, shall be remitted officially to the official of Civil Registration of the place where home for lepers is situated, in order to effect the registration immediately.

Article 2471 – **Record of birth during sea voyage** – Where in the course of a journey through the sea, a child is born, the clerk, in case of warships, and the captain or master, in case of commercial ships, shall draw within twenty hours from the date of delivery, in the presence of the father, if he is on the board, the record of the birth in duplicate, with all the formalities and declarations required by this code, adding the time at which the birth has occurred, and any other circumstances which might have taken place.

Article 2472 – **Delivery of signed note** – When the ship enters into any foreign port, where a Portuguese diplomatic or Consular agent resides, the commander of the ship shall deliver to him one of the notes signed by him and other to the official of Civil Registration of first national port where he enters.

§ Sole paragraph – Where the ship first enters in any national port or where the ship having touched a foreign port, it did not have a Portuguese diplomatic or Consular agent both the signed notes shall be handed over to the official of Civil Registration Services in terms of this article.

Article 2473 – **Transcription of birth registration** – The official of Civil Registration Services, to whom any autograph or copy of the birth record was delivered or sent, shall immediately, transcribe it in the competent book and shall archive the same, with respective serial number.

Article 2474 – **Registration of birth occurred during land journey** – Where the birth has occurred during any journey by land, the record shall be made by the official of first place where the mother of newly born halts for more than twenty four hours.

DIVISION IV

REGISTRATION OF MARRIAGES

Article 2475 – **Registration of marriages** – Marriage records shall be entered in the book of the place where the marriage was performed.

- Article 2475 was covered by Articles 180, 190, 195, 245 & 248 of the Code of Civil Registration, 1912.

Article 2476 – **Registration (transcription) of Catholic marriage** –Where the marriage was performed before the Parish priest, he shall be transmit ex-offcio within forty eight hours, the record of the contract to the official of the Civil Registration services and the latter shall register it, the original being filed.

§ Sole paragraph – Where, as per direction of the ecclesiastical authority, the religious marriage was performed by a priest who was not parish priest, the record of the contract shall be drawn and remitted in terms of the article by the parish priest of one of the contracting parties.

- Article 2476 – At present Articles 11, 26 & 29 to 37 of the Decree no. 35461 of 22/01/1946 – Canonical Marriages in colonies operate.

Article 2477 – **Record of marriage celebrated before Civil Registration office** – Where the marriage is performed before the official of Civil Registration Services, he shall draw the record of the contract, which will be signed by the contracting parties and by witnesses, besides the public official.

§ Sole paragraph – Where any or both contracting parties do not know to sign, in addition there shall be one witness for each party who shall sign at their request.

- Article 2477 was covered by Chapter VII, Registration of Marriages, Articles 180 – 248 of the Code of Civil Registration, 1912.

Article 2478 – **Requirement of entry** – The marriage record shall specify, besides the declarations mentioned in article 2448, the following circumstances:-

1. Time, day, month, year and place of celebration of marriage;
2. Whether it was performed in a public place or private place and the later shall be designated; 3. Whether the contracting parties are legitimate, illegitimate, or exposed children and their prior civil status;
4. Names, surnames and place of birth of the father, mother, grandparents, if known.

§ 1 - If there is exemption as to publication or age, mention shall be made of the orders granting such exemption.

§ 2 – The same procedure will apply if there is an order granting consent, where any of the contracting parties is a minor.

§ 3 - Where any of the contracting parties is a widower, name of the deceased spouse shall be declared and place of death.

- Article 2478 was covered by Article 225 of the Code of Civil Registration, 1912.

Article 2479 – **Transcription of marriage by Portuguese citizen in a foreign country** – Every Portuguese citizen, who has contracted marriage in a foreign country, shall, within three months, counted from the date of his return to the kingdom, effect entry in the office of the Civil Registration of the place of his domicile, of the record of his marriage, supported by authentic document from the civil registration, from which it is established that the marriage was lawfully performed.

- Article 2479 was covered by Article 245 of the Code of Civil Registration, 1912.

Article 2480 –Endorsement of annulment – If the marriage is annulled, the respective decision shall be noted at the margin of the record of the marriage, declaring its date, the Court which passed it and in which office the Court was processed.

DIVISION V
REGISTRATION OF DEATHS

Article 2481 – **Registration of Death** – No body shall be buried, without the death being registered in the Registration book.

- Articles 2481 – 2491 – were covered by Articles 249 to 282 of the Code of Civil Registration, 1912 but from 01/01/1971 the Registration of Births and Deaths Act 1969 was extended to Goa of which Section 31 reads as follows:-

31. Repeal and Saving – (1) Subject to the provisions of section 29, as from the coming into force of this Act in any State or part thereof, so much of any law in force therein as relates to the matters covered by this Act shall stand repealed in such State or part, as the case may be.

- Article 2481 was covered by Article 249 of the Code of Civil Registration, 1912.

Article 2482 – **Report of Death** – As soon as any person dies, his nearest relative, or, in the absence of relative, his family members, or, in their absence, in the last case, his neighbours, shall make declaration of the death to the official of the civil registration services of the place where death has occurred or dead body is found.

§ Sole paragraph – The manner, in which such declarations shall be authenticated, is prescribed in the respective regulation.

- Article 2482 was covered by Article 250 of the Code of Civil Registration, 1912.

Article 2483 – **Requirement of death record** – The death record, shall mention, besides all the declarations referred to in article 2448, which may be available, the following:-

1. The date, time, and place of death;
2. The name, sex, surname, age, profession and domicile of the deceased.
3. The names, domicile, place of birth, and profession of parents and grandparents of the deceased, if this is available.
4. The name of the other spouse, if the deceased was married or widower.
5. The disease or cause of the death, if known.

§ 1 - The death record shall be signed by the person who made the declaration of the death, or, in the absence of the same, by two witnesses, chosen preferably, amongst the relatives or neigbours of the deceased.

§ 2 - If the deceased has made a will, mention of this fact shall be made, in the death record, as well as of the person in whose possession the will was left.

- Article 2483 was covered by Article 255 of the Code of Civil Registration, 1912.

Article 2484 – **Record of death occurred in hospital, jails and leper homes** - Where any person expires in civil or military hospitals, in the jails, asylum for abandoned persons, or in the leper homes, the directors or administrators of such establishment shall enter the birth record in the books which should be kept therein for this purpose, with all the declaration prescribed in this Code, and which may be available and within twenty four hours after the record is entered, shall remit authentic copy of the same to the official of the Civil Registration of the place where the hospital, prison, asylum, leper house is situated in order that the death record is transcribed in the Civil Registration records.

§ Sole paragraph – Such documents shall be filed with competent number of serial order of the registrations.

- Article 2484 was covered by Article 271 of the Code of Civil Registration, 1912.

Article 2485 – **Registration of death of unknown person** – If the dead body of some one is found, and it is not possible to know the identity, the death record shall contain:-

1. The place where the dead body was found;
2. His or her status;
3. His or her sex and the apparent age;
4. The dress worn, and any other circumstances or indicia found.

§ Sole paragraph – As soon as the identity of the deceased is established, the death record shall be completed, writing in its margin, the particulars obtained afresh.

- Article 2485 was covered by Article 275 of the Code of Civil Registration, 1912.

Article 2486 – **Registration of death during sea journey** – When there is any death during journey in the sea, steps will be taken as provided in article 2471, 2472 and 2473 to the extent applicable.

- Article 2486 was covered by Article 278 of the Code of Civil Registration, 1912.

Article 2487 – **Registration of death occurs during land journey** – When the death has occurred during any journey on land, the death record shall be entered, either by the official of the place where the death has occurred or, of the place where the dead body was buried, where the later place is different than from the former.

- Article 2487 was covered by Article 279 of the Code of Civil Registration, 1912.

DIVISION VI
REGISTRATION OF ACKNOWLEDGMENT AND OF THE LEGITIMATION

Article 2488 – **Register of acknowledgement and legitimations** – There shall be a special book for the record of acknowledgements and legitimations.

- Article 2488 was covered by Article 58(4) of the Code of Civil Registration, 1912.

Article 2489 – **Records to be made in the aforesaid book** – In such book, all the records of acknowledgements and legitimations of the children shall be entered, either of legitimation resulting from subsequent marriage or acknowledgement made by public deed, Will or public record, other than the birth record of the recognized children.

- Article 2489 was covered by Article 283 of the Code of Civil Registration, 1912.

Article 2490 – **Requirements in records of legitimation or acknowledgement** - Such records shall contains, besides what is provided in article 2448:-

1. The names, surnames, civil status, place of birth and domicile of those who are effecting the legitimation, or the acknowledgment.
2. The names, surnames, civil status, place of birth and domicile, being known, of the child legitimated or acknowledged.
3. Declaration of the document, by which the legitimation or acknowledgment is done.

§ 1 - In case of legitimation by subsequent marriage, the book where the marriage record is registered and respective serial number of the record shall be indicated. If the record is found in a different Civil Registration office, or in another office prior to the establishment of the same, the said office or the said registration record shall be specifically indicated and, entries will be made on the basis of the certified copy which will be filed.

§ 2 - When the recognition or acknowledgement is done by will, declaration shall be made where the will is registered; if it is done by public instrument, the office of the notary will be indicated.

If in any other public record, the Court or public office where it was recorded will be shown.

- Article 2490 was covered by Article 284 of the Code of Civil Registration, 1912.

Article 2491 – **Endorsement on the records** - The endorsement on these records shall be done in the manner laid down in article 2469.

SECTION IV
ATTESTING WITNESSES

Article 2492 – **Capacity to be witness** - The persons, who cannot act as witnesses in respect of document indicating last will in accordance with article 1966, cannot also be witness for acts inter vivos.

- Article 2492 to 2534 – This group of sections is in the nature of provisions on evidence.

SECTION V
DEFECTS WHICH MAY UNDO THE PROBATIVE VALUE OF THE DOCUMENTS

Article 2493 – **Defects which undo the probative value of authentic documents** – The probative value of the authentic documents may be refuted by the absence of any of the legal requirements in their execution or for not being genuine.

- Substituted by article 533 of the Code of Civil Procedure

Article 2494 – **Nullity of official documents** - The nullity of official documents arises from non conformity with the provision of laws and of regulations, which prescribe the manner in which

the same should be drawn and issued.

Article 2495 – **Nullity of extra-official documents** – Extra-official documents are rendered null and void on account of:-

1. Lack of competence of the public official with regard to object and place.
2. His status as person interested in the act whether the interest is his or of his ascendants, descendants, siblings, his spouse or spouse of any of them;
3. Absence of the date, month, year and place;
4. Absence of the signature of the parties, or of the persons who are signing at the request of the parties, when do not know to sign or are unable to sign;
5. Absence of signature of two competent witnesses atleast, when the law does not demand more than two;
6. The absence of acknowledgement of identity of the parties;
7. Non- mention of powers of attorney when the act is performed by the attorney;
8. Non-mention of corrections, interlineations or erasures which have taken place;
9. The absence of the signature and seal of the public official.

§ Sole paragraph – The clauses of this article do not affect any provisions made in that regard by the law, in special cases.

Article 2496 – **Falsity of documents** – The falsity of the document may consist of:

1. In lack of its genuineness;
2. Lack of genuineness of some of the person shown as parties or witnesses;
3. In mentioning therein an act as done, which really, was not done;
4. In the vitiation of the date, context or signatures of the document.

 Substituted by article 534 of the Code of Civil Procedure.

Article 2497 – **Authenticity of document prior to XVI century** – Documents prior to the XVI century, authenticity of which is contested in the Court, may not be received in evidence as matter of proof, without prior diplomatic examination made in the "Torre de Tombo", from which it may flow that the document is authentic.

§ Sole paragraph – Such examination shall be ordered by the Inspector of archives, upon letter of request from the Court when the document was produced.

 Substituted by article 535 and sole paragraph of Code of Civil Procedure.

SECTION VI
TRANSCRIPTS AND CERTIFIED COPIES

Article 2498 – **Probative value** –The tenor certificates and certified copies made, in due form, from the original authentic documents, whether official or extra-official, shall have the probative value of the original documents themselves.

Article 2499 – **Need for transcripts of Powers of Attorney mentioned in documents** – When in the original documents, there is mention of power of attorneys in terms of article 2495, no.7, the copies of the same shall follow after the transcript, without which they shall not be given full faith and credit.

Article 2500 – **Suspicion of falsity of transcript or certificate** – In case of suspicion of forgery, it is lawful for the parties to ask that the transcripts or certified copies be compared and matched with the originals in their presence.

Article 2501 – **Requirements of transcripts and certificates** – The transcripts and certificates of the original authentic documents shall have full faith and credit only:-

1. When these documents are official, the transcripts and certificates being issued by competent public official according to laws and regulations applicable;
2. When those documents are extra-official the transcripts or certificates being issued by public official, by whom, or with whose intervention, the originals were drawn or by whoever has succeeded him and in the mode prescribed at that time when they were issued.

§ Sole paragraph – The authentic copies shall constitute, proof only if they have been obtained with notice to the other side against whom they are presented or upon the party producing document from which they were extracted as soon as this is sought in terms of article 2500; and

the certified copies of the certificates or of the transcripts shall constitute proof to the extent they are not contrary to the transcripts or certificates which are exhibited as being from the originals.

CHAPTER V
RES JUDICATA

Article 2502 – **Meaning of Res judicata** – Res judicata is a fact, or a right which has become final by judgment, from which appeal cannot be filed any longer.

- The res-judicata is primarily governed by articles 2502 to 2505. In the Civil Procedure Code of 1939 it is governed by articles 500 and 501.

Article 2503 – **Requisites of Res Judicata** – Res judicata may be invoked as a means of proof only upon satisfaction of following requisites:-

1. The identity, of the object, over which the judgment was pronounced;
2. The identity of right or cause of action;
3. The identity of the parties and their juridical capacity.

§ Sole paragraph – However, Res judicata on questions of capacity, filiation or marriage, shall constitute proof against any other person, provided the lawful opponent has been heard.

- Vide articles 500, 501 & 502 of the Civil Procedure Code 1939.

Article 2504 – **Value of Criminal Res Judicata in Civil matters** – Res judicata with executory force in a criminal matter constitutes legal presumption in a civil matter, so long as the same is not rebutted by evidence to the contrary.

- Vide articles 153 & 154 of the Portuguese Penal Code.

Article 2505 – **Effect of acquittal of accused in criminal case on civil suit for damages** – The acquittal of the accused in criminal or corrective Courts does not debar a civil suit for losses and damages, save for what is provided in article 2368 onwards.

CHAPTER VI
ORAL EVIDENCE

Article 2506 – **Admissibility** – Proof by oral evidence is admissible in all cases except where the law provides otherwise.

- Vide article 620 of the Code of Civil Procedure.

Article 2507 – **Limits to use of oral evidence** – Oral evidence contrary and beyond the contents of authentic documents is barred, except where their forgery is pleaded.

- Vide article 621 of the Code of Civil Procedure.

Article 2508 – **Oral evidence against or beyond legalized documents** - Oral evidence contrary to and beyond the contents of the private documents legalized in terms of article 2432 and 2433 is barred, except where such documents are challenged on the ground of forgery, mistake, malice or coercion.

- Substituted by article 621 of the Code of Civil Procedure.

Article 2509 – **Who can be a witness** – All persons of either sex who are not barred either by natural incapacity or by provision of law are permitted to be witnesses.

- Substituted by article 622 of the Code of Civil Procedure.

Article 2510 – **Natural disability from being witness** – Following persons are debarred to be witness of account of natural incapacity:

1. Those who are not mentally sound;
2. Those who are blind and deaf in matters which depend in these senses.
3. Minors below fourteen years.

- Substituted by article 623 of the Code of Civil Procedure.

Article 2511 – **Legal incapacity** – The following persons are debarred by law from being witnesses;

1. Those who have direct interest in the case;
2. The ascendants, in the cases of descendants and vice-versa
3. The father-in-law and mother-in-law, in the cases of son-in-law or daughter-in-law, and vice versa.
4. The husband, in the cases of wife and vice-versa.
5. Those, who, on account of their status or profession, are bound to maintain secrecy in respect of affairs relating to same status or profession.
6. Those who are specifically barred from deposing on certain facts;

§ Sole paragraph – The provisions of clause 2, 3 and 4 are not applicable to questions which deal with the investigation of birth or death of children.

- Vide article 624 of the Code of Civil Procedure.

Article 2512 – **Testimony of a sole witness** – The deposition of only one witness, unsupported by any other evidence, shall not have faith in the Court, except the case in which law expressly provides to the contrary.

- Does not survive in view of Article 625 of Portuguese Civil Procedure Code, 1939, which permits free appreciation of the evidence by the Court.

Article 2513 – **Single deposition tending to prove the same assertion** – Where the individual statements or assertion, on different facts intend to proof the same fact, it is left to the judge to decide as per free appreciation, arising from the totality of the evidence.

- Substituted by article 625 of the Code of Civil Procedure, which establishes the system of free appreciation of the evidence.

Article 2514 – **Probative value of depositions** – The probative value of the evidence shall be assessed, not only from the knowledge which the witnesses show to have of the facts, as well as faith they deserve considering their status, life and customs, or from the interest which they may or may not have in the litigation, or, finally, by the relationship or link which they have with the litigating parties.

- Substituted by article 625 of Code of Civil Procedure. Article 643 and 644 of Code of Civil Procedure may be noticed. Article 643 permits to contradict a witness by special machinery provided therein. Article 644 permits the confrontation of the witness and parties who have given contradictory versions on same facts.

Article 2515 – **Defendant's evidence to prevail** – When the oral evidence of one and the other party is of equal probative value, that which is produced by the defendant shall prevail.

- Substituted by article 625 of Code of Civil Procedure.

CHAPTER VII

PRESUMPTIONS

Article 2516 – **Meaning** – Presumptions are consequences or inferences, which the legislature or the judge draws from a known fact, to base the existence of an unknown fact.

Article 2517 – **Force of legal presumptions** –Whoever has a legal presumption in his favour, need not prove the fact which is founded on it.

Article 2518 – **Rebuttal of legal presumptions** – Presumptions by virtue of law, may however, be rebutted by leading evidence to the contrary except in cases in which it is absolutely forbidden by law.

Article 2519 – **Judicial discretion as to presumption** – Presumptions not laid down by law, depend upon the prudent discretion of the judge; but they may be admitted only in cases where oral evidence is admissible.

CHAPTER VIII

OATH

SECTION I

GENERAL PROVISIONS

Article 2520 – Requirements – The oath, as a means of proof, may not be given by the attorney, nor even may cover facts which are not within the knowledge of the deponent to whom oath is administered.

- Article 580 of the Code of Civil Procedure abolished the oath as a means of proof. Consequently, the entire chapter of articles 2520 to 2534 stands repealed.
- Article 2520 – This mode of proof has been abolished by Article 580 of the Portuguese Civil Procedure Code, 1939.

Article 2521 – Kinds of oath – The oath may be decisory or suppletory.

Article 2522 – Meaning of different kinds of oath – Decisory oath is one in which one of the parties asks the other party for the purposes of the decision of the suit. Suppletory oath is which is administered by the judge, to any of the party as a complement of the proof.

SECTION II

DECISORY OATH

Article 2523 – Admissibility –Decisory oath may be given in any civil litigation, but not on facts considered criminal by the law, nor in the matters of contracts, which may be proved only by public deeds, and finally not on questions which cannot be compromised between parties.

Article 2524 – **Stage at which decisory oath may be taken** – Decisory oath may be offered at any stage of the litigation even before the commencement of the trial.

Article 2525 – Consequences of refusal –Whoever refuses to give oath already offered by one party or tender back the same proposal, shall be debarred from adducing any other evidence.

Article 2526 – When oath can be taken – The oath may not be administered when the factum to which it relates is purely personal to the person to whom the oath was offered.

Article 2527 – Effects of oath –After the offer made by one party and its acceptance, the other side is not permitted to prove that it is false.

§ Sole paragraph – But if the falsehood of oath is verified by criminal proceedings the injured party shall be entitled to losses and charges.

Article 2528 – Bar on retracting from oath – It is not lawful for the party who made the offer, or to the party who tendered back the proposal, to retract when it is found that the opposite party is ready to take oath.

Article 2529 – Consequences of oath – The oath given constitutes proof pro or contra the parties themselves, who made this offer, who tendered back the proposal, or who took this oath, or their heirs and representatives.

Article 2530 – **Oath by one of joint creditors** – The oath offered by one of the joint creditors, to the debtors, does not exonerate the latter, except to the extent the share of the creditor.

Article 2531 – **Oaths which benefit third parties** – Following are the exceptions to the rule of article 2529:

1. The oath offered to the principal debtor also discharges his sureties.
2. The oath offered to one of the joint debtors, is available to his co-debtors.
3. The oath offered to surety, is available to the principal debtor.

Article 2532 – **Limitations to the preceding provision** - In the cases mentioned in the clauses no.2 and 3 of the preceding article, the oath of one joint debtor, or of the surety, will not be available to the other joint debtors or to the principal debtor, unless the same is referring to the debt and not on the factum of joint liability or as to the guarantee.

SECTION III

SUPPLEMENTARY OATH

Article 2533 – **Limits as to admissibility** – Supplementary oath on the suit or the defence, whether administered ex-officio by the judge, or directed at the request of the party, is admissible provided following requisites are cumulatively satisfied:

1. If the suit or defence is proved and doubt remains only as to the quantum;
2. It is not possible to prove the quantum by any other means;
3.

If the person to whom the oath is administered is not unworthy of credit; 4. If the quantum does not exceed 50,000 reis; except where the obligation arises from criminal offence, guilt or deceit.

§ Sole paragraph – But in this last case, the judge may reduce the amount sworn under the oath, if he finds it excessive, after hearing the parties.

Article 2534 – **Consequence of ex-officio oath** – The oath, administered by the Judge ex-officio, to one of the parties, cannot be lawfully tendered back by the same party to the adversary.

TITLE II

SUITS

Article 2535 – **Bar on self defence** – No one is authorized to restitute himself as to the exercise of his rights by own authority, except in the cases declared by the law.

- Article 2535 – This is substituted by Article 1 of the Portuguese Civil Procedure Code, 1939.

Article 2536 – **Role of law in protection of rights** – The law prescribes the means to the aggrieved and threatened party for the restitution, compensation or securing the enjoyment of his rights.

Article 2537 – **Means to defend and secure rights** – These means are Courts and Suits.

Article 2538 – **Laws regulating suits and courts** – The organization and jurisdiction of Courts are regulated by special laws. The norms pertaining to the suits are the domain of the Code of Procedure.

Palace, on 1st July, 1867 – Augusto Cesar Barjona de Freitas.