

Civil Law

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cancellation of the business performed by the managers beyond their powers (ultra vires) or in violation of the law or of the constitution of the foundation; in such case the proceedings for cancellation will be commenced within two years from the date of the action being contested; the action of cancellation may not be brought against a bona fide party who has acquired rights on the basis of such act.

61. - (1) Having rendered judgment cancelling the action the court shall appoint liquidators and determine the fate of the assets which remain after the liquidation in accordance with the provisions of the constitution of the foundation. Where it is impossible to transfer the assets to the person to whom they should pass or where such party has been designated (named) in the constitution of the foundation the court will determine the fate of the assets in such a way that as far as possible the interests of the liquidator as much as is possible be nearest to the object intended in the constitution deed of the foundation.

Chapter 3 - Things, Property, and Rights

Section (1) - Things

61. - (1) Everything which by its nature or in accordance with the law is not excluded from dealings may be the object of pecuniary rights. (2) Things which by their nature fall outside the scope of dealings are those which no one may claim sole ownership thereof; things which in pursuance of the law are excluded from the ambit of dealings are those which may not be the object of pecuniary rights under the law.

62. - (1) The immovable (realty) is every thing which is fixed so that it would be impossible to move or

convert it without causing damage thereto such as buildings, plantations, bridges, dams, mines, and other real estate things.

(2) A movable is anything which can be moved without causing damage thereto and includes currency (nuqud), commodities ('arudh)*, animals and things that can be measured by volume or weight and other movable things.

Article 63. - A movable which is placed by its owner on an immovable owned by him with intent to serve or exploit the immovable is deemed to be an immovable.

Article 64. - (1) Fungibles are things which are substituted one for the other when making a payment and are normally (customarily) assessed in dealings with people by number, measure, volume, or weight.

(2) All other things are non-fungibles.

Section (ii) - Property and rights

Article 65. - Property is every right having a pecuniary value.

Article 66. - Pecuniary rights are either in rem or in personam.

Article 67. - (1) A right in rem is a direct power over a specified thing vested by the law in a certain person.

(2) A right in rem is either primary or accessory.

Article 68. - (1) The primary rights in rem are: ownership, usufruct, usufruct user, real mortgage, and real lease.

* "Arudh": see the Foreword for an explanation of the term.

third party it is tantamount to a fresh contract.

Chapter 2 - Unilateral Will

184. - (1) A unilateral will does not bind its
r except in the cases where the law provides to
ct.

The provisions applicable to a contract shall
a unilateral will except those of which relate to
sity of the existence of two concordant wills to
obligation.

185. - (1) He who has promised a consideration
e/remuneration) to whoever performs a certain
act will be obligated to give the consideration
rson who has performed said act even where he had
it without having regard to a promise.

Where the promisor has not fixed a time limit for
ce of the act he may revoke his promise provided
revocation shall not have any effect on the right
r has performed the act before revocation of the

The claim of the consideration shall lapse if
gs have not been commenced within six months from
of proclaiming (declaring) the revocation.

Chapter 3 - Unlawful Acts

tion (i) - Responsibility for personal acts

(1) Unlawful Acts against Property

arm/Injury)

186. - (1) A person who wilfully or by trespassing
rtly or indirectly caused damage to or decreased

the value of the property of another person
liable.

(2) Where two persons - a perpetrator and a
- are involved (in committing the damage) the one
wilfully or by encroachment shall be liable; where
liable the liability will be joint and several.

Article 187. - (1) A person who without (lawful)
demolished an immovable belonging to another p
latter is vested with an option: either to leave t
to the former and claim from him the value thereof
(built up) as well as reparations for the other
or deduct the value of the rubble from the valu
immovable standing (built up) and in the latter
the rubble and claim from him the balance (diff
value) and reparations for the other injuries.

(2) But where the perpetrator (destroy
reinstated the immovable to its original stat
existed before the demolition and paid reparations
other injuries his liability will be discharged.

Article 188. - A person who without lawful cause
tree in the garden of another person the owner
tree) has an option: either to claim the value of
standing and reparations for the other injuries a
(give) the tree cut to the perpetrator; or to de
value of the cut tree from its value when standing
the cut tree and claim the remaining bala
reparations for the other injuries.

Article 189. - A person who has cheated anothe
shall be liable on the damage (injury): if a per
the market people, "This minor is my son sell him
I have permitted him to deal in trading" and
transpired that the boy is the son of another per
market people may claim from him the price of t
sold to that boy and damages for the other injuries

190. - (1) A person who has damaged the property of a person alleging that it is his own property shall be liable on that which he has damaged. If however the damage was permitted by the owner the perpetrator will not be liable.

191. - (1) A minor - rational or irrational - or a person having his status who has damaged the property of another person will be liable from his own funds (property). Where it was impossible to obtain the reparations from the assets of the person who has done the damage (the perpetrator) - be he an imprudent (irrational) minor or otherwise - the court may order the natural guardian or the selected guardian to pay the sum of the damages which the person who may have recourse for the sum paid against the perpetrator has committed the injury (perpetrator). In assessing the fair reparations for the damage the court must take into consideration the situations of the parties.

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192. - The property usurped must be restituted in its original state to its owner at the place wherein it was usurped if it is possible; if the owner of the property has casually met the usurper who had with him the usurped property at a place he may if he so wishes have the property restituted in that place, but if he demands restitution at another place of usurpation the expense of moving it and the expense of providing for its restitution will be borne by the usurper which thing will be without prejudice to the claims of the owner for the other injuries.

193. - The usurper will be liable if he has destroyed, or lost the property usurped or where the property has perished totally or partially without encroachment

on his part.

Article 194. - (1) If the thing usurped has changed in possession of the usurper the usurpee may wish to recover the thing usurped in kind or claim reparations for the other damages or leave the thing usurped and claim reparations from the usurper.

(2) The usurper who has changed the thing in such a manner which changed its name (nomenclature) shall be liable and will keep the thing; he who has usurped wheat of a third party and sowed it in his land shall be liable for the wheat and will keep the crop.

(3) Where the usurper has changed some description of the thing usurped by adding to it something from his own property the usurpee will have the option if he wishes to give the usurper the value of the addition and claim the thing usurped in kind and claim the other reparations or to abandon the thing and claim from the usurper.

Article 195. - If after the usurpation the value of the thing usurped has diminished (depreciated) the usurper has no alternative but to accept it in its existing state without prejudice to his right to reparations for the injuries; the usurper shall however be liable if the value of his act or use of the thing usurped has depreciated.

Article 196. - The accessories of the thing usurped shall be deemed to be usurped like it and the usurper shall be liable if they have perished even without encroachment on his part.

Article 197. - Where the thing usurped is an immovable the usurper is under an obligation to reconstitute it together with the comparable (true) rent; the usurper shall be liable if the immovable has suffered damage or depreciated even without encroachment on his part.

Article 198. - (1) The usurper of a usurper has the same status as that of the latter: where any person has usurped the property usurped from the (original) usurper and damaged it, or where it sustained damage while in his possession the usurpee (owner of the thing) has the option if he so wishes to claim from the first usurper or from the second usurper; he may claim part thereof from the first usurper and the other part from the second usurper; the first usurper who has paid may claim from the first usurper but the second usurper may not if he has paid claim from the first usurper.

(2) Similarly where a third party has damaged the thing usurped which is in possession of the usurper the usurpee will have the option of either claiming from the usurper who may in turn claim from the third party who did the damage, or he may claim from the person who did the damage where the latter may not claim from the usurper.

Article 199. - Where a usurper of the property has restituted the thing usurped to the latter usurper his liability only will be discharged and if he has restituted it to the usurpee the liability of both usurpers will be discharged.

Article 200. - Where the usurper has disposed against or without a consideration of the thing usurped which sustained total or partial damage the usurpee has the option to claim from whomever he chooses; the disposal of the usurper shall be valid if he has discharged his liability in respect of the thing usurped; if the transferee of the thing usurped has discharged his liability he will claim from the usurper the reprieve warranty in accordance with the provisions of the law.

Article 201. - A situation which is equal to usurpation in debarring disposal is tantamount to usurpation: a depositary who denies the deposit (entrusted into his care)

is tantamount to a usurper; if after denial the deposit has perished while in his possession without encroachment he shall be liable.

(2) Unlawful Acts Committed on Persons

Article 202. - Every act which is injurious to persons such as murder, wounding, assault, or any other kind of inflicting injury entails payment of damages by the perpetrator.

Article 203. - In case of murder and in case of death resulting from wounds or any other injurious act renders the perpetrator liable to pay compensation to the dependants of the victim who have been deprived of sustenance on account of the murder or death.

(3) Provisions Common to Unlawful Acts

Article 204. - Every assault which causes other than the injuries mentioned in the preceding Articles entails payment of compensation.

Article 205. - (1) The right to compensation also covers moral injury: any encroachment (assault) on the freedom, morality, honour, reputation, social standing, or financial position (credibility) of a third party renders the perpetrator liable for compensation (damages).

(2) Damages may be adjudged to spouses and the next of kin of the family in respect of the moral injury sustained by them as a result of the victim's disease.

(3) Damages for moral injury do not pass to a third party unless its value has been determined pursuant to an agreement or a final judgment.

Article 206. - (1) The civil damages shall not be prejudicial to imposition of the criminal penalty if its

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Article 206. - (1) The civil damages shall not be prejudicial to imposition of the criminal penalty if its

elements have been satisfied.

(2) The court will decide the civil liability and the amount of the compensation (damages) without being bound by the principles of criminal liability or by the judgment rendered by a criminal court.

Article 207. - (1) In all cases the court will estimate the damages commensurately with the injury and the loss of gain sustained by the victim provided that the same was a natural result of the unlawful act.

(2) Deprivation from (loss of) benefits of things will be included in the estimation of the damages and the liability may cover the wage (fee/remuneration).

Article 208. - Where it is not possible for the court to estimate the damages adequately it may reserve a right to the victim to apply within a reasonable period for reconsideration of the estimate.

Article 209. - (1) The court will determine the method of payment of the damages according to the circumstances; the damages may be payable in instalments or as a revenue in the form of a salary in which case the debtor may be required to provide a security.

(2) The compensation (damages) will be estimated in cash; the court may however depending on the circumstances and upon application being filed by the victim (injure) order that the situation be reinstated to its original state or adjudge performance of a certain specified matter or restitution of a similar thing of the fungibles by way of compensation.

Article 210. - The court may reduce the sum of or refuse to adjudge payment of any compensation whatsoever if the injured person has contributed through his fault to causing or aggravating the injury or had worsened the debtor's situation.

Article 211. - A person who has established that the injury had arisen from a cause beyond his control such as by an act of God, an accident, a force majeure, by the act of a third party or the fault of the injured himself shall not be liable on damages unless there is a provision (in the law) or an agreement otherwise.

Article 212. - (1) Exigencies permit (legitimise) prohibitions and will be assessed commensurately with the need for them.

(2) He who in legitimate self defence or in defence of a third party had caused injury shall not be liable provided in so doing he does not use force more than is needed (for the defence) otherwise he will be obligated to pay compensation (damages) where the principles of equity must be observed.

Article 213. - (1) The lesser of two evils will be chosen and in case of conflict of two evils the evil with greatest injury will be considered (taken into account): the greater injury will be eliminated by the lesser injury; but an exigency (the compelling circumstances) will not nullify completely the right of a third party.

(2) He who has caused injury in order to protect himself or a third party against a much greater impending danger than the injury he has caused shall not be liable except on the compensation which the court deems appropriate.

Explanation according to Al Majalla: Paragraph (1): A's hen swallowed B's pearl consideration shall be had of that which is of greater value and who will take the hen and the pearl in its stomach. The pearl obviously is of greater value and the owner of the pearl is entitled to take the hen together with the pearl in its stomach; he will have to compensate the owner of the hen.

It would be permitted for the abdomen of a dead person to be opened in order to get out a child if there is hope of its survival.

Article 214. - (1) Personal injury will be tolerated (allowed) to ward off the public injury.

(2) A person who has demolished a house without permission from the owner in order to avoid (ward off) the breaking out of a fire in the quarter (vicinity) and the fire was actually extinguished there (at that place) shall not be liable for damages if the demolition was in compliance with an order by the competent authorities but where the demolishing was of his own accord he shall be liable to pay a suitable compensation.

Article 215. - (1) The act will be attributed to the perpetrator not to the commander (orderer) unless he was under duress where only the compelling coercion will be considered as duress in the actual disposals.

(2) A public official however will not be responsible for his act which caused injury to a third party if such action was performed in compliance with an order issued to him by his superior where compliance with such order was incumbent or believed to be incumbent; he who has caused the injury will have to establish that he believed that the act performed by him was lawful by adducing proof that in so doing he observed caution and that his belief was based on reasonable grounds.

Article 216. - (1) No ab initio or retaliatory injury: the injury will not be eliminated by inflicting a similar injury; a person who has suffered a grievance shall not inflict the same grievance as he had suffered on another person.

(2) Where a person has destroyed the property of a third party to counter said party's destruction of his property each party may claim for the damage suffered from

the other party: a person who has been cheated accepted counterfeited money from a third party may not dispense said (counterfeited) money to a third party.

Explanation according to Al Majalla: It was interpreted in Morocco that a man may not injure ab initio or in retaliation his brother (Ashbah), i.e. he may not be the first in inflicting the injury or retaliate the injury, e.g. no person is allowed to demolish the wall of a third party and if he did such party may not retaliate by demolishing his wall as in such case he must refer the matter to the courts which will order the demolisher to pay the value of the wall he had destroyed. A situation stemming from this is where a joint property needs a wall built and a co-partner asked for the construction to be done but the other refused the latter shall not be forced to do so; if the joint property is indivisible it will be divided and each party will do as he pleases with his share but where the property is indivisible the judge will allow the applicant for building to build and withhold the property from his co-partner until he pays to him the costs pertaining to his share. Where the right of a third party relates to the jointly owned property the co-partner who has refused shall be compelled to build.

Article 217. - (1) The several persons responsible for an unlawful act will be jointly liable in their obligation to pay damages for the injury done without distinction between the perpetrator, the accomplice, and the instigator (incitor).

(2) He (of the foregoing persons) who has paid the entire compensation may claim from the others such part which is assessed by the court according to circumstances and the gravity of the encroachment committed by each one of them; if it was not possible to determine the extent of the responsibility of each one of them the liability will be apportioned among them equally.

Section (ii) - Responsibility for the acts of a
third party and for things

(1) Responsibility for the Acts of a Third Party

Article 218. - (1) The father and then the grandfather shall be obligated to compensate the injury caused by a minor.

(2) The father or the grandfather will be able to waive his responsibility if he has established that he had exercised the duty of control (over the minor) or that the injury would have taken place even where he had performed said duty.

Article 219. - (1) Government municipalities and other institutions which perform a public service as well as every person who exploits an industrial or commercial enterprise are responsible for the damage (injury) caused by their employees if the injury resulted from an encroachment committed by them in the course of their service.

(2) The employer will be able to relieve himself of the responsibility if he establishes that he had exercised the necessary care to prevent the injury or that the injury would have happened had he exercised the necessary care (caution).

Article 220. - A person who is responsible for the action of a third party is entitled to claim from such third party that which he had paid (in compensation).

(2) Responsibility for Things

The Offence of an Animal

Article 221. - The crime of an animal is excusable (reparable): the owner of an animal which causes injury

precautions to prevent the damage.

Article 224. - (1) A person shall not be liable if, while riding, leading, or driving his animal on a public road the animal caused unavoidable injury such as where the feet of the animal spread dust or splashed clay which soiled the clothes of a third party there is no liability.

(2) The owner (of a beast) will be liable where the injury could have been avoided such as in case of collision (bump) of the animal, a knock from its hand or head unless he has established that he had taken adequate precautions to prevent the collision (accident).

Article 225. - (1) A person who unnecessarily stops (parks) or ties a beast on the public road in other than the places assigned for (the parking of) beasts shall in all cases be liable for damages.

(2) A person who has let loose or left to stray a beast on the public road will be liable for damages if it is established that he has failed to take adequate precautions to prevent its straying.

Article 226. - (1) If a beast which has been tied by the owner in his property has injured another beast which was brought and tied by its owner in the property and without the permission of the former no liability will accrue; but where the latter (intruder) beast has injured the beast of the owner of the property the owner of the intruder beast will be liable.

(2) If two persons tied their two beasts in a place wherein they are entitled to tie their beasts (parking lot?) and one of the two beasts injured the other there is no liability unless the owner of the injured beast has established that the other owner had failed to take adequate precautions to prevent this injury.

(3) If two persons tied their two beasts in a place wherein they have no right to tie their animals there will

be no liability where the beast which was tied first has injured the beast of the person who tied his beast later; where the reverse is true (i.e. the second has injured the beast which was parked first) there is liability.

That which Takes Place on the Public Road

Article 227. - (1) Every person has the right of passage on the public road provided he (observes) the safety (precautions) so that he will not cause injury to a third party or to himself in the cases where (safety) precautions may be taken.

(2) A porter will be liable if the load he was carrying fell from his back in circumstances that could have been avoided and injured a third party; when beating (hot) iron in his shop a spark flew out and hit the clothes of a passer by on the public road the blacksmith will be liable (for the price of) the clothes of said passer by if it had been possible for the blacksmith to take precautions to prevent the flying of sparks.

Article 228. - (1) No person may place anything on the public road without having obtained a licence from the authority concerned otherwise he will be liable for the injury that results from such act.

(2) Liability will accrue where a person has placed on the public road stones and construction tools which caused the stumbling and injury of an animal or a person; similarly liability accrues where a person has poured (sprayed) something slippery on the public road which caused the slipping of a man or animal.

Responsibility in Respect of Buildings (Constructions)

Article 229. - (1) Liability will accrue where a building fell down causing injury to a third party if the building was dilapidated or contained a defect that led to its

falling and if the owner had been warned of (had his attention brought to) the same or where he was or should have been aware of the state of the building.

(2) A person who is threatened by suffering injury from a building may demand the owner to take the necessary precautions to ward off the danger and if the latter has failed to take the necessary precautions the court may be petitioned to issue a permit to take such precautionary measures at the owner's cost.

Article 230. - Every person who resides in a dwelling (house) (residence) will be liable for the damage caused as a result of that which is thrown out of or falls from this dwelling place (residence) unless he will establish that he has taken adequate precautions to prevent the injury.

Article 231. - Every person who has at his disposal mechanical machines or such other things which require special care for protection against injury shall be responsible for the injury caused thereby unless he can establish that he has taken adequate precautions for preventing this injury without prejudice to any specific provisions in this regard.

Article 232. - A claim for damages resulting from whatever (kind) of unlawful act shall not be heard after the lapse of three years from the day on which the injured person became aware of the injury and of the person who caused it; in all cases the claim will not be heard after the lapse of 15 years from the day of occurrence of the unlawful act.

Chapter 4. - Gain without Cause

Section (i) - Payment for that which is not due

Article 233. - (1) He who has paid a thing thinking that it is but was revealed not to be due from him may have

BOOK 3 - PRIMARY RIGHTS IN REM

Title 1 - The Right to Ownership

Chapter 1 - The Right to Ownership Per Se

Section (i) - The scope of the means of protection and the restrictions on the right to ownership

(1) The Scope and the Means of Protection of the Right to Ownership

Article 1048. - Perfect ownership vests unto the owner a right to dispose absolutely of that which he owns: through use, enjoyment, and exploitation he shall enjoy (avail himself of) the thing (ayn) owned as well as its fruits, crops, and produce and may dispose of the thing itself (ayn) by all the allowable means.

Article 1049. - (1) The owner of a thing also owns everything which is deemed by usage to constitute an essential element thereof such as it cannot be separated therefrom without the thing owned perishing, deteriorating, or changing.

(2) The ownership of land includes that which is above and below as far as can be usefully enjoyed in height and in depth.

(3) The ownership of the surface of the land may by agreement be separated from that which is above it and that which is below it.

Article 1050. - No one can be deprived of his ownership except in the cases and in the manner provided for by law and in consideration of a fair compensation payable in advance.

annual remuneration payable in advance provided that he does not exercise this right of way except over the land and at the place where the passage causes the least possible burden.

(2) Where however the cut off from the public road was the result of the division of an immovable (real estate) in consequence of a legal disposition and it is possible to provide an adequate right of way over parts of the land so divided the right of way cannot be claimed except over these parts.

Article 1060. - Every owner may erect a fence around that which he owns provided this does not bar the exercise of a right belonging to an adjacent immovable; he may compel his neighbour to place boundary marks along the borders of their adjoining ownerships and the costs of such delimitation will be shared between them.

Section (ii) - Special kinds of ownership

(1) Joint Ownership

The Rights of the Landowners in Joint Ownership and Their Duties in the Management of the Joint Ownership

Article 1061. - (1) When two or more persons own a thing they are co-owners of the joint ownership and their shares will be equal save proof to the contrary.

(2) Every co-owner in common is the absolute owner of his joint ownership share and is entitled to avail himself of and exploit it in such manner which does not cause harm to his co-owners and may dispose of it by sale, mortgage, or other kinds of alienation even without their permission.

(3) A co-owner in common may lease his common share of the ownership to a co-owner or a third party.

Article 1062. - (1) Every co-owner of the common (joint)

ownership is a stranger as far as concerns the jointly owned share of the other co-owner and may not dispose of it in such manner which is in any way prejudicial to it without such other co-owner's consent.

(2) Where a co-owner has disposed of a part of the joint ownership property such disposal shall not have any effect except where such alienated part falls to that co-owner in case of a partition of the jointly owned property.

(3) The joint share of every co-owner is a trust in the hand of the other co-owners and if he has damaged it through his encroachment he shall warrant.

Article 1063. - (1) The co-owners may avail themselves of the entire jointly owned thing.

(2) Each one of the co-owners is entitled to avail himself of his joint share; if he has availed himself of all the thing without having obtained leave from the other co-owners such as dwelling (habitation/occupancy), sharecropping, hiring out, or other kinds of enjoyment he is bound to pay them the comparable rent; but if he has rented out the thing for more than the comparable rent he is bound to give every co-owner his share of the nominate rent charged.

Article 1064. - (1) Unless there is an agreement otherwise the co-owners of a jointly owned property shall manage it jointly.

(2) In the normal course of the management the resolutions passed by the holders of the majority of the shares will be binding on all even the minority which had dissented; in the absence of a majority the court shall upon being petitioned by a co-owner take such action as is necessitated by the circumstances and may in case of necessity appoint someone to manage the joint property; the majority may also choose a manager and fix the extent of his powers of management.

(3) Where a co-owner has assumed the management without any objection being raised by the other co-owners he is deemed to be their agent acting on their behalf.

their rights of preference on that part of the price of the immovable which reverted to the purchaser.

(4) Possession

Article 1145. - (1) Possession is a material situation by which a person dominates (controls) actually directly himself or by an intermediary a thing which may be the subject of dealings or exercises actually a right.

(2) Possession does not result from an act done by a person because it is merely permitted or tolerated by a third party nor will it result from recurrent acts.

Article 1146. - If possession has been coupled with coercion or was obtained secretly or if it contained confusion (was dubious) it shall not have an effect vis-à-vis the person who was the subject of coercion, or from whom possession has been concealed, or who has been confused in respect thereof except from the time when these defects have ceased.

Article 1147. - Where a dispute has arisen between several persons as to the possession of one and the same thing the person who has actual possession thereof will be deemed to be the possessor until proof to the contrary has been adduced unless it would be revealed that the actual possessor (for the time being) has obtained the possession from a third party by defective means.

Article 1148. - (1) A person is of good faith who has possession of a thing not knowing that he is encroaching on the right of a third party; good faith is always presumed unless there is proof to the contrary.

(2) The good faith of the possessor shall not cease except from the time when he becomes aware that his possession is an encroachment on a third party's right; a person is also considered of bad faith who has usurped

possession from a third party by coercion even though he believed that he has a right to a possession.

(3) Unless there is proof to the contrary possession will retain the capacity which commenced at the time of acquiring it.

Article 1149. - (1) Possession is transmitted with all its features to a universal successor in title; if however the successor in title has established that he was in his possession of good faith he may invoke the same even where his predecessor was of bad faith.

(2) The successor in title - be he singular or universal - may add to his possession the possession of his predecessor as regards the effect which results from the law.

Article 1150. - (1) If dispossessed the possessor of an immovable may apply to the magistrate's court within one year from the date of dispossession to have the realty restituted to him; if the dispossession was made clandestinely the time limit begins from the time when it has been revealed; a person who exercises possession on behalf of another person may also claim to be reinstated in possession.

(2) If the person who has been dispossessed has not been in possession for one year from the time of dispossession he may not recover possession except from a person who does not have a better possession; the best possession is that which is based on a legal title; where each party has produced a legal title the holder of the title bearing the precedent date shall have preference regardless of whether the realty was received from the same or from different persons; if either of them has received the realty from the other the holder of the title with the latter date shall have preference; if the titles are of equal value or if neither possessor has a title the person with the prior possession shall have preference and if the

possession was on the same dates possession will be adjudged jointly to them.

(3) Where the person who has been dispossessed has without resorting to legal means reinstated his possession by coercion and dominance and the other party has claimed reinstatement of his previous hand (possession) a judgment will render reinstating his possession and the first possessor shall thereafter have to resort to the legal means for having his possession reinstated.

Article 1151. - If the possessor has commenced proceedings of dispossession for reinstatement of his possession he may demand that the defendant be prevented from erecting buildings or planting trees on the disputed realty for the duration of the proceedings provided he provides adequate securities for any damages that might be suffered by the defendant if it would be revealed that the plaintiff had no right to his case (unsuccessful in the proceedings).

Article 1152. (1) If the defendant had erected buildings or planted trees on the disputed immovable prior to the issue of an order preventing him from doing so he may demand that the buildings and trees remain in his possession until the case of ownership has been decided provided he provides securities which are adequate for such damages as may be suffered by the plaintiff in case the defendant has failed to establish his ownership and also provided that he commences the proceedings of ownership within one month from the date of providing the aforementioned securities; if he has failed to provide said securities or delayed commencing the ownership proceedings beyond the aforesaid time limit the immovable shall together with all the constructions and trees introduced thereon be delivered to the plaintiff if he has provided the adequate securities and failing which the said things will be handed over to a person who is known for his trustworthiness and respectability ('adil').

(2) If the construction or plantation lies on a part of the disputed immovable these provisions shall not be applied except on said part and the plaintiff's possession will be reinstated on the remaining part of the immovable.

Article 1153. - (1) If the defendant has crops on the disputed immovable which have ripened and has been ordered to give up possession he will be ordered to reap (harvest) the crops and deliver the immovable vacant to the plaintiff.

(2) If the seeds have not grown to fruition the plaintiff has an option either to give the comparable, or the value, of the seeds and acquire ownership thereof or wait until the crops have ripened and been harvested in consideration of payment of the comparable rent of the immovable.

(3) If the seeds have sprouted but not ripened yet the plaintiff has the option of either waiting until the crops have ripened and have been harvested in consideration of the payment of the comparable rent of the immovable, or taking delivery of the immovable with all the crops thereon if he has provided adequate securities for the damage that may be suffered by the defendant if his ownership has been established thereto. The plaintiff will however be liable for the value of the seeds only if the ownership of the defendant has not been established.

Article 1154. - A person who has possession of an immovable which continued (uninterruptedly) for one full year and then his possession was impeded he may within one year from the date of the impediment commence proceedings for elimination of this impediment before the magistrate's court.

Article 1155. - (1) A person having possession of an immovable which continued for one full year who on reasonable grounds fears that he be impeded by new work

which threaten his possession thereof may file a claim in the magistrate's court pleading the suspension of said work provided they have not been completed and provided also that one year has not elapsed on the commencement of said work.

(2) The court will render an interlocutory judgment to suspend or continue the work; it may in both cases order the presentation of a suitable security which in case of rendering a judgment suspending the work be a security for reparation of the damage resulting from said suspension where it has been revealed by a final judgment rendered on the subject that the objection to the continuity of the work was baseless; the security will in case of a judgment ordering the continuation of the work be a security for removing all or some of the work in reparation of the damage which will be suffered by the plaintiff if it will be revealed that he was rightful in his claim by a final judgment on the subject.

Article 1156. - A judgment of dispossession and reinstatement of possession, a judgment eliminating impediment, or a judgment suspending new work does not entail the successful party to acquire the ownership of the immovable.

Article 1157. - (1) Until the contrary has been established a person who has possession of thing will be deemed to be the owner thereof.

(2) Where a person has claimed that his possession is based on a personal right or on a right in rem other than ownership possession is deemed as a presumption of the existence of this right until the contrary has been established; the possessor may not adduce this presumption against the person from whom he has obtained the possession.

Article 1158. - (1) A person who has possessed a movable or an immovable which is not registered in the Land

Registration Department on the assumption that it is his own property or has possessed a right in rem over a movable or a right in rem which is not registered over an immovable and if this possession has continued uninterrupted for 15 years in case of denial a case claiming ownership or a right in rem brought by any person without lawful excuse will not be heard against him.

(2) If the possession was of an immovable or of a right in rem which has not been registered in the Land Registry Department and if the possession was coupled with good faith and was based at the same time on valid grounds the time limitation preventing the hearing of the case will be five years; the existence of good faith must not exist except at the time of receiving the right.

(3) A valid ground is a title or an event which establishes the possession of the immovable by any of the following means:

- (a) acquisition of wastelands (mawat);
- (b) transmission of property by inheritance or will;
- (c) gifts (donations);
- (d) sale or conveyance.

Article 1159. - Save proof to the contrary if possession has been established at a certain previous time and if it is still existing (for the time being) this is a presumption of the existence of possession during the intervening period (period separating the two periods).

Article 1160. - (1) No one can set up prescription contrary to his title; that is to say that no one may by himself and in his own interests change the cause and origin of his possession.

(2) A person may however set up time limitation if the

nature of his possession has changed either by the act of a third party or by setting up (himself) an adverse claim against the owner; the running of the prescription in this case will not run except from the date of such change.

Article 1161. - Prescription is not interrupted by the loss of possession if the possessor has regained it or he has commenced the proceedings of repossession within one year.

Article 1162. - The rules of prescription preventing the hearing of a case of an obligation will apply to the prescription which prevents the hearing of a case claiming ownership as much as regards computation of the time limit, the suspension, interruption, and setting up of prescription before the judiciary and abandonment thereof and agreeing to amend the time limit to the extent where these rules do not conflict with the nature of the prescription preventing the hearing of a case claiming ownership and subject to the preceding provisions.

Possession of Movables

Article 1163. - (1) No case by any person who claims ownership may be heard against a person who has possession of a movable thing or note to bearer and whose possession is based on a valid cause.

(2) Possession itself is a presumption of the existence of good faith and of the valid cause unless there is proof to the contrary.

Article 1164. - By exception to the provisions of the preceding Article the owner of a movable thing of a note to bearer who through loss, theft, usurpation, or abuse of confidence has lost possession thereof may recover it from the possessor in good faith and for valid cause within three years from the time of the loss, theft, usurpation or abuse of confidence.

Appropriation of Surpluses and Benefits and Recovery of Expenses

Article 1165. - A possessor of good faith will appropriate the surpluses he has received and the benefits he has collected during the time of his possession.

Article 1166. - A possessor of bad faith will be liable as of the time when he became of bad faith for all the fruits which he will receive and those which he has failed to collect; he may however obtain reimbursement of that which he has spent on producing these fruits.

Article 1167. - (1) The owner to whom his property has been restituted shall pay to the possessor all the necessary expenses he had incurred; the necessary expenses are those expenses which are not normal which the person had to incur to preserve the object from perishing.

(2) Beneficial expenses shall be governed by the provisions of Articles 1119 and 1120.

(3) The possessor may not claim reimbursement of any of the luxury expenses and therefore he may dismantle anything he has added thereto provided he reinstates the thing to its original state unless the owner prefers to keep them in consideration of paying their value due for removal.

Article 1168. - If the possessor is of bad faith he shall be responsible for the perishing or deterioration of the thing even where the same has resulted from a fortuitous event unless he has proved that the thing would have perished or deteriorated even if it had been kept in the hand of the person to whom it is due.