

# **Indonesian Civil Code**

**(Promulgated by publication of April 39 1847 S.NO.23)**

## **BOOK ONE - INDIVIDUAL**

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### **Chapter I**

#### **Concerning the enjoyment and the loss of civil rights**

#### **Extraordinary Regulations**

This compilation contains several ordinances set out in chronological order which contain provisions necessitated by the extraordinary circumstances which provisions deviate in part from existing legal regulations inter alia the Civil Code and the Civil Registry.

In the Dutch Civil Code pursuant to the law of July 10, 1947, N.S. No. H 232 see also 1948 No. I 343 the provisions pertaining to children's law are amended, with the result that the Dutch articles referred to in the margin are no longer consistent in most cases with the text printed next to them. Where the new Dutch text deviates substantially from an article of the Dutch Civil Code, such article will be referred to as Old Article in the margin.

Pursuant to the ordinance in S31-168 see also 423 pertaining to the distribution of assignments between the European and Indonesian Government in the government area of Java and Madura, regarding the area referred to in the Civil Code, unless otherwise provided, the words "assistant resident" and "resort of the assistant resident" shall be read as "head of the local government" and "department".

Article 1. The enjoyment of civil rights is independent from the state's rights. (Civ. 7)

Article 2. The circumstances in each case shall determine when a child shall be deemed to be born. In the event that a child is stillborn, it shall be deemed to have never existed. (Civ. 725, 906; G.16; Bw.348, 489, 758, 836, 899, 1679)

Article 3. No punishment shall result in a civil death or the loss of all civil rights. (G.167; ISR.144; Civ.22v.)

## **Chapter II**

### **Concerning the deeds of the civil registry**

#### **Section 1**

##### **Concerning the registers of the civil registry in general**

Article 4. (Amended by S.16-38 see also 17-18;07-205 art.3 see also 19-816; 37-595) Without prejudice to the stipulations of article 10 of the general regulations of legal provisions for Indonesia, throughout Indonesia there are for Europeans, registers of, births, notifications marriages, consent to marriages, of marriages and divorces, and notification of deaths. (Bw.5; BS.1) The officials to whom the keeping of the registers is assigned, shall be referred to as "officials of the civil registry".

Article 5. After having heard the Supreme Court, pursuant to a separate regulation, based upon the Dutch legal requirements pertaining to the Civil Registry, the Governor General shall stipulate the locations, the individuals, the manner in which registers are kept, the assortment of deeds, and which format should be taken into consideration. This regulation shall also set forth the punishments consequent upon violations by the officials of the civil registry, only to the extent that it has or has not been provided for in the legal provisions of the Penal Code. (Sw. 436,556v; see regulations BS. Europeans, Chinese, Indonesians and Christian Indonesians)

#### **Section 2**

##### **Concerning names and changes of first and last names**

Article 5a. (Supplemented by S.37-595) Legitimate and illegitimate children acknowledged by the father shall carry the family name of the father; illegitimate children not acknowledged by the father shall carry the family name of the mother. (Bw. 250v., 255, 256v., 261, 272v., 280, 283v., 306; BS.41)

Article 6. An individual shall not change his family name, or add another name, without approval from the Governor General. (BS.28, 40; S.1824-13 art.2; 1837-11; 67-168 par. V; 17-12, pg.384; Bb.977 see also 10486, 1246, 2105, 3995, 4134, 5102, 6724, 12482, 13421) (Supplemented by S.37-595)An individual, whose family or first names are not known, may take a last or first name with the approval of the Governor General.

Article 7. (Amended by S.37-595 and 41-370) Applications for such approval may not be admitted earlier than four months after the date of publication of same in the official newspaper. (S.83-192 art.3; Bb.7962 see also 13421)

Article 8. (Amended by S.83-190) During the period of four months referred to in Article 7, the interested parties may oppose an application for approval by filing an application with the Governor General therein stating the reasons for such opposition. (S.83-192 art.3)

Article 9. (Amended by S. 37-595) The decision, whereby approval referred to in the first paragraph of article 6 is granted shall be submitted to the official of the civil registry at the place of birth of the applicant. The said official shall record the decision in the current registers and make a note thereof in the margin of the birth certificate. (BS. 26) (Supplemented by S.37-595) The decision whereby approval referred to in the second paragraph of article 6 is granted shall be recorded in the current registers of births in the place of domicile of the relevant party, and in the event referred to in article 43 of the regulation concerning the keeping of registers of the Civil Registry for Europeans, shall also be recorded in the margin of the birth certificate. (Supplemented by S.37-595) In the event that approval is denied, as mentioned in the previous paragraph, the Governor General may provide the interested party with a \*8 last or first name. This decision shall be treated in accordance with the previous paragraph.

Article 10. (Amended by S.37-595) The acquisition of a name in accordance with the provisions of the four aforementioned articles shall never be submitted as evidence of kinship. (Bw. 262; S.83-192 art.3)

Article 11. An individual may not change his first name or add to his first name, without approval of the court at his place of domicile, done at his request, after having heard the prosecution counsel. (BS. 40)

Article 12. If the court admits the change or addition of first names, then the decision shall be submitted to the official of the Civil Registry at the birth place of the applicant. The said official shall record the decision in the current registers, and shall make note thereof in the margin of the birth certificate. (BS.26)

### **Section 3**

#### **Concerning the correction of the deeds at the civil registry, and of the supplements thereto (S.1836-16)**

Article 13. If no registers exist, or if they have been lost, falsified, amended, torn, eliminated, obscured or damaged if deeds are missing, or if deviations, omissions or other errors have taken place in the recorded deeds, then these shall provide grounds for the supplementation or modification of the registers. (BS.26v., 36; Bw.14, 101; Civ.99; S.1854-40 see BS.67; Bb.214)

Article 14. The request therefor shall only be submitted to the court of justice, within whose legal jurisdiction the registers are located or would have been kept. After having heard the prosecution counsel, provided that the interested parties have grounds for such request and provided that there is no further appeal, the court of justice shall issue a decision. (Rv. 844v.; Civ. 99)

Article 15. This decision shall only be effective between the parties, who have appealed for such, or who have been summoned for this event. (Bw. 1917; Civ. 100)

Article 16. All decisions for the modification or supplementation of deeds which are legally enforceable, shall immediately after submission, be recorded by the official of the Civil Registry in the current registers, and shall in the event of modification, be recorded in the margin of the corrected deed, in accordance with the legal regulations concerning the keeping of the registers of the Civil Registry. (BS.26; Rv.166; Civ.101)

### **Chapter III**

#### **Concerning residence or domicile**

Article 17. An individual shall be deemed to have his residence where he has established his principal abode. (Civ. 102) In the absence of such residence, the actual location of his abode shall be considered as such. (Rv. 6-7, 99; Pr.59, 69-8)

Article 18. An individual's change of residence shall take place by moving the actual residence to another location, and by expressing his intent to establish his principal abode there. (Bw. 19, 53v.; Civ.103; Bb.960)

Article 19. Such intent shall be proven by a statement submitted to the head of the government (assistant resident) at the location from which the individual departs, as well as at the location to which the residence is moved . (Bb.379; Sw.515; S.19-573 see also 31-373, 423) In the absence of such statement, proof of intent shall be deduced from the circumstances. (Civ.104v.)

Article 20. Individuals summoned for public service, shall be deemed to have their residence where they carry out such service. (RO.21; Rv.99; Civ.106)

Article 21. (Amended by S.27-31 see also 390, 421) A married woman, who is not separated from bed and board, shall not have any residence other than that of her husband; minors shall follow the residence of their parents who exercise their parental authority, or that of their guardians; adults, who are under guardianship, shall follow the residence of their guardians. (Bw.106, 207, 211, 242, 298, 301, 383, 452; Civ. 108)

Article 22. (Amended by S.26-335 see also 458, 565 and 27-108) Laborers, shall, pursuant to what is stipulated in the previous article, have their residence in their employers' residence if they reside with them. (Bw.17-2, 1601a v; Civ. 109)

Article 23. The funeral parlor in which a deceased person is laid shall be considered to be at the same location as the place of residence of that deceased person. (Bw. 1023; Rv.7, 99; Civ. 110; Weesk.47)

Article 24. Parties shall be entitled, or one of the parties shall be entitled, pursuant to a deed, and due to specific circumstances to choose a residence other than their actual one. \*12 The choice may be general, and shall extend even to the execution or shall be limited in a manner as approved by the parties or one of them. In such event, the writs, summons and warrants, expressed or implied in the deed, shall be served at the selected place of residence and in the presence of the judge of such location. (Bw.1186, 1194, 1393, 1405, 1412; Rv.8, 13, 85, 99, 106v., 411, 443, 461, 477, 504, 533, 550, 561, 594, 597, 601, 606, 655, 662, 666, 729, 816, 860 etc.; Civ. 111)

Article 25. If no agreement to the contrary has been made, an individual may change his selected residence, provided that the new residence is not located further than ten poles from the previous location, and that the counter party shall be notified of the change.

## **Chapter IV**

### **Concerning matrimony**

#### **General provisions**

Article 26. The law shall only recognize a marriage in a civil relationship. (Bw.81)

#### **Section 1**

#### **Concerning the qualifications and conditions required to enter into a marriage**

See Transitory Regulations relevant to the application of the civil children's law S.27-31 see also 390, 421 prior to Civil Code.

Article 27. At any one time a man may only be bound to one woman, and a woman bound to one man in a marriage. (Bw. 60-4, 62, 63-2, 65, 70-4, 83, 86, 93, 95v., 493v.; Sw.279v.; Civ. 147)

Article 28. To enter into a marriage, the voluntary consent of the prospective spouses shall be required. (Bw. 61-3, 4, 62, 63-2, 65, 83, 87v., 95v., 901; Civ.146)

Article 29. A man may not enter into marriage until he has reached the age of eighteen years and a woman may not enter into marriage until she has reached the age of fifteen years. The Governor General may, however, for significant reasons, remove this prohibition by granting a dispensation. (Gw.71; ISR.43; Bw.61-4, 62, 63-2, 65, 83, 89; BS. 55, 61; Bb.13416; Civ.144v.; W. and B.II-283)

Article 30. Marriage shall be prohibited between individuals who are related lineally, either by legal or illegal birth or due to marriage; and between brother and sister, legal or illegal. (Bw. 61-4, 62, 63-2, 65, 83, 90, 93, 95v., 98, 290, 295, 297; Civ. 161v.)

Article 31. Marriage shall also be prohibited as follows:

1. (Amended by S.41-370) between brother-in-law and sister-in-law, legal or illegal, unless the spouse by virtue of whom these persons became related as brother-in-law and sister-in-law, is deceased or, because of his absence the surviving spouse has been issued approval by a judge to enter into another marriage;

2. between uncle or great-uncle and niece or great-niece, also between aunt or great-aunt and nephew or great-nephew, legal or illegal. (Bb3122) The Governor General may, for significant reasons, remove the prohibition set forth in this article by granting dispensation (Gw.71; ISR.43; Bw.29, 61-4, 62, 63-2, 65, 83, 90, 93, 95v., 98, 295, 297; Civ. 162-164; Bb.3122, 13416, \*16 13603)

Article 32. An individual who has been convicted by legal judgment of adultery, may never enter into matrimony with the accomplice in such adultery. (Bw. 61-4, 62, 63-2, 65, 83, 90, 93, 95v., 98, 209; Civ. 298)

Article 33. (Amended by S.23-31) Individuals whose marriage has been dissolved in accordance with that which is stipulated in article 199, 3 or 4, shall not enter into matrimony for the second time until one year has elapsed after the date on which the dissolution of their previous marriage is recorded in the registers of the Civil Registry. A further marriage between the same individuals is prohibited. (Bw.61-4, 62, 63-2, 65, 83, 90, 93, 199, 207v., 232a, 268, 493; Civ.295)

Article 34. A woman may not enter into a new marriage earlier than three hundred days following the dissolution of the previous marriage. (Bw. 61-4, 62, 63-2, 64v., 71-4, 83, 99, 252, 494v.; Civ. 228, 296)

Article 35. (Amended by S. 27-31 see also 390, 421) Approval of the parents is required for a marriage between minor legitimate children. If only one of the parents has granted his or her approval and the other parent has been deprived of his or her parental authority or guardianship over the child, then the court of justice, within whose jurisdiction the child's residence is located, shall be authorized, at his or her request, to extend approval for the marriage after having heard, or following proper summons of those whose approval is required including next-of-kin or relatives by marriage. In the event that one of the parents is deceased or is incapable of expressing his intent, then only the approval of the other parent shall be required. (Bw.37, 40v., 49, 61-1, 71-2, 5, 83, 91, 151, 299v., 330, 424, 458, 901; BS.61-4; Civ.850)

Article 36. (Amended by S.27-31 see also 390, 421) In addition to the approval required in accordance with Article 35 above, where minor legitimate children are under the guardianship of someone other than their father or mother, approval of such guardian shall be required or if the marriage is to be entered into with the guardian or one of the guardian's blood relatives in a direct line, approval from a supervisory guardian shall be required. If the guardian or supervisory guardian or the father or mother whose parental or guardianship rights have been removed refuse to grant their approval or fail to express their wishes, then the second paragraph of the aforementioned article shall apply, unless the parents, to the extent that their parental or guardianship rights have not been removed, have granted their approval. (Bw. 42, 49, 62, 71-2, 5, 83v., 91, 151, 424, 901; BS.61-4; Civ.150)

Article 37. (Amended by S.27-31 see also 390, 421). If the \*17 father and the mother are both deceased or are incapable of expressing their intent, then each of them shall be replaced by their parents, to the extent that they are still alive and are not similarly incapable. If somebody other than the aforementioned individuals holds guardianship, then the minors, in the circumstances mentioned in the previous paragraph, shall still require the approval of the guardian or supervising guardian in accordance with the distinction made in the previous article. The second paragraph of article 35 shall apply, if, those persons, whose approval is required pursuant to the first or second paragraph of this article, differ in opinion or if one or more do not express their opinion. (Bw. 49, 62, 71-2, 5, 83v., 91, 151, 424, 497, 901; BS 61-4; Civ. 150)

Article 38. (Amended by S.27-31 see also 390, 421) If the father, mother, grandfather and grandmother are absent, or if they are incapable of expressing their wishes, then the legitimate children, to the extent that they are still minors, may not enter into matrimony, without the approval of their guardian and their supervising guardian. In the event that the guardian and the supervising guardian or either one of them

refuses to grant approval or declare themselves, then at the request of the minors, the court of justice, within whose jurisdiction the residence of the minors is located, shall be authorized to grant permission for the marriage, after having heard or after having properly summoned the guardian, the supervising guardian, the blood relatives and the relatives by marriage. (Bw. 39, 49, 61-2, 63. etc.; Civ. 160; Sw.524)

Article 39. (Amended by S.27-31 see also 390, 421) Legally acknowledged illegitimate children, shall not, while they are still minors, enter into marriage without the approval of the father and mother, by whom they have been acknowledged, to the extent that both or one of them are still alive and are capable of expressing their wishes. If, during the life of the father or the mother, by whom they have been acknowledged, somebody other than the father or mother assumes a role as their guardian, then they shall require the approval of the guardian, or in the event that it concerns a marriage to him or one of his blood relatives in the direct line, then the approval of the supervising guardian shall be required. In the event of a difference of opinion between those whose approval is required pursuant to the first and second paragraphs, and one or more refuse to grant such approval, or one or more do not declare themselves, then the court of justice, within whose jurisdiction the residence of the minors is located, shall be authorized, at the request of the minor, to grant permission to enter into the marriage, after having heard or having properly summoned those whose approval is required. In the event that the father as well as the mother, by whom the minor is acknowledged, are either deceased, or incapable of expressing their wishes, then the approval of the guardian and the supervising guardian shall be required. \*18 If one or both refuse to grant approval, or do not declare themselves, then the second paragraph of article 38 shall apply, with the exception of whatever has been stipulated regarding blood relatives or relatives by marriage.

Article 40. (Amended by S.27-31 see also 390, 421) Illegitimate children who are not acknowledged while still minors, shall not enter into marriage without the approval of their guardian or supervising guardian. If one or both refuse to grant approval or do not express their wishes, then at the request of the minor, the court of justice, within whose jurisdiction the residence of the minors is located shall grant approval thereof, after having heard or having properly summoned the guardian and supervising guardian. (Sw. 524)

Article 41. (Amended by S.27-31 see also 390, 421) The judgments of the court of justice in the circumstances mentioned in the previous six articles, shall be passed without any form of legal procedure. The judgments shall not, regardless of whether approval is granted or refused, be subject to further appeal. (Amended by S.27-456) The hearings of those whose approval is required, as mentioned in the previous six articles, shall, if the persons being heard are located or reside outside the area in which the court of justice is established, be assigned to the residential judge and head of the local government (the assistant resident) of their location or residence. Such residential judge and head of local government (the assistant resident) shall designate the official who shall provide the minutes to the court of justice. The summoning of those whose approval is required, shall take place in the manner stipulated in article 333 in respect of blood relatives and relatives by marriage. They may also be represented in the manner stipulated in article 334.

Article 42. (Amended by S.27-31 see also 390, 421) Legitimate children who are no longer minors, but have not reached the age of thirty years must also seek the approval of their parents in order to enter into matrimony. In the event that they are unable to obtain such approval, they may appeal to the court of justice at their place of domicile, for its intervention, having regard to the provisions of the following articles. (Civ. 151v.)

Article 43. (Amended by S.27-31 see also 390, 421) Within a period of three weeks or such other period that the court of justice shall deem appropriate, effective from the date on which the letter of request is filed, the court shall summon the father, mother and child, to inform them in private of that which it deems to be honorable and in their mutual interest. Minutes shall be drafted and shall include details of appearances by the parties but shall exclude details of the arguments submitted by the various parties. (Civ. 154v.)

Article 44. (Amended by S.27-31 see also 390, 421) In the event that neither the father nor the mother makes an \*19 appearance, the marriage shall proceed on the basis of the presentation of the deed which details the non-appearance.

Article 45. If the child fails to appear, the marriage cannot proceed without a renewed request for intervention. (Bw. 47, 48)

Article 46. (Amended by S.27-31 see also 390, 421) If the child and either one or both of the parents appear which parent or parents refuse to grant approval, then the marriage shall not be concluded earlier than three full months after the date of appearance.

Article 47. (Amended by S.27-31 see also 390, 421) The provisions of the last five articles are also applicable to illegitimate children and to the father and mother by whom they have been acknowledged.

Article 48. (Amended by S.28-546) If either one or both parents are not located in Indonesia, then the Governor General may grant dispensation from the requirements stipulated in articles 42 through article 47. (Bb. 480, 1033, 13416, 13603)

Article 49. (Amended by S.27-31 see also 390, 421) For the purposes of articles 35, 37, 38 and 39, continuous or temporary absence from Indonesia shall not constitute incapability of the parents or grandparents to grant approval to minors to enter into marriage, . (S.27-31 overg.1\*)

## **Section 2**

### **Concerning the formalities which precede a marriage (BB. 1231, 1232)**

Article 50. All individuals, who intend to enter into matrimony with one another, shall notify the official of the Civil Registry at the place of domicile of one of the parties. (Bw.17; BS.54v.)

Article 51. Individuals shall either notify in person or provide documentation in which the intent of the prospective spouses is set out with sufficient certainty, on the basis of which a deed shall be drafted by an official of the Civil Registry. (BS. 54v.)

Article 52. (Amended by S.16-338 see also 17-18) Prior to the solemnization of a marriage, the official of the civil registry shall announce such event by means of affixing a notification drafted by the official, to the main entrance of the building where the registers of the civil registry are kept. The announcement shall be affixed for a period of ten days. The announcement shall not appear on a Sunday; New Year's day, the Christian second Easter and Pentecostal days, first and second Christmas days, Ascension day and the birthday of the King shall be regarded as having the status as Sundays. (Amended S.37-595) This document shall contain the following: 1. the names, first names, age, profession and the residence of the prospective spouses, and if they have been married previously, the names of their former spouses; 2. the date, location, and time on which the announcement appears (Bw.53, 61-6, 63-2, 75, 82v., 99; BS.54v.; Civ.63) (Supplemented S.27-595) The document shall be signed by the official of the Civil Registry.

Article 53. (Amended by S.16-338 see also 17-18) In the event that the prospective spouses are not domiciled within the same civil registry area, then the announcement shall be arranged by the respective officials of the civil registry within whose area the respective parties are domiciled. (Bw. 17,76,83; BS.56v; Civ.166)

Article 54. (Amended by S.16-338 see also 17-18) If the prospective spouses have not resided for a full six month period in one area of an official of the civil registry, the aforementioned announcement shall be arranged by the official of the civil registry within whose area they were domiciled most recently. (Civ. 167) \*21 (Amended by S.37-572; 39-288) In the Government area of Java and Madura, dispensation from this requirement may be granted by the Head of the Regional Government within whose area the marriage notification has been given based upon significant reasons put forth by the resident and others. (BS. 56v.; Bb.1020, 13416, 13603)

Article 55, 56. Revoked: S.16-338 see also 17-18.

Article 57. (Amended by S.16-338 see also 17-18) If the marriage does not take place within one year after the marriage notification, a new notification must be given prior to the marriage taking place. (Bw.75; Civ.65)

Article 58. (Amended by S.16-338 see also 17-18) Marriage promises shall not form grounds for a lawsuit for solemnization of a marriage, nor for compensation in the form of costs, damages and interest, due to non-fulfillment of the promises; all claims for compensation in these cases shall be deemed void. If, however, the notification of a marriage by an official of the Civil Registry is followed by an announcement, this may form grounds for claiming compensation in the form of costs, damages and

interest, based upon actual material losses, which one party due to the refusal of the other, may have sustained, provided however that no anticipated profits may be claimed. No such claim shall be made after the expiration of eighteen months from the date of the marriage announcement. (AB.23; Bw.154, 1243v., 1305, 1320, 1335, 1337)

### **Section 3**

#### **Concerning the obstruction of a marriage**

Article 59. The right to obstruct the execution of a marriage, shall only be enjoyed by the individuals and in the circumstances specified in the following articles. (Rv. 816v.)

Article 60. An individual who is bound in marriage to one of the parties intending to enter into marriage, and children of that marriage, shall be authorized to prevent the new marriage from taking place on the basis of the existing marriage. (Bw.27, 61-4, 62v., 68, 86; Civ. 172)

Article 61. (Amended by S.16-338 see also 17-18; 17-497; 27-31 see also 390, 421) The father or the mother of a party to an intended marriage may prevent the marriage from taking place in the following events: 1. if their child, who is still a minor, has not obtained the required approval; 2. if their adult child, who has not yet reached the age of thirty years, has failed to obtain their approval and where such approval has been refused, has failed to seek the intervention of the court of justice, which is required pursuant to article 42; 3. if one of the parties due to mental incapacity has been put under guardianship, or has sought approval from the guardian who has not yet decided whether or not to grant such approval; (Bw.434) 4. if one of the parties cannot comply with the requirements to enter into a marriage in accordance with the provisions of the First Section of this Title; (Bw. 27v., 60, 62v.) 5. if the required marriage announcement has not taken place; (Bw. 52v.) 6. if one of the parties due to wasteful behavior has been put under guardianship, and the intended marriage could be damaging to their child. (Bw. 434; Civ.173) In situations where someone other than a father or mother exercises parental authority over a child, such person, being the guardian, or his replacement, being the supervising guardian, shall be deemed to have the same authority in the events specified in numbers 1, 3, 4, 5 and 6 of this article.

Article 62. (Amended by S.17-497; 27-31 see also 390, 421) In the absence of both parents, the grandparents and the guardian or his replacement, being the supervising \*23 guardian, shall be authorized to obstruct the marriage in the events stipulated in numbers 3,4,5 and 6 of the previous article. The grandparents, the guardian and the supervising guardian are, in the instance stipulated in number 1, authorized to obstruct the marriage, if their approval is required. (Civ.173)

Article 63. (Amended by S.17-497; 27-31 see also 390, 421) In the absence of grandparents, the brothers, sisters, uncles and aunts, including the guardian, supervising guardian, conservator and supervising conservator may obstruct an intended marriage as follows: 1. if the requirements of articles 38 and 40 regarding obtaining approval for a marriage have not been complied with; 2. for the reasons specified in numbers 3,4,5 and 6 of article 61. (Bw. 58; Civ.174v.)

Article 64. A husband, whose marriage has been dissolved due to divorce, may obstruct the marriage of his former spouse, in the event that she intends to enter into a new marriage prior to the expiration of three hundred days following the aforementioned dissolution. (Bw. 34, 60, 61-4, 62, 63-2, 65)

Article 65. The prosecution counsel is required to obstruct an intended marriage in the events set out in article 27 through article 34. (RO.55; Bw.94; Rv.323)

Article 66. The obstruction of the marriage shall be noted by the court of justice, whose jurisdiction covers the Civil Registry of the official who is to execute the marriage. (Rv.817; Civ.177)

Article 67. The deed of obstruction shall stipulate all reasons on which the obstruction is based and no reasons shall be given other than those that existed prior to the obstruction. (BS.59; Rv.816; Civ.176)

Article 68. Revoked; S.37-595, effective as of January 1, 1939.

Article 69. In the event that the application for obstruction is rejected, those seeking obstruction not being blood relatives in a direct line upwards or downwards or the prosecution counsel may be found liable for costs, damages and interest. (Bw. 62v.; Rv.58; Civ.179)



Article 70. In the event that the marriage is obstructed, the official of the Civil Registry shall not execute the marriage unless a legal judgment or authentic deed, whereby the obstruction is rendered legally void, has been submitted to him. Violation of this provision shall render the guilty party liable for compensation in the form of costs, damages and interest. In the event that the marriage is entered into prior to such obstruction being canceled, the lawsuit regarding that obstruction may be continued, and the marriage shall be rendered legally invalid in the event that the claim is \*24 awarded to the opposing party. (Bw. 71-6, 82; BS.59; Civ.68)

#### **Section 4**

##### **Concerning the execution of a marriage**

Article 71. Prior to executing a marriage, the following documents shall be submitted to the official of the civil registry: 1. the birth certificate of each of the prospective spouses; (Bw.29, 35v.; Civ.70; Chin.16) 2. (Amended by S.16-338 see also 17-18; 27-31 see also 390, 421) a deed, drafted by the official of the Civil Registry and entered in the register or another authentic deed, containing the approval of the father, mother, grandfather or grandmother, the guardian or supervising guardian, as well as the approval granted by the judge in the instances in which such is required; (Bw.35v., 42v., 452; Civ.73) the approval may also be granted in the marriage deed; 3. the deed stipulating the intervention of the court of justice, in the instances so required; (Bw. 38v. 41v.) 4. in the event of a second or subsequent marriage, the death certificate of the previous spouse, or the divorce deed, or copy of the judge's permission, granted in the absence of the second spouse; (Bw. 27, 32, 44, 493; Chin. 16) 5. the death certificate of those whose approval is required for the marriage; (bw.71-2; Chin.16) 6. (Amended by S.16-338 see also 17-18) proof that the marriage announcement has taken place without any obstruction at the location and in accordance with the provisions set out in article 52 and the following articles of this title, or proof that the obstruction has been rendered legally void; (Bw.70; BS.59; Civ.69;Bb.5296, 743) 7. the dispensation granted; (Bw.29, 31, 48, 54, 56) 8. the approval, required, for officers and military personnel of lower rank for a marriage.

Article 72. If a prospective spouse is unable to present his or her birth certificate in accordance with the first paragraph of the previous article, such deed shall be replaced by a deed of acknowledgment witnessed by two individuals being male or female regardless of whether or not they are blood relatives of the said prospective spouse, such deed being submitted by the head of the local government at his or her place of birth or residence. This statement shall specify the place of birth and as accurately as possible the date of birth as well as the reasons preventing the submission of a birth certificate. \*26 The absence of a birth certificate may also be remedied, by a similar statement under oath, provided by the witnesses, who should be present at the execution of the marriage, or a statement under oath submitted to the official of the Civil Registry, by the prospective spouse, stipulating that he or she cannot provide a birth certificate or deed of acknowledgment. The marriage certificate shall refer to these statements. (Bw.13, 76v.; BS.27, 61; Civ. 70v.; Chin.16; Bb.379, 1231, 1232; LN 55-26, effective as of 13-5-55, charges for each deed of acknowledgment of birth/death, ex Bw.72, 73; Rp.7,50)

Article 73. In the event that the parties are unable to submit the death certificate referred to in article 71 number 5, this shall be remedied in the same manner as set out in the previous article. (Bw. 13, 82; BS.27)

Article 74. If the official of the civil registry refuses to execute a marriage, on grounds of insufficiency of the documents and statements required in accordance with the provisions of the previous articles, then the parties shall be entitled to appeal to the court of justice by submitting a letter of request; the court shall hear the opinion of the prosecution counsel and the official of the civil registry and provided that there are grounds therefor, shall summarily make a decision on whether or not the documents submitted are sufficient and no further appeal shall be permitted.

Article 75. (Amended by S.16-338 see also 17-18) The marriage shall not take place prior to the tenth day following the announcement, not including the date of the announcement. (Bw.52, 57, 71-6, 99; Civ.64) The Head of the Local Government within whose jurisdiction the marriage notification is placed may for significant reasons dispense with the requirements relating to the announcement and prescribed time period. The dispensation granted shall immediately be affixed on the main entrance of the building, in the manner set out in the first paragraph of article 52. The dispensation shall stipulate the date on which the marriage shall take place or has already taken place.

Article 76. (Amended by S.01-353 see also 05-552; 32-42) The marriage shall take place in public, in the building where the certificates of the civil registry are produced and before the official of the civil registry in the place of domicile of one or both parties, and in the presence of two witnesses, either

relatives or strangers, above the age of twenty one years, and domiciled in Indonesia. (Bw.17v., 53, 83, 92v.,99; BS.13,61v.; Civ.74v.,165)

Article 77. If one of the parties is prevented from attending the marriage in the aforementioned building and can demonstrate a legitimate reason for same, the marriage may take place in a special house within the jurisdiction of the official of the civil registry. In such circumstances, the marriage certificate shall stipulate the reason for the relocation of the venue. \*27 The decision as to whether or not the reason is acceptable shall be at the discretion of the official of the Civil Registry. (Bw.99; BS.62)

Article 78. The prospective spouses shall appear in person before the official of the civil registry at the execution of the marriage. (S.47-137 art.2\*)

Article 79. The Governor General may for substantial reasons, allow the parties to execute the marriage by proxy pursuant to a specific authentic power of attorney. If the authorizer has legally entered into matrimony with another individual prior to the execution of the marriage, then the marriage, executed by proxy, shall be regarded as not having taken place. (Bw.27,29,31,48,54,58,1792v.,1815,1818;BS.12,62;Bb.13416, 13603)

Article 80. The prospective spouses, shall, before the official of the civil registry and in the presence of witnesses, declare, that they accept each other as spouses, and shall faithfully fulfill all legal obligations applicable to married status. (BS.13, 60v.; Civ.75)

Article 81. The parties must provide evidence to their religious officials, of the execution of their marriage before the official of the Civil Registry, prior to any religious ceremony taking place (Bw.26; Sw.530)

Article 82. In the event of violation of the provisions of this title by the officials of the Civil Registry, a monetary fine not exceeding one hundred guilders, may, to the extent that this is not contained in the regulations of the Penal Code, be imposed on the officials by the court of justice, without prejudice to the rights of redress of the relevant parties, provided that there are grounds therefor. (Bw.99;BS.28; Civ.156, 192v.; Sw.530; the penal provisions in Bw.82 are revoked by Inv. Sw.3)

## **Section 5**

### **Concerning marriages executed abroad**

Article 83. (Amended by S.15-299 see also 642) Marriages executed abroad between either Dutch citizens, or Dutch citizens and foreigners, shall be valid, if they are executed in the format customary in the country where the marriage took place, and the spouses, who are Dutch citizens, have not acted in contravention of the provisions of the first section of this title. (AB.3, 16,18; Bw.27v.,52v.; BS.63;Civ.170)

Article 84. Within one year after the return of the spouses to Indonesia, the marriage certificate, executed abroad, shall be copied in the public marriage register of their place of domicile. (Bw.4v., 91, 152; BS.1v., 63; Civ.171)

## **Section 6**

### **Concerning the annulment of the marriage**

Article 85. A marriage can only be annulled by a judge. (Bw.70)

Article 86. The annulment of a marriage which breaches article 27, may be sought by an individual who has been bound in matrimony to one of the spouses, by the spouses themselves, by the blood relatives who are in the ascending line, by those who will benefit from the annulment declaration, and by the prosecution counsel. The validity of a marriage shall be established prior to its annulment taking place (Bw.60-65, 83, 93v., 493v.; Civ.184, 188v., 190)

Article 87. The validity of a marriage to which one or both spouses have not willingly consented may only be disputed by the spouse/spouses who have not willingly consented In the event that an individual, to whom one is married , has erred, then the validity of the marriage may only be disputed by the spouse, who has been misled by such error. In all cases indicated in this article, an individual shall not be permitted to file for annulment, if the spouses have been living together for a continuous period of

three months, effective from the time the spouse obtains his or her freedom, or the error is discovered. (Bw.28, 58,61-3 and 4, 62,63-2,65,83,901;Civ.180v.)

Article 88. If a marriage is entered into by an individual who has been placed under guardianship due to mental incapacity, then the validity of the marriage may be disputed by his or her father, mother and other blood relatives who are in the ascending line, brothers, sisters, uncles and aunts, the guardian, and finally by the prosecution counsel. Following termination of the guardianship, annulment may be sought only by that spouse placed under guardianship, provided always, that he or she may not do so if both spouses have been living together for a period of six months following date of termination of guardianship. (Bw. 28, 61-3, 62, 63-2, 65,83,433v., 447,460; Civ.180)

Article 89. If a marriage has been entered into by an individual, who has not reached the required age as stipulated in article 29, then the annulment may be \*30 requested, either by the spouse who has not reached the required age, or by the prosecution counsel. The validity of the marriage, however, cannot be disputed for the following reasons: 1. if, on the date the annulment is filed for, the spouse or spouses have reached the required age; 2. if the wife, even though she has not reached the required age, becomes pregnant prior to the date of filing for annulment. (Bw.61-4, 62, 63-2, 65, 83; Civ.184v.,190)

Article 90. The annulment of all marriages, entered into in violation of the provisions of articles 30, 31, 32 and 33, may be sought, either by the spouses themselves, or by their parents or blood relatives in the ascending line, or by anyone who has a beneficial interest in such annulment, or by the prosecution counsel. (Bw.61-4, 62, 63-2,65,83,93; Civ.184)

Article 91. (Amended by S.27-31 see also 390, 421, 456) If a marriage is concluded without the consent of the father, mother, grandparents, guardian or supervisory guardian, or without the consent or hearing of the guardian as required under articles 35, 36, 37, 38, 39 and 40, an annulment may only be sought by those whose consent or hearing is necessary in accordance with the law. The application for annulment shall not be filed by blood relatives, whose consent is required, if the marriage has been expressly or impliedly approved by them, or if six months has passed without any opposition by them, from the time that they have become aware of the marriage. With respect to a marriage concluded outside Indonesia, it shall not be assumed that the blood relatives are aware of the marriage in circumstances where the spouses have failed to have the marriage certificate copied in the public registers, in accordance with the provisions of article 84. (Bw,35v., 61-1, 62, 63-1, 83v., 95v., 901; S.27-31 transitory provisions 1\*; Civ.182v.)

Article 92. (Amended by S.27-31 see also 390, 421) The annulment of a marriage, which has not taken place before the authorized official of the civil registry and in the presence of the required number of witnesses, may be sought by the spouses, by the father, mother and other blood relatives in the upwards line including the guardian, the supervising guardian and by those who have an interest therein, and finally by the prosecution counsel. In the event of breach of the provisions of article 76 regarding the competency of the witnesses, annulment shall not be obligatory, but the decision as to whether or not annulment shall take place shall be made by the judge taking the circumstances into account. In the event that there is physical evidence of a married status, and a certificate of marriage instituted before an official of the civil registry, is presented, then the spouses shall not be permitted, in accordance with this article, to seek annulment of this marriage. (Bw.76v., 83, 99v.; BS.13;S.27-31 transitory provisions 1\*; Civ.191, 196)

Article 93. In any of the circumstances, in which, \*31 according to articles 86, 90 and 92, an application for annulment may be filed by the interested parties, such application may be filed during the lifetime of both spouses, by those persons who have or who shall immediately benefit from it. For the purposes of this article, interested parties shall exclude blood relatives in the collateral line, children born of a previous marriage, or strangers.(Civ.187)

Article 94. Following the dissolution of the marriage, the prosecution counsel shall not be permitted to seek annulment thereof. (Civ.190)

Article 95. A marriage, which has been annulled, shall have the same civil consequences, for the spouses as well as the children as if the marriage was entered into in good faith by both spouses (Bw.27v. 86v.97v; Civ.201)

Article 96. If good faith only exists on the part of one of the spouses, then the marriage shall have no civil consequences with the exception of those that benefit that spouse and the children resulting out of the marriage. The spouse who has acted in bad faith, may be found liable for costs, damages and interest with respect to the other party. (Bw. 97; Civ.202)

Article 97. In the events described in the two previous articles, the marriage shall cease to have civil consequences, from the date on which the marriage is annulled.

Article 98. The annulment of a marriage shall not prejudice the rights of third parties who have acted in good faith towards the spouses.

Article 99. A marriage shall not be annulled in the event of breach of the provisions of articles 34, 42, 46, 52 and 75, or, with the exception of the provisions of article 77, in the event that the marriage does not take place in the building in which the civil registry deeds are prepared. In these events the provisions of article 82 shall apply to the officials of the civil registry. (Civ.192)

Article 99a.(Amended by S.37-595, effective as January 1, 1939) Upon request by the prosecution counsel at the legal board which has granted the annulment, the annulment shall be recorded in the current marriage register at the location of the execution of the marriage, in accordance with the provisions of the first paragraph of article 64 of the Regulation regarding the keeping of registers of the Civil Registry for Europeans as well as the first paragraph of article 72 of the corresponding Regulation for Chinese. The record shall be noted in the margin of the marriage certificate. In the event that the marriage is executed outside Indonesia, the recording shall take place in Jakarta.

## **Section 7**

### **Concerning evidence of the existence of a marriage**

Article 100. The existence of a marriage can only be proven by the deed of its execution, recorded in the registers of the Civil Registry, with the exception of those circumstances described in the following articles. (Bw.4,92;BS.1,7,61;Civ.194;S.47-64 article 5)

Article 101. If it appears that there have never been any registers, or that these were lost, or that the marriage certificate is missing from the register, then the sufficiency of the evidence regarding the existence of the marriage shall be decided upon by the judge, provided there is physical evidence of the marriage. (Bw.13; BS.27;S.47-64 art.5\*)

Article 102. Failure to present the marriage certificate of the deceased parents shall not be grounds for disputing the legitimacy of a child if such child demonstrates his knowledge of his status and if the parents have lived together openly as man and wife. (Bw.250, 261v.; Civ.197)

## **Chapter V**

### **Concerning the rights and obligation of the spouses**

Article 103. The spouses owe a duty to one another to assist and support, and to be faithful to each other. (Bw.140, 145v., 193, 225, 227, 237;Sw.304; Civ.212)

Article 104. The spouses commit themselves, by the single act of marriage, to support and raise their children. (Bw.109, 145v., 193,214,230,293,318,320v., 1097, 1601i; Sw.304; Civ.213)

Article 105. A husband is the head of the matrimonial union. (Bw.124, 140) In this capacity he shall lend his assistance to his wife in court, or shall appear there on her behalf, subject to the exceptions described herein. (Bw.110v.; Civ.213) He shall manage his wife's personal assets, unless otherwise stipulated. (Bw.140,194,215,244; Aut.3;LN.53-86 art.6) He shall manage the assets as a proper head of the household, and shall be responsible for any failure to do so. (Bw.195) He shall not dispose of or encumber the immovable assets, without the cooperation of his wife. (Civ.1428)

Article 106. A wife shall obey her husband. (Bw.140; Civ.213) She is obligated to live with her husband, and shall follow him, wherever he deems fit to reside. (Bw.21,140,211v.,242; Civ.214)

Article 107. The husband is obligated to accommodate his wife in the house that he occupies. (Bw.21) He is obligated to protect her, and to provide her with necessities, in accordance with his position and capacity. (Bw.193,213,225v.,237; Civ.214)

Article 108. A wife, notwithstanding that she has been married on the basis that her property shall not be held in common with that of her husband or that she has been married pursuant to a prenuptial agreement, shall not, without the assistance of her husband set out in the deed, or without his written consent, give away, dispose of, encumber, acquire, whether for free or pursuant to an encumbrance. Notwithstanding that the husband has authorized his wife to execute a specific deed or agreement, the wife shall not be entitled , to receive any payment or provide any discharge thereof pursuant to such deed or agreement, without the express consent of the husband. \*35 (Bw.109, 112v.,115v.,118,125,194,896,1006,1046,1171,1330v.,1446,1454,1601f,1676,1678,1684 ,1702,1722,1798;Civ.217)

Article 109. (Amended S.26-335 see also 458,565,27-108) With respect to acts carried out, or agreements executed by the wife, in connection with the regular and daily household expenditures including any domestic arrangements concluded by her as an employer for the benefit of the household, the law shall presume that she has obtained her husband's approval. (Bw.1601v. old, 1601a, 1601e, 1601f, 1916; Coop.10)

Article 110. (Amended by S.38-276) A wife may not appear in court without the assistance of her husband, notwithstanding that she has been married on the basis that her property shall not be held in common with that of her husband or that she has been married pursuant to a pre-nuptial agreement, or that she has a profession which is independent of her husband. (Bw.105, 113v., 139, 194, 1171; Rv.815; Civ.215)

Article 111. The assistance of a husband shall not be required in the following circumstances: (State Gazette 53-86 art.6; Bw.1601f)

1. if his wife is being prosecuted in a criminal case; 2. in a legal application for divorce, legal separation, or separation of assets. (Rv. 819v., 831v.,841; Civ.216)

Article 112. If a husband refuses to authorize his wife to execute a deed, or to appear in court, she may petition the court of justice at their mutual domicile for authorization to do so. (Bw.114; Rv.813v.; Civ.218).

Article 113. (Amended by S.38-276) A wife, who, with the express or implied consent of her husband, has a profession which is independent of her husband, may make any kind of commitment in connection with such, without her husband's assistance. In the event that she is married on the basis that her property will be held in common with that of her husband, then the husband shall also be bound by any commitments made by her If the husband withdraws his consent, he is required to announce such withdrawal publicly. (Bw. 108, 110, 121, 130, 132, 1330v., 1916; Rv.581; Civ. 220)

Article 114. If the husband, due to absence or other reasons, is prevented from assisting his wife or providing her with authorization, or if he has conflicting interests, the court of justice at the domicile of the spouses may grant her the authority to appear in courts, enter into agreements, manage, and to commit all other acts. (Bw.112, 125, 496; Rv.813v.; Civ.221v.)

Article 115. A general authorization, stipulated by prenuptial agreement, shall only apply to the management of a wife's assets. (Bw. 108, 125,140, 194, 1387,1798; Civ.223)

\*36 Article 116. The invalidity of the act, based upon the absence of the authorization, may only be sought by the wife, the husband, or their heirs. (Bw. 108, 1046, 1331, 1387, 1446, 1451, 1454, 1821; Civ.225)

Article 117. If, following the dissolution of a marriage, the wife executes an agreement or a deed, partially or in full, without the necessary authorization, she shall not be entitled to request the cancellation of the agreement or deed. (Bw. 1456)

Article 118. The wife, may without her husband's consent, execute wills. (Bw. 895v.; Civ.226, 905)

## **Chapter VI**

### **Concerning legal community property and management**

#### **Section 1**

## **Concerning legal community property**

Article 119. From the moment of execution of the marriage, there shall exist by law community of property between the spouses to the extent that no other stipulations have been made in the pre-nuptial agreement. Rules regarding community property cannot be revoked or amended by mutual agreement between the spouses for the duration of the marriage. (Bw.126, 139, 149, 153, 180, 186; F.60, 62; Civ.1393, 1395, 1399)

Article 120. With regard to assets, the community property shall include all current or future movable and immovable property of the spouses, and property obtained free of charge, unless the testator or the donor has specified otherwise. (Bw.158; Civ.1401-1408)

Article 121. With regard to liabilities, the community property shall include all debts incurred by the respective spouse either prior to or during the marriage. (Bw.130v., 163, F.62; Civ.1409)

Article 122. All gains and income, including profit and loss, during the marriage, shall also be included in the gains and losses of the community property. (Bw.155; Rv.823j)

Article 123. All debts disclosed after a person's death shall be assumed only by the deceased's heir(s). (Bw.126-1, 128)

## **Section 2**

### **Concerning the management of the community property**

Article 124. A husband only shall manage the community property. He may dispose of, sell and encumber it without any intervention by the wife, except in the event stipulated in the third paragraph of article 140. A husband may not grant the property to individuals who are living unless he does so in order to afford status to his children of the marriage in the event of their marriage. He cannot grant a specific movable asset, if he intends to continue to use it. (Bw.105, 119, 186, 320, 434, 903; Aut.3; Civ.1421v.; State Gazette 53-86, art.6, cf. note Bw. 105)

Article 125. In the event of an emergency, if a husband is absent or is incapable of expressing his wishes, a wife may bind or dispose of the community property upon authorization by the court of justice. (Bw. 108, 112, 114v., 496; Rv.813v.; Civ.1427)

## **Section 3**

### **Concerning the dissolution of the community property,**

#### **and the right to dispose thereof**

Article 126. The community property shall be legally dissolved due to the following: 1. death; 2. the concluding of a new marriage, with the consent of a judge, following the absence of the spouse; (Bw.493v.) 3. divorce; (Bw. 207v.) 4. legal separation; (Bw.233v.) 5. separation of assets (Bw.186v.) The special consequences of the dissolution, in the events set out in numbers 2,3,4 and 5 of this article, are regulated in the titles relating to these subjects. (Bw.119, 222v.; Civ.1141)

Article 127. (Amended by S.27-31 see also 390, 421) Following the death of one of the spouses, the surviving spouse is obligated, in the event that there are minor children, to draft a description of the assets which the community property comprises, within a period of three months. The description of assets may be done by private deed, but must be completed in the presence of the supervisory guardian. In the absence of such description, the community property shall continue to exist for the benefit of the minor children and shall under no circumstances jeopardize them. (Bw.311, 315, 370, 408, 417; Civ.1442; Wsk.48)

Article 128. Following dissolution of the community property, the total number of assets shall be divided into equal parts between the husband and wife, or their heirs, without taking into consideration which party the goods originated from. The rules stipulated in the seventeenth Chapter of the second book concerning separation of assets shall be applicable to the distribution of the assets which the legal community property comprises. (Bw.123, 156, 243, 408, 903, 1066v., 1071v.; Rv.689v.; Civ.1467, 1474, 1476, 1482)

Article 129. Clothing, trinkets and tools, belonging to the profession of one of the spouses, including the books and collection of art and scientific objects, and lastly the documents or memorabilia, associated with the gender of the respective spouse, may be claimed by the party from where they originated, at a price to be decided amicably between the parties or to be appraised by experts. \*41 (Bw.132)

Article 130. The husband, may, following the dissolution of the community property, be liable for the total debts of the community property, without prejudice to his claim for compensation from his wife or her heirs for half the amount. (Bw.121,124,128; Civ.1484)

Article 131. Following the divorce and the distribution of the entire community property, a spouse cannot be prosecuted by creditors for the debts incurred by the other spouse prior to their marriage. Those debts shall be the liability of the spouse who has incurred those debts or his or her heir(s); without prejudice to the claim for redress filed by one spouse against the other or his or her heir(s). (Bw.121, 128, 132)

Article 132. A wife shall be entitled to renounce her rights to the community property and any agreement to the contrary shall be deemed void. In the event that she renounces such rights to the community property, she shall be entitled to claim only her personal linen and clothing from the community property. (Amended by S.38-276) This renunciation shall release her from the obligation to contribute to the debts of the community property. (Amended by S.38-276) Notwithstanding the right of the creditors to the community property, the wife shall still be required to settle those debts incurred by her in the community property; without prejudice to her claim for compensation for the entire amount filed against her husband or his heir. (AB.23; Bw.113, 121, 129,131,136,138,153,483,1023,1045; Civ.1453,1492-1495)

Article 133. A wife, who intends to exercise her right of renunciation, described in the previous article, shall be required, within a period of one month following the dissolution of the community property, to submit a deed of renunciation, to the court clerk at the court of justice at the place of the last communal domicile, and failure to do so shall result in loss of the right to renounce. If the community property is dissolved due to the death of the husband, then the one month time period shall commence as of the date that the wife becomes aware of the husband's death. (Ov.14; Bw.134, 138,1023v., 1989; Rv.135, 829; Civ.1457; Bb.379)

Article 134. If the wife dies within the stipulated time period without having submitted a deed of renunciation, her heirs shall be authorized, within a period of one month after her death or after they become aware of her death, to renounce the community property in the manner set out in the previous article. The heirs of the wife may not however, submit the claim for her linen and clothing from the community property. (Ov. 14; Bw. 132, 138, 903, 1023v.; Civ.1461, 1495; Bb.379)

Article 135. If the decision by the heirs is not unanimous, with the result that one party renounces and one \*42 party accepts the community property, the person who accepts it shall only enjoy that portion of the property to which he is entitled by inheritance, and to which the wife would have been entitled upon division of the property in the event of divorce The remainder shall be left with the husband, or his heirs, who are, with respect to the heir who has renounced, responsible for the settlement of all that the wife in the event of renunciation could have claimed, but only to the extent of the inheritance share, to which the individual, who has renounced it, is entitled.(Bw.132, 134,138,903,1048,1051,1061; Civ.1475)

Article 136. The wife who has agreed to community of property, cannot release herself from such. Acts of simple management, or concerning the maintenance of the assets, shall not result in a release. (Bw. 137, 483, 1048v.; Civ.1454)

Article 137. The wife, who has lost or embezzled assets from the community property, shall retain the community property, notwithstanding her renunciation; the same shall apply with respect to her heirs. (Bw.136, 1031, 1064; Civ.1460)

Article 138. In the event that the community property is dissolved due to the death of a wife, her heirs may renounce the community property, within the same period and in the same manner as stipulated in respect of the wife. (Ov.14; Bw.132v., 135,242v., 1023; Civ.1466; Bb.379)

## **Chapter VII**

### **Concerning prenuptial agreements**

## Section 1

### Concerning prenuptial agreements in general

Article 139. The prospective spouses, may, pursuant to a prenuptial agreement deviate from the rules stipulated in relation to legal community property, provided that they do not contravene proper morals or public order and that they comply with the following provisions. (AB.23;Bw.119,132,153,180,888,1254,1337; Aut.3;Civ.1387,1497,1527)

Article 140. The agreement shall not interfere with the rights, which originate from the man, in such capacity, and with the paternal rights, neither shall it interfere with the rights which the law has granted to the longest living spouse. (Bw.105v., 110, 298v., 300, 307v.,311,345v.,355) The agreement shall also not interfere with the rights afforded to the man, as head of the legal union; without prejudice to the rights of the wife to control the management of her movable and immovable assets, and to enjoy her personal income freely. (Bw.105,115) They shall also be entitled to stipulate, that, notwithstanding the legal community property, the immovable assets, the recordings of State debts, other negotiable instruments and indebtedness, attributable to the wife, or those, which, during the course of the marriage, shall be added to the community property as her share, shall not be transferred or encumbered by her husband without her consent. (Bw.124, 132; Civ.1388)

Article 141. The prospective spouses, may not in the prenuptial agreement, renounce their legal obligation regarding the inheritance of their descendants. In addition, they cannot regulate the inheritance of their descendants. (Bw.852v.,1063, 1334; Civ.1389)

Article 142. They may not provide that one shall be liable for a larger portion of the community property debts than the other. (Civ. 1521)

Article 143. They shall not, in general terms, stipulate, that their agreement shall be governed by foreign laws, by customs, laws, law books or local customs, which were previously enforced in Indonesia, or in the Royal Kingdom of the Netherlands and other such properties overseas. (Civ. 1390)

Article 144. Exclusion of community property shall not result in an exclusion of shared profit and loss unless this is expressly stipulated. \*45 Shared profit and loss shall be regulated by the provisions of the second section of this title. (Bw.155v., 164; F.60v.; Civ.1392,1530,1536)

Article 145. In the event of exclusion or restriction of community property, the amount that the wife must contribute yearly to the household and education of the children shall be stipulated. (Bw.104,193;Civ.1537)

Article 146. In the absence of any such stipulations , all profit and income arising from the assets of the wife shall be at the husband's disposal. (Bw.105,193; Rv.823j; Civ.1530,1537,1575)

Article 147. The prenuptial agreement shall be invalid if it is not drawn up by notarial deed, prior to concluding the marriage. (Bw.232a) The agreement shall become effective upon the execution of the marriage and such time period may not be altered. (Bw.119,149; Civ.1394,1399)

Article 148. The changes to the agreement proposed prior to execution of the marriage, shall not become effective other than by a deed drawn up in the same format as the prenuptial agreement. No changes shall, in fact, be valid, without the presence and the consent of all the parties to the prenuptial agreement. (Bw.1873; Civ.1396)

Article 149. Following the execution of the marriage, no changes whatsoever may be made to the prenuptial agreement. (Bw.196v.,232a,237,1678;Civ.1395)

Article 150. In the absence of the community property, the acquisition of the movable assets, with the exception of the recordings of State Debts, and other bearer negotiable documents and indebtedness, cannot be proven in any manner, other than by indicating such in the prenuptial agreement, or by a description signed by the notary and the parties involved and attached to the minutes of the prenuptial agreement, in which it shall be referred to. (Bw.165v.,513;F.60v.;Civ.1504;HCl.50;Bep.Vr.O.art.2, pg.378)



Article 151. Minors, who have fulfilled the requirements for entering into marriage, shall also be competent to agree to all conditions proposed in the prenuptial agreement, provided the minors, in agreeing thereto, are assisted by those, whose consent to the marriage is required. If the marriage requires such consent as referred to in articles 38 and 41, the draft prenuptial agreement shall be attached to the request for consent and shall be decided upon simultaneously. (Bw.29,35,40v.,452,458,1447,1677;Civ.1095,1398)

Article 152. No stipulations, in the prenuptial agreement, which deviate entirely or partially from the provisions regarding legal community property, shall apply to third parties, earlier than from the date 1.of copying such \*46 stipulations in a public register, which shall be done with the court clerk at the court of justice, within whose legal jurisdiction the marriage was executed, or 2. on which the marriage certificate is copied, in circumstances where the marriage takes place overseas. (Bw.84,147,245,249;F.60v.;Pr.872;Co.67)

Article 153. The rules stipulated in relation to legal community property shall apply only to the extent that they have not been deviated from either expressly or impliedly in the pre-nuptial agreement. Notwithstanding the manner in which community property has been stipulated, the wife, or her heirs, shall be authorized to renounce such, in the manner and circumstances described in the previous title.(Ov.14;Bw.119v.,132v.,138v.,1423;Civ.1393,1453,1528;Bb.379)

Article 154. Conditions set out in the prenuptial agreement, including gifts in connection with the marriage, shall become void if the proposed marriage does not take place. (Bw.58, 168v., 176v.,1258; Civ.1088)

## **Section 2**

### **Concerning the community property in respect of**

#### **profit and loss and gains and income**

Article 155. If the prospective spouses have stipulated that there shall be community of property in respect of profits and losses, such stipulation shall exclude the establishment of legal community property of assets, it shall be further provided that upon the dissolution of the community property between the spouses, the profits gained and losses incurred in the course of the marriage, shall be equally divided . (Bw.144,165; Civ.1498)

Article 156. Liability for the losses, and share in the profits shall be apportioned equally between each of the spouses, unless it has been otherwise stipulated in the prenuptial agreement. (Bw.128, 142, 185)

Article 157. Profit shall be interpreted as the increase in the value of their property, in the course of their marriage, resulting from the gains and income from the respective assets and work and diligence, and from the savings made on unused income. Losses shall be interpreted as the reduction in the value of their property caused by expenditure beyond their means. (Bw.120; Civ.1498)

Article 158. Profit shall not be interpreted as anything, acquired by one of the spouses, in the course of the marriage, by inheritance or gift, regardless of whether or not this originates from next-of-kin or strangers, without prejudice to the stipulation in article 167. (Bw. 120, 166)

Article 159. Immovable assets and securities, purchased in the course of the marriage, regardless of whom this is done on behalf of, shall be regarded as profit, unless it is proven otherwise.

Article 160. The appreciation or depreciation of the value of the assets, belonging to one of the spouses, shall not be regarded as profit or loss.

Article 161. Improvement of immovable assets, as a result of addition of land, alluvium, carpentry work or any other manner, shall not be considered as profit, but shall merely benefit the owner of the immovable assets. (Bw. 596v.)

Article 162. Damage or depreciation, caused by fire, floods, erosion or any other cause, shall not be regarded as community losses, but shall become the liability of the owner, whose assets are damaged or depreciated.

Article 163. All debts, being the responsibility of both spouses, and incurred during the course of the marriage, shall be deemed to be loss in the community property. Notwithstanding this, anything forfeited by a spouse due to a misdemeanor shall not be deemed to be loss in the community property.(Bw.121, 130v.)

Article 164. The stipulation that there shall only be community of property in respect of gain and income between the spouses, implies that there shall be no legal community property or shared profit and loss.(Bw.165)

Article 165. In circumstances where there is community of property in respect of profits and losses or gains and income as described in articles 155 and 164, movable assets belonging to the respective spouses at the time of execution of the marriage shall be considered as profit only, unless expressly specified in the prenuptial agreement, or in a statement signed by a notary and the relevant parties and attached to the minutes of the prenuptial agreement which refer to the statement. (Bw.150,513,1977; F.60v.; Civ.1499, 1532)

Article 166. The specification shall set out how the movable assets became the property of the respective spouses during the course of the marriage, whether by inheritance or gift. In the absence of a specification of the movable assets, which in the course of the marriage became the husband's property, or in the absence of documentation proving ownership by the husband, the husband shall not be entitled to claim ownership of such assets. If no specification of the movable assets, which have become the property of the wife during the course of the marriage, is available, or in the absence of documentation containing a specification and the value of the assets, the wife or her heirs shall be permitted to present witnesses to testify about the existence and value of the assets or prove such based on public knowledge. (Bw.165, 513; Civ.1499, 1504, 1509)

Article 167. Gains and income include Gains and income which accrue yearly, monthly and weekly and other gifts or payments, such as annuity payments; and shall be included in the provisions regarding community property aforementioned in this section. (Bw.120, 157v.)

### **Section 3**

#### **Concerning gifts between the two prospective spouses**

Article 168. The prospective spouses, may, pursuant to the prenuptial conditions, grant to one another or one party may grant to the other, gifts which they consider appropriate, and may also curtail those gifts to the extent that they are detrimental to the rights of those who are legally entitled to a portion thereof. (Bw.182, 222, 913v., 919v.,1666v., 1678, 1692; Civ.1090v.)

Article 169. The gifts may be relevant to the current assets as described in the deed, as well as to the entire or partial inheritance of the donor. (Bw.175, 179, 22, 224, 1334, 1667)

Article 170. Gifts of such nature shall be valid notwithstanding the absence of the express acceptance by those to whom they were granted. (Bw.151, 402, 452, 1683, 1685; Civ.1087, 1093)

Article 171. Gifts may be subject to conditions the enforcement of which depends on the intention of the donor.(Bw.179, 1256, 1668; Civ.944, 1068, 1093, 1170, 1174)

Article 172. All gifts of current and specific assets are irrevocable, unless the conditions pursuant to which they were made have not been complied with. (Bw.179, 1253-1255, 1688; Civ.953v.)

Article 173. Gifts of the entire or partial inheritance of the donor are irrevocable, provided, that the assets granted, are no longer at the donor's disposal, with the exception of insignificant amounts for wages, or other matters, to be determined by a judge. Failure to comply with the conditions may result in the gifts being revoked. (Bw.173, 178v., 1608; Civ.1082v., 1093)

Article 174. No current and specific gifts exchanged between spouses pursuant to a prenuptial agreement, shall be subject to the requirement that the donee survives, unless such requirement has been expressly stipulated. (Bw.1666, 1672; Civ.1092)

Article 175. No gift of the entire or partial inheritance of the donor pursuant to a prenuptial agreement, either exchanged between the two spouses, or \*50 bequeathed by one spouse to the other, shall be

passed on to the children of the marriage, in the event that the donee does not survive the donor. (Bw. 174, 178, 231, 899; Civ.1093)

#### **Section 4**

##### **Concerning gifts granted to the prospective spouses,**

##### **or the children of such marriage**

Article 176. Third parties may grant gifts, pursuant to conditions of a prenuptial agreement and separate notarial deeds executed prior to a marriage taking place, to one or both spouses, whichever they deem appropriate, including the curtailment of the gifts to the extent that such gifts are detrimental, without being subject to the rights of those who are entitled to a legal portion thereof. (Bw.228, 913v., 919v., 1090, 1334, 1693; Civ.1082, 1090).

Article 177. If the gifts are granted pursuant to conditions of the prenuptial agreement, express acceptance by the donee shall not form grounds for claiming the validity thereof. However, if the gift is granted by separate deed, it must be expressly accepted in order to be valid. (Bw.170, 1666, 1683; Civ.1087)

Article 178. A gift of the entire or partial inheritance of the donor, granted to one or both spouses, shall always be considered to be granted for the benefit of the children and descendants, from the marriage, in the event that the donor survives the donee, unless it is otherwise stipulated in the deed. The gift shall lapse, if the donor survives the donee and the children and descendants from the marriage. (Bw. 173, 175, 231, 976, 1334, 1679; Civ. 1082, 1089)

Article 179. The provisions in articles 169, 171, 172 and 173 shall also apply to the gifts referred to in this section. (Civ. 1083, 1086, 1092).

#### **Chapter VIII**

##### **Concerning community property or prenuptial agreements in the event of second or further marriages**

Article 180. There shall also be legal community of property in second and further marriages between the spouses, to the extent that no stipulations to the contrary have been made in a prenuptial agreement. (Bw.119, 139; Civ.1496)

Article 181. However, in the event of second and further marriages, and in the event that there exists children and descendants from the previous marriage, the new spouse, due to the consolidation of assets and debts based upon community of property, shall only be entitled to profit not exceeding the minimum share to which one of the children, or in the event of his death, his descendant is entitled such share not to exceed one fourth of the assets of the re-married spouse. The children from the previous marriage or their descendants shall have, at the time the inheritance of the re-married spouse becomes available, a legal claim to restrict or depreciate such inheritance; and the excess of the permitted portion shall be for the benefit of such inheritance. (Bw.182,185,231,842,902,913v.,920,929,1060; Civ.1098,1496).

Article 182. A husband or wife, who has children or descendants from a previous marriage, and who enters into a second marriage may not make provision for additional profits in the prenuptial agreement other than those described in Article 181 (Bw.168,902; Civ.1098)

Article 183. The spouses shall not indirectly give one another more than what is permitted pursuant to the above stipulations. All gifts granted pursuant to fictitious reasons, or granted to representatives, shall be invalid. (Bw.911, 1057v.; Civ.1099)

Article 184. Gifts granted to representatives shall cover those which have been made by one of the spouses to the children, or to one of the children of the spouse, from a previous marriage, and gifts granted by the donor to the blood relatives, of which the other spouse, at the time of the gift, shall be the presumed heir; notwithstanding that the latter-mentioned would probably not have survived the blood relative who is the beneficiary. (Bw.911, 1916-1, 1921; Civ.1100)

\*54 Article 184a. (Supplemented by S.23-31) Articles 181-184, shall, with respect to spouses who have remarried one another, not apply to the children or descendants from their previous marriage to one another.

Article 185. With respect to children from a previous marriage, profit and loss shall be shared equally between the spouses, unless the community property provisions have been excluded or altered by the prenuptial agreement. (Bw.128, 156, 164)

## **Chapter IX**

### **Concerning the division of assets**

Article 186. The wife, may, in the course of marriage, request a division of assets, in the following circumstances:

1. if the husband, due to patent misconduct, has squandered the community property, and has exposed the household to ruin; 2. if, due to a husband's misconduct and mismanagement of his affairs, his wife is in imminent danger of losing the security of her dowry and her entitlements pursuant to the law, and also if due to gross negligence in the management of the community property, such property might be endangered. Division of assets pursuant to mutual agreement shall be invalid. (Bw.105, 119, 124, 126-1-5, 149; Rv.819v., 825; Civ. 1443)

Article 187. The claim for division of assets shall be made public. (Rv.822)

Article 188. Creditors of the husband may intervene in the proceedings between them in order to dispute the claim for division of the assets. (Bw.192; Rv.279v.; Civ.1447)

Article 189. The division of assets shall, prior to taking place, be made public; failure to do so shall render the implementation invalid . (Rv.811) The judgment granting permission for division of assets shall be effective from the date on which the lawsuit is filed. (Bw.192; Civ.1445)

Article 190. The wife, may, during the proceedings, with the approval of the judge, take precautionary measures, to prevent the assets from becoming lost or squandered. (Rv. 823v.; Civ.270)

Article 191. The judgment, granting permission for the division of assets, shall lapse by law, if the division of assets, which should be evidenced by an authentic deed, does not take place; or, if, within a period of one month after the judgment is granted , no legal claims have been filed by the wife seeking division which claims shall be continued regularly. (Bw.1066; Rv.827; Civ.1444)

Article 192. Creditors of the husband who have not interfered in the proceedings, may oppose the division, notwithstanding that it has taken place, in the event that their rights have been expressly restricted as a result \*57 thereof.(Bw. 188, 215, 1341; Rv.828; Civ.1447)

Article 193. Notwithstanding the division of assets, a wife is obligated, in proportion to her income and that of her husband, to contribute to the expenses of the household and the education of the children, borne to her by her husband. In the event of the insolvency of her husband, a wife shall be solely liable for such expenses. (Bw.104, 145v., 298; Civ.1448)

Article 194. A wife, whose assets have been separated from those of her husband, shall be restored as independent manager thereof, and may obtain approval from a judge in order to have her movable assets at her disposal. (Bw.105, 110, 115, 124; Civ.1449)

Article 195. A husband shall not be responsible for his wife, in the event that their assets have been separated and she fails to use or re-invest the proceeds from the sale of immovable assets, transferred pursuant to approval from the judge, unless the contract was drafted with the assistance of the husband, or it is proven that the proceeds were provided by him or have benefited him. (Civ.1450)

Article 196. The community property which is dissolved by separation of assets, may be reinstated with the consent of the spouses. This can only take place by authentic deed. (Bw.149, 232a, 1868; Rv.826; Civ.1451)

Article 197. In circumstances where community of property is reinstated, matters relating thereto shall be afforded the same status as that applicable prior to separation, without prejudice to the result of acts carried out by the wife which took place in the interim between separation and reinstatement. Agreements providing for reinstatement of community of property by the spouses for any reason other than those already specified shall be deemed void. (AB.23; Bw.119,149,232a,1340; Civ.1451)

Article 198. The reinstatement of community of property must be made public by the spouses. Third parties shall not be effected by the reinstatement until the public announcement has been made. (Bw.232a; Rv.828, 830; Civ.1451)

## **Chapter X**

### **Concerning the dissolution of marriage**

#### **Section 1**

##### **Concerning the dissolution of marriage in general**

Article 199. A marriage is dissolved for the following reasons: 1. death; (Bw.3, 220) 2. absence of or abandonment by one of the spouses for a duration of ten years followed by a new marriage being entered into by the other spouse, in accordance with the provisions of the fifth section of the eighteenth title; (Bw.493v.) 3. (Amended by S.16-530) by legal judgment after having lived separately and after registration of the pronounced dissolution of the marriage has taken place in the registers of the civil registry, pursuant to the provisions of the second section of this title; (Bw.200v.) 4. divorce, in accordance with the provisions of the third section of this title. (Bw.207v.; Civ.227)

#### **Section 2**

##### **Concerning the dissolution of the marriage, following separation**

Article 200. In the event that spouses have been living separately, either for one of the reasons mentioned in article 233, or upon mutual decision, and the separation has endured for a period of five years, without any reconciliation, each party shall be free to summon the other party in court, and to request that the marriage be dissolved. (Bw.233, 236, 242, 248; Civ.310)

Article 201. The request shall be denied if the defendant does not appear in court after having being summoned three times for three consecutive months, or if he or she does appear and opposes the dissolution or declares his or her willingness to reconcile with the other spouse. (Bw.248; Civ.310)

Article 202. If the defendant consents to the request, the court of justice shall order the spouses to appear together and in person before one or more members who shall attempt to persuade them towards a reconciliation. Should the attempt to do so fail, the judge shall order that the spouses appear again, at the earliest three months, and at the latest six months after the first appearance. (Ov.46; Bw.208, 236, 239, 248, 1023; Rv.31; Bb.379) (Supplemented by S.23-287 see also 441) In the event that there is a valid reason for failure to appear, the designated members or the designated member shall visit the residence of the spouses. (Supplemented by S.23-287, 441, amended by S.25-497, 678 see also 26-63) If one of the spouses or both of them reside outside the jurisdiction in which the court of justice is established, then the court may appoint the residential judge, or in his absence, the head of the local government to carry out the acts mentioned in the three previous paragraphs. The official thus designated shall draft minutes of the proceedings and shall immediately forward such to the court of justice. (Supplemented S.23-287 see also 441) If one of the spouses, or both, reside outside Indonesia, the court, may, request that the legal authorities of the country in which they reside, perform the functions mentioned in the first and second paragraphs, or otherwise assign responsibility to the Dutch consulate official, within whose jurisdiction they reside. The minutes made thereof shall be forwarded \*61 to the court of justice.

Article 203. (Amended by S.23-287 see also 441) If the second appearance is also unsuccessful, the court of justice shall pass judgment after having heard the prosecution counsel and the request shall be granted, provided that the formalities described above, have been fully complied with. The court of justice is, however, entitled to postpone its judgment, for a period of six months, if it appears that reconciliation may still be possible. (Bw.240)

Article 204. An appeal to a higher court shall be permitted against the judgment of the court of justice no later than one month after such judgment. (Ov.45; Bw.241, 1023)

Article 205. (Amended by S.16-530) The marriage shall be dissolved by virtue of the judgment and the registration in the registers of the civil registry. The registration shall take place in the same manner, within the same period, and upon the same conditions, as those applicable to divorce, stipulated in article 221. (Bw.245; BS.64;cf.S.45-14, 46-24)

Article 206. (Amended by S.27-31 see also 390, 421) The dissolution of the marriage shall not interfere with the consequences, which are regulated in articles 222 through 228 and article 231 and pursuant to article 246 shall also apply to the separation from board and bed, nor shall it infringe on the provisions, which in the event of an amicable divorce pursuant to article 237 are stipulated by the spouses both with respect to their own position and with respect to the care, support and education of the children. At the delivery of the judgment granting dissolution, the judge shall appoint the parents who may exercise parental authority, as guardian. At the request of both or one of the parents, the court of justice may, based upon circumstances arising after the judgment granting dissolution of the marriage has become legally valid, amend the ruling regarding guardianship of the children referred to in the previous paragraph, and the provisions mentioned in the first paragraph with respect to the children consequent upon a hearing or proper summons of the parents, the supervising guardians and the blood relatives or relatives by marriage of the minors. This decree may be executed immediately, notwithstanding opposition or appeal, with or without a guarantee. (Bw.230, 246a; Rv.54v.) (Amended by S.27-456) The hearing of the parents and the supervising guardians, who reside or have taken up residence outside the area, in which the court of justice is established, may be assigned by that court to the residential judge or the head of the local government at their residence or domicile. The official who is responsible for drafting minutes of the hearing shall forward same to the court of justice. The parents and supervising guardians shall be summoned in the manner described in article 333 with respect to blood relatives \*62 and relatives by marriage. They may have themselves represented in the manner stipulated in article 334. A parent, who has not filed a request and who has not appeared upon the summons, may oppose the decree mentioned in the third paragraph, within thirty days after the decree or a deed drafted pursuant to such matter or for the implementation of such matter, has been forwarded to the parent in person, or after the parent has acted in such a way that makes it evident that he is familiar with the decree or its execution. An individual, whose request has been denied, and an individual, who, notwithstanding opposition, has been declared to be in the wrong, as well as an individual whose opposition has been rejected, may file a higher appeal within thirty days after the judgment. (Rv.83,341) In the event that authority has not already been asserted over the minors by those to whom guardianship has been assigned pursuant to one of the provisions of this article, provision for delivery of the minors shall also be made in the judgment or decree. The second, third, fourth and fifth paragraph of article 319h are applicable in this regard.

Article 206a. (Supplemented by S.27-31 see also 390, 421; amended by S.38-622) Upon granting the dissolution or issuing the decree referred to in the third paragraph of article 206, the court of justice may, provided that there is a reasonable fear that the parent assigned with guardianship cannot adequately contribute to the support and education of the minors, issue instructions referred to in article 230 in the manner and with the consequences stipulated in the said article. In the absence of such instruction the guardianship board may request payment in respect of aforementioned contributions from the court, after the judgment as to dissolution of the marriage has been registered in the registers of the civil registry. (Bw.298)

Article 206b. (Supplemented by S.23-31) The stipulation in article 232a shall also apply to individuals, who re-marry one another, following the dissolution of their previous marriages to one another pursuant to the previous articles.

### **Section 3**

#### **Concerning divorce**

Article 207. (Amended by S.25-199 see also 273) A petition for divorce shall be filed with the court of justice, within whose jurisdiction the husband, at the time of the filing of the petition as referred to in article 831 of the Regulation for Legal Procedures, has his main residence, or in the absence thereof, has taken up actual residence. If at the time of the filing of the above petition, the husband does not have a known principal residence or actual residence within Indonesia, the petition shall be filed with the court of justice at the location where the wife, at that time, actually resides. (Bw.17, 20v., 33; Rv.831v.; Civ.234)

Article 208. Divorce may never take place by mutual consent. (Bw.200v., 236; Rv.78; Civ.233)

Article 209. The reasons for which a divorce may be granted shall be as follows:

1. adultery; (Bw.32, 310, 909) 2. willful abandonment; (Bw.211,218) 3. (Amended by S.17-497 see also 645) a sentence to imprisonment of five years or to a more severe punishment, passed after the marriage; (Bw.210) 4. severe injuries or abuse inflicted by one spouse on the other, thereby endangering their lives. (Ov.63; Bw.233; Civ.229-232)

Article 210. In the event that a punishment has been imposed on one of the spouses pursuant to a judgment finding that spouse guilty of adultery, then no further formalities shall be necessary to the granting of a divorce other than submitting a copy of the judgment to the court of justice together with proof that the judgment is not subject to further legal appeal. (Amended by S.17-497 see also 645) This stipulation shall also apply, if the divorce is requested due to one of the spouses being sentenced to imprisonment for five years or to a more severe punishment. (Bw.219, 233v., 909, 1918; Sv.189, 314; Civ.261)

Article 211. (Amended by S.25-199 see also 273) In the event of willful abandonment resulting in a change of principal residence or actual residence, which occurs after \*64 the grounds for divorce have arisen, the petition for divorce may also be filed with the judge located at the most recent shared actual residence. The petition for divorce based on willful abandonment may only be granted, if one of the spouses, who has left the shared residence without any legal justification, continues to refuse to return to his spouse. The legal petition for divorce in such instance may not be filed before a period of five years has elapsed since the time that the spouse left the shared residence. If there is legal justification for the estrangement, then the period of five years shall run from the moment the justification no longer exists. (Bw.21, 106v., 199, 218, 233v.,463, 493)

Article 212. A wife, whether petitioner or defendant in the divorce, may, upon consent of the judge, during the course of the lawsuit, leave the residence of the husband. The court of justice shall designate the residence, where the wife is required to reside. (Bw.21,106,214,216;Rv.835; Civ.268)

Article 213. The wife shall be authorized to claim support for her maintenance, which the husband shall be required to pay to her for the duration of the lawsuit in accordance with the directions of the judge. If the wife leaves the residence assigned to her without the consent of the judge, she may, depending upon the circumstances, be deprived of all rights to payment, and in the event that she is the plaintiff, be declared unqualified to continue legal proceedings. (Bw.105,107,212,217,226,324v.; Rv.839;Civ.268v.)

Article 214. (Amended by S.27-31 see also 390,421) Pending the lawsuit, the court of justice shall be entitled to suspend the exercise of parental authority either in its entirety or partially, and to assign such authority to one of the parents or to another individual designated by the court or to the guardianship board with respect to the children personally and their assets, as the court shall deem fit. These decrees shall not be subject to any appeal. They shall remain valid until the judgment rejecting the petition for divorce has obtained legal validity, or in the event that the petition is granted until one month has elapsed after the decree for the granting of the guardianship has obtained legal validity. (Rv. 835, 839) The seventh and eighth paragraph of article 319 shall apply to costs incurred in the lawsuit referred to in the first paragraph.

Article 215. A husband's rights regarding the management of the assets of his wife, shall not be suspended during the lawsuit, without prejudice to the authority of the wife, who shall, in order to protect her rights, take relevant protective measures, which are provided for in the legal provisions in Regulation Regarding Civil claims. All acts carried out by a husband which expressly diminish his wife's rights, are deemed invalid. (Bw.105, 124, 192, 1341; Rv.840; Civ. 270v.)

\*65 Article 216. In the event that a reconciliation between the spouses occurs, the right to file for divorce shall lapse, whether the reconciliation took place after acknowledgment by one spouse of the acts of the other which could constitute grounds for divorce, or whether it took place after the petition for divorce has been filed with the court. The law shall presume that a reconciliation has occurred, in the event that a husband and wife resume living together after the wife has left the communal residence upon consent from the judge. (Bw.212v., 217, 220, 235,1921; Rv.831v.; Civ.272,274)

Article 217. A spouse who files a new petition on different grounds, the circumstances of which arose after reconciliation, may rely upon the grounds for divorce in the original petition in support of his new petition. (Bw.209,213,219; Civ.273)

Article 218. A petition for divorce on grounds of willful abandonment, shall lapse, if the spouse, prior to the divorce being granted, returns to the communal residence. However, if the spouse leaves the communal residence for no valid reason, for a second time, the other spouse may file a new petition for divorce upon the expiration of six months after the abandonment and may rely upon the grounds for divorce in the original petition in support of his or her new petition. A petition for divorce shall not lapse in the event that the spouse returns following a second abandonment. (Bw. 211, 216v.)

Article 219. If in the two cases, as described in article 210, the spouse allows six months to lapse, effective from the date on which the judgment becomes legally valid, he or she shall no longer be eligible to file a petition for divorce. If one of the spouses is outside Indonesia, at the time the judgment is issued against the other spouse, then the stipulated term of six months shall commence on the date of that spouse's return to Indonesia.

Article 220. The legal petition for divorce shall expire, if one of the spouses dies prior to the judgment. (Bw.19 9-1)

Article 221. (Amended by S.16-530) The marriage shall be dissolved by the judgment and the registration of the divorce in the registers of the civil registry. The registration shall take place at the request of both parties or one of them at the location of the register in which the marriage was recorded. In the event that the marriage took place outside Indonesia, the registration shall take place in the registers of the civil registry in Jakarta. The registration shall take place within a period of six months from the date that the judgment may no longer be appealed. If the registration does not take place within such time \*66 period, the judgment, pursuant to which the divorce was granted, shall cease to have legal effect, and cannot be sought again on the same grounds. (Bw.245,254;BS.64;Rv.843;Civ.264-266; see temporary deviating provisions and regulations regarding registration in S.45-14, 46-24)

Article 222. The spouse, whose petition for divorce has been granted, shall maintain all benefits, which were granted to him or her by the other spouse in the course of the marriage, notwithstanding that they were granted on a reciprocal basis. (Bw.139, 168v., 228, 327; Civ.300)

Article 223. However, the spouse, against whom the divorce has been granted, shall lose all benefits granted to him or her by the other spouse in the course of the marriage. (Bw.139, 168v., 228, 317; Civ.299)

Article 224. Divorce shall not result in an immediate claim for the aforementioned benefits, such benefits may only be claimed on the death of the spouse, however, the person to whom the petition for divorce has been granted, may only exercise his or her right to such benefits after the death of the other spouse. (Bw. 168v., 173, 175, 317; Civ.1452)

Article 225. If the spouse, at whose request the divorce has been granted, does not have sufficient income for his or her living support, the court of justice may, allocate some payment to him or her for support from the assets of the other spouse. (Bw.103, 227; Civ.301)

Article 226. Revoked: S.38-622

Article 227. The obligation to provide for living support shall cease upon the death of one of the spouses.

Article 228. Payments due to be made for the benefit of a divorced spouse by a third party pursuant to a marriage contract shall remain owing to such spouse. (Bw. 176v.,222; Civ.1082, 1088)

Article 229. (Amended by S.27-31 see also 390, 421) Following the judgment granting divorce, the court of justice shall decide, after hearing or properly summoning the parents and blood relatives or relatives by marriage of the minor children, which parent shall be appointed guardian of their children, provided that they have not both relinquished or been relieved of their parental authority. (Bw.230a,b,319a; Civ.302) This stipulation shall not apply earlier than the date, on which the judgment of the divorce obtains legal validity. Prior to that date, no stipulation shall take place and it shall not be open to opposition or higher appeal. The parent who has not been appointed guardian may oppose the ruling, if he has not appeared pursuant to the summons referred to in the first paragraph. This opposition shall be filed within thirty days following the notification of the ruling to him. (Rv.83) The parent, who has appeared pursuant to the summons, but \*67 has not been appointed guardian, or whose opposition has been rejected, may, within thirty days after the date referred to in the second paragraph, submit a higher



appeal against the ruling. (Rv.341) The fourth paragraph of article 206 shall apply to the hearing of the parents.

Article 230. (Amended by S.27-31 see also 390, 421) The court of justice may, depending upon circumstances which arise after the judgment for divorce has obtained legal validity, amend the ruling given pursuant to the first paragraph of the previous article at the request of both or one of the parents after a hearing or proper summons of both parents, the supervising guardians and the blood relatives or relatives by marriage of the minors. This ruling may be declared to be effective immediately, notwithstanding any opposition or appeal, with or without any guarantee. The provisions in the fourth and fifth paragraph of article 209 shall apply thereto.

Article 230a. (Supplemented by S.27-31 see also 390, 421) In the event that the minors are not already under the actual authority of those who have been appointed guardians pursuant to article 229 or article 230, or of the parent, or other members of the guardianship board, to whom the children have been entrusted pursuant to the first paragraph of article 214, then provision for delivery of the children shall also be made in the ruling. The provisions of the second, third, fourth and fifth paragraphs of article 319 h are applicable hereto.

Article 230b. (Supplemented by S.27-31 see also 390, 421) At the decision, referred to in the first paragraph of article 229, the court of justice shall, after the hearing or appropriate summoning also mentioned in that paragraph and after having heard the guardianship board, provided there are reasonable grounds for fearing that the parent who has not been appointed guardian cannot sufficiently contribute to the support and education of the minor children, instruct that the said parent shall deliver weekly, monthly or quarterly payments of a specified sum to the guardianship board for the support and the education of one or more children. The stipulations of the second, third and fourth paragraph of article 229 are also applicable to this instruction.

Article 230c. (Supplemented by S.27-31 see also 390, 421; amended by S.38-622) In the absence of an instruction as referred to in the first paragraph of the previous article, the guardianship board may demand these support payments through the court, after the judgment granting divorce is recorded in the registers of the civil registry.

Article 230d. Supplemented by S.27-31 see also 390, 421; revoked by S.38-622.

Article 231. The dissolution of a marriage by divorce, shall not result in the children born out of such marriage \*68 being deprived of any benefits which they are entitled to by law, or which they are entitled to by virtue of the provisions of their parents' marriage agreement. However, the children must claim the benefits in the same manner and in the same circumstances, as if there had not been any divorce. (Bw.175, 178, 181v., 311, 317, 852v.; Civ.304)

Article 232. If the divorced spouses were married on the basis that their would be community of property between them, the distribution of assets shall take place pursuant to and in the manner stipulated in the sixth title. (Bw.126, 128, 1066v.)

Article 232a. (Supplemented by S.23-31, amended by S.28-546) If the divorced spouses re-marry one another, then the marriage shall have the same consequences and shall be treated as if no divorce had taken place, without prejudice to the validity of deeds executed against third parties in the interim between the divorce and the new marriage, and without prejudice to the legal validity of the court's judgments pursuant to which the spouses have been removed or discharged from guardianship of their children, which judgments shall continue to effect the removal or discharge of parental authority. All stipulations otherwise agreed between the spouses shall be deemed invalid. (Bw.33, 149, 196-198)

## **Chapter XI**

### **Concerning separation from bed and board**

Article 233. In circumstances, which provide grounds for divorce, the spouses may request a separation from bed and board. An application in this respect may also be filed, in the event of excessiveness, physical abuse and mental abuse exercised by one spouse towards the other. (Ov.63; Bw.126, 200, 209; Rv.841; Civ.231, 306)

Article 234. The application shall be filed, processed and finalized in the same manner as a divorce. (Bw.207v.,216v.; Rv.831v.; Civ.307)

Article 235. A spouse, who has filed a legal application for separation from bed and board, shall not be eligible to file for divorce on the same grounds. (Bw.209)

Article 236. A separation from bed and board may also be granted by a judge, upon mutual request of the spouses, without any obligation on them to provide a specific reason. Such separation shall not be approved, unless the spouses have been married for a period of two years. (Bw.200, 202, 208; Civ.233, 275v., 307)

Article 237. (Amended by S.27-31 see also 390, 421) Prior to requesting a separation from bed and board, the spouses are required to stipulate the conditions of such separation in an authentic deed, with regard to their individual interests and to the exercise of their parental authority and the care, support and education of the children. The arrangements planned between them to take place during the court's investigation, shall be subject to validation by the court of justice, and shall, if so required, be regulated by the court. (Bw.104v., 124v., 149, 206, 212v., 229, 247, 298v.; Civ.279v.)

Article 238. The application by both spouses shall be made in the form of a letter of request to the court of justice located in their place of residence; filed together with a copy of their marriage certificate as well as of the agreement described in the first paragraph of the previous article. (Rv. 831v.; Civ.223)

Article 239. Following this the court of justice shall instruct both spouses to appear together in person before one or more members of the court who shall advise as \*71 necessary. If the spouses' intentions remain unaltered, the judge shall order a new appearance to be made after a period of six months. (Rv.832, 834; Civ.281v.) (Supplemented by S.23-287 see also 441) In the event that there is a valid reason for failure to appear, the designated members or member shall visit the residence of the spouses. (Supplemented by S.23-287 see also 441; amended by S.25-497, 678 see also 26-63) If the spouses reside outside the jurisdiction of the court of justice, the court may appoint the residential judge, or in his absence, the head of the local government to carry out those duties mentioned in the three previous paragraphs. The designated official shall then draft the minutes thereof and immediately forward same to the court of justice. (Supplemented by s.23-287 see also 441) If one or both of the spouses reside outside Indonesia, the court may request a designated legal authority of the country where they reside, to have the spouse or spouses appear before him in an attempt to reconcile them, or may assign this to an official at the Dutch consulate, in whose jurisdiction they reside. The minutes drafted thereof shall be forwarded to the court of justice.

Article 240. (Amended by S.27-31 see also 390, 421) The court of justice shall pass judgment six months after the second appearance. (Bw. 202) (Amended by S.38-622) The stipulations in articles 230b and 230c shall apply to the father or the mother, who has not been granted parental authority.

Article 241. If the request is denied, the spouses, may, together, file an appeal with a higher judge no later than one month after the judgment. (Ov.45; Bw.204, 236v., 247, 1023; Civ.291)

Article 242. Separation from bed and board shall not dissolve the marriage, but shall only release the spouses from the obligation to live together. (Bw.21. 106v., 200)

Article 243. Separation from bed and board shall always result in the separation of assets, and shall be grounds for the division of the community property, on the same basis as that in dissolution of the marriage. (Bw.128, 186, 232, 1066v.; Civ.311)

Article 244. Separation from bed and board shall also suspend the management by the husband of the wife's assets. The wife shall resume independent management of her assets, and may, notwithstanding the stipulations in article 108, obtain a general authorization from the judge to dispose of her movable assets. (Bw.105, 124, 194; Civ.1449)

Article 245. The judgment regarding the separation from bed and board shall be publicly announced. Pending this public announcement, the judgment with regard to the separation shall not be enforceable against third parties. (Bw.152, 205, 221, 249; Rv.826, 843)

\*72 Article 246. (Amended by S.27-31 see also 390, 421) The stipulations in article 210 through 220 and 222 through 228 and article 231 shall also apply to a separation requested by one spouse. Following the judgment regarding the separation from bed and board, the court of justice shall decide, after a hearing or proper summons of the parents and blood relatives or relatives by marriage of the minor children, with respect to each child, which one of the parents shall exercise parental authority, unless, having regard to previous legal judgments in which they might have been removed or discharged from their parental

authority, they have both been removed or discharged from such. (Bw.319a.) This decree shall not take effect before the date on which the judgment regarding separation from bed and board obtains legal validity. Prior to such date no notification shall take place and it shall not be subject to opposition or higher appeal. The parent who has not been granted parental authority may oppose this decision, if he has not appeared pursuant to the summons referred to in the second paragraph. This opposition shall be filed within thirty days after he has been notified of the decision. (Rv.83) The parent, who has appeared pursuant to the summons, and has not been granted parental authority, or whose opposition has been denied, may, within thirty days after the date, referred to in the third paragraph, submit a further appeal. (Rv.341) (Amended by S.38-622) The stipulations in articles 230b and 230c shall be applicable to the father or the mother, to whom parental authority has not been granted. The fourth paragraph of article 206 shall apply to the hearing of the parents.

Article 246a. (Supplemented by S.27-31 see also 390, 421) The court of justice, may, pursuant to circumstances arising after the judgment granting separation from bed and board has obtained legal validity, amend the stipulations in paragraph 2 at the request of both or one of the parents following a hearing or proper summons of both parents and of the blood relatives or relatives by marriage of the minors. This decision may be declared to take immediate effect notwithstanding any opposition or appeal, with or without collateral. (Rv.54v.) The stipulations in the fourth and fifth paragraphs of article 209 shall apply in this regard.

Article 246b. (Supplemented by S.27-31 see also 390, 421) If the minors are not already under the authority of those persons, who, pursuant to article 246 and article 246a have been granted parental authority or of one of the parents, or of the guardianship board, to whom the children are entrusted, pursuant to the first paragraph of article 246 in accordance with article 214. The decision shall also contain instructions as to the delivery of the children. The stipulations in the second, third, fourth and fifth paragraphs of article 319h shall apply in this regard.

\*73 Article 247. If the judge, after having deliberated over the agreement as described in the first paragraph of article 237, grants the separation upon the request of both spouses, then such separation shall have the effect as intended pursuant to the agreement. (Bw.206)

Article 248. The separation from bed and board shall be canceled by law, if a reconciliation occurs between the spouses and the marriage shall be reinstated with full effect, without prejudice to the validity of acts executed towards third parties in the interim between the separation and reconciliation. All stipulations providing otherwise between the spouses shall be deemed invalid. (AB.23; Bw.149, 196v., 200, 216,244; Civ.1451v.)

Article 249. In the event that a reconciliation takes place following a judgment granting separation from bed and board which judgment has been publicly announced, third parties shall not be subject to the consequences of such reconciliation unless it is also announced in the same manner as that of the separation (BW.152, 245)

## **Chapter XII**

### **Concerning fatherhood and the descent of children**

#### **Section 1**

##### **Concerning legitimate children**

Article 250. The husband shall be deemed to be the father of a child born out of or conceived during the marriage. (Bw.34, 95, 100-102, 106v., 1916, Civ.312)

Article 251. The legitimacy of a child, who is born prior to the one-hundred and eightieth day of the marriage, may be denied by a husband. However, the denial may not occur in the following events:

1. if the husband, was aware of the pregnancy prior to the marriage; 2. if he was present at the drafting of the birth certificate, and signed the certificate, or if this certificate contains a statement that he is unable to sign; 3. if the child was still born. (Bw.2; BS.39; Civ.312,314)

Article 252. A husband may deny the legitimacy of a child, if he can prove that, from the three-hundredth until the one-hundred and eightieth day prior to the birth of the child, whether due to separation, or

incidental circumstances, it would have been impossible for him to have had intercourse with his wife. A husband may not deny the legitimacy of the child on the basis of his physical infirmities. (Bw.258, 1865; Civ.312v.)

Article 253. A husband may not deny the legitimacy of the child upon grounds of adultery, unless the birth was concealed from him; in which case he may rely upon adultery as proof that he is not the father of the child. (Bw.1965; Civ.313)

Article 254. He may deny the legitimacy of a child, who is born more than three hundred days after the judgment granting separation has obtained legal validity, without prejudice to the rights of the wife to submit evidence which is admissible in order to prove that her husband is the father of the child. If the husband's denial has been declared valid, the reconciliation of the spouses shall not result in the child being granted legitimate status.

Article 255. A child who is born three hundred days after the dissolution of the marriage shall be deemed to be illegitimate. (Bw.106, 199; Civ.315) (Supplemented by S.23-31) If the parents of a child, who \*76 is born three hundred days following the dissolution of their marriage, remarry one another, the child may not obtain legitimate status in any way other than that which is pursuant to the stipulations in the second section of this title.

Article 256. In the events described in articles 251, 252, 253 and 254, a husband shall deny the legitimacy of child: within a period of one month, if he is located in the birth place of the child, or within the vicinity thereof; within two months after his return, if he has been absent; in the event that the birth of the child has been concealed from him, within two months after the discovery of the concealment. All deeds executed outside court, containing the denial by a husband, shall be deemed invalid, unless they are followed within two months by a legal claim. If the husband, following the denial, executes a deed outside court, and passes away within the stipulated period, his descendants shall be granted a new period of two months within which to file their legal claim. (Bw.257v., 1058, 1979; Civ.316, 318; See S.46-67 below)

Article 257. The legal claim filed by a husband, shall lapse, if the heirs do not pursue same within two months, effective from the date of death of the husband. (Bw.259, 1979)

Article 258. If a husband passes away, prior to exercising such right, but during the stipulated period, his heirs may not deny the legitimacy of the child otherwise than in the circumstances described in article 252. The legal claim disputing the legitimacy of the child shall be filed within a period of two months, effective as of the time that possession of the assets of the husband is taken by the child, or effective as of the time that the inheritance of such assets by others is obstructed by the child. (Bw.259, 472, 833v.; Civ.317)

Article 259. In the event that the heirs, pursuant to articles 256, 257 and 258, are authorized to file or continue a legal claim disputing the legitimacy of a child, this must be done within a period of one year, if one or more reside outside Indonesia. In the event of war at sea, the term shall be doubled.

Pursuant to S.46-67 effective as July 13, 1946, the following is stipulated: Article 1. (1) The judge, with whom a legal claim denying the legitimacy of a child is or may be filed, shall, until a date to be stipulated in the future by the Governor General, be authorized to extend the periods stipulated in articles 256 through 259 of the Civil Code regarding the denial of the legitimacy of a child pursuant to a deed executed outside court, regarding the filing of such legal claim for another stipulated term or until a fixed point in time, if the legal claim cannot reasonably be filed within the aforementioned periods due to extenuating circumstances \*77 (2) The extension referred to in the first paragraph may be granted by a judge ex officio.

Article 260. All legal claims for the denial of the legitimacy of a child shall be addressed to the special guardian to whom the child is entrusted, and the mother shall be properly summoned in the lawsuit. (Bw.102, 110, 310, 359, 1920; Civ.318)

Article 261. The descent of legitimate children shall be proven by birth certificates, recorded in the registers of the civil registry. (BS.34) In the absence of such deed, the uninterrupted possession of a child's legitimate status shall be sufficient proof for the child. (Bw.13,101,286;BS.37;Civ.319v.)

Article 262. The possession of such status shall be proven by events, which either together or separately, indicate the relationship by descent and kinship between a specific individual and the

lineage to which he purports to belong. The most significant of these events are, among others: that such individual has always used the name of the father from whom he claims to be descended ; (Bw.10; BS.30) that the father has treated him as his child and as such has provided for his education, maintenance and means of living; (Bw.104, 298v.) that the public has acknowledged him as the father's child; that the next of kin have acknowledged him as such. (Bw.102; Civ.321)

Article 263. No one can claim a status that is in violation of that which is stipulated and has been granted in his birth certificate, while at the same time no one can dispute the status held by an individual pursuant to his birth certificate. (Bw.102; Civ.322)

Article 264. In the absence of such certificate and uninterrupted possession of status, or if the child is recorded in the registers under false names, or if the child's natural father or mother are unknown, then the descent may be proven by witnesses. This proof may only be admitted if there is initial written proof; or if the allegations or indications, resulting from events which have not been disputed, can be considered sufficiently significant to admit such as evidence. (Bw.288, 1922; BS.27; Civ.323)

Article 265. The initial written proof shall be found in family documents, registers and household documents belonging to the father or the mother, or also in public or private deeds belonging to an individual, who is involved in the dispute, or if still alive, would have had an interest therein. (Bw.268, 1881, 1902; BS.27; Civ.324)

Article 266. Proof against this may be in any suitable form which indicates that the individual claiming descent is not the child of the woman who he claims to be his mother, or also, in the event that it is proven that she is his mother, is not the child of such woman's husband. \*78 (Bw.264v., 286v.; Civ.325)

Article 267. A civil judge only shall be authorized to deal with appeals in respect of status. (Bw.268, 1920; Civ.326)

Article 268. A lawsuit in respect of false representation of status which carries the penalty of corporal punishment may not be filed, prior to the passing of the final judgment regarding the dispute over such status. The prosecution counsel shall, however, be entitled to file a lawsuit in respect of false representation of status which carries the penalty of corporal punishment, if the interested parties remain silent, provided that there is initial written proof pursuant to article 265, and if it has been decided from the start that there is such indication of initial proof. (Bw.268, second paragraph not applicable to Chinese, see Chinese 1-1 g) In the last instance, the process of the public lawsuit shall not be suspended by any civil suit. (AB.30; Bw.267, 1918;BS.27v.; Sv.409; Sw.529; Civ.337)

Article 269. In relation to children, the lawsuit to appeal a certain status shall not be subject to any prescribed period of limitation. (Bw.1967, 1986; Civ.328)

Article 270. Such a lawsuit may only be filed by the heirs of the child who has not appealed his status in the event that the child died when he was still a minor, or within three years of his reaching the age of majority. (Bw.258, 883, 1058; Civ.329)

Article 271. The heirs, may, however, resume such lawsuits, if they have been instituted by the child, unless the suit has not been prosecuted within three years after the filing of the last deed. (Bw.257, 833; Rv.273v.; Civ.330)

Article 271a. (Supplemented by S.37-595, effective as of January 1, 1939) An individual whose claim for invocation of a certain status has been granted or who has been permitted to deny the legitimacy of a child, shall have the judgment recorded after it has obtained legal validity in the current registers of births at the location where the birth was recorded. This shall be mentioned in the margin of the birth certificate.

## **Section 2**

### **Concerning the legitimization of natural children**

Article 272. Children conceived outside marriage, with the exception of those who have been conceived in an adulterous or incestuous relationship, shall be legitimized by the ensuing marriage of their father and mother, if the latter-mentioned have acknowledged them legally prior to the concluding of the

marriage, or if the acknowledgment took place at the time of execution of the marriage certificate. (Bw.40, 275, 277, 280v., 862, 867; BS.53, 61-9; Civ.331)

Article 273. Children, who are born of parents, between whom no marriage would have existed without dispensation granted by the Governor General, cannot be legitimized other than by acknowledgment in the marriage certificate. (Bw.29,31,280,283)

Article 274. If the parents, prior to or at the time of entering into the marriage, fail to acknowledge their natural children, they may subsequently reverse their position by letter of legitimization, granted by the Governor General, following the advice issued by the Supreme Court. (Ov.16; Bw.276;BS.61-9; Bb.515, 4941, 6038, 6089, 7488, 8653, 13416, 13421, 13603, 13604, 13605)

Article 275. (Amended by S.96-115) In a manner similar to that stipulated in the previous article, the following natural and legally acknowledged children may also be legitimized:

1. children born of parents who cannot enter into their intended marriage as a result of one of the parents passing away;

2. children born of a mother, who is of Indonesian descent or descended from another similar indigenous group; if the mother has passed away, or in the event that there are significant objections -at the discretion of the Governor General- to the marriage of the parents. (Bw.272, 276, 278)

Article 276. (Amended by S.96-115) In the events, mentioned in the two previous articles, the supreme court shall if it deems fit, hear or instruct that the blood relatives of the applicants be heard, prior to issuing its advice, and shall also order that the request for legitimization shall be announced through the appointed public newspapers. (Bw.290)

Article 277. (Amended by S.27-31 see also 290, 421) \*80 Legitimization, either by the ensuing marriage of the parents, or in the events set out in article 274, pursuant to the issuance of letters of legitimization, shall result in the same legal regulations being applicable to the children as those which are applicable to children born during marriage. (Bw.852; Civ.333)

Article 278. (Amended by S.96-115) In the events described in article 275, the legitimization shall only be valid as of the date that the letters are issued by the Governor General; this shall not jeopardize the existing legitimate children with respect to their succession as heirs, similarly, this shall not affect the succession of other blood relatives as heirs, provided that they have approved the issuance of the letters of legitimization. (Bw.852v.)

Article 279. In the same manner, and pursuant to the same regulations as mentioned in the previous articles, children who have passed away and who have left descendants, can also be legitimized; in which event, the legitimization shall benefit their descendants. (Bw.272, 274, 842, 852; Civ.332).

### **Section 3**

#### **Concerning the acknowledgment of natural children**

Article 280. The acknowledgment of a natural child shall create a civil relationship between that child and his father or mother. (Bw.30v., 40, 47, 272v., 306, 319, 328, 353, 363,862, 871, 873, 908, 916)

Article 281. The acknowledgment of a natural child can take place pursuant to any kind of authentic deed, if such has not already taken place by birth certificate, or at the execution of the marriage. (Not.37a) Such acknowledgment can also take place pursuant to a deed, drawn up by the official of the civil registry, and recorded as at the date of signing in the birth registry. Such acknowledgment shall be mentioned in the margin of the birth certificate, if it is available. (Bw.40, 272, 862, 908, 1868; BS.41, 53, 61-9; Civ.62, 334) If the acknowledgment of the child was contained in another authentic deed, then each interested party may demand that it shall be mentioned in the margin of the birth certificate. Under no circumstances shall absence of the notation of an acknowledgment in the margin of the birth certificate be grounds for disputing the status granted.

Article 282. The acknowledgment by a minor of a natural child shall be deemed to be invalid unless the minor has reached the age of nineteen years, and the acknowledgment is not the result of duress, error,

deceit or enticement. (BS.42) A minor daughter, shall, however, be able to acknowledge a natural child prior to her reaching the age of nineteen years. (Bw.29, 108, 330, 446, 452, 1321, 1446, 1449)

Article 283. Children conceived in an adulterous or incestuous relationship may not be acknowledged, without prejudice to the stipulation in article 273, with regard to the latter mentioned. (Bw.30v., 41, 252v., 272, 289, 867v.; BS.42; Civ.335)

Article 284. (Amended by S.96-108) No acknowledgment of a natural child shall, during the lifetime of the mother, notwithstanding that she may be of Indonesian descent or descended from a similar indigenous group, be accepted, if the mother does not approve the acknowledgment. (Bw.280v., 354) If such child is acknowledged after the death of the \*82 mother, such acknowledgment shall have no consequences other than those which relate to the father. (Bw.288; Civ.336) Acknowledgment of a natural child, whose mother is of Indonesian descent or descended from a similar indigenous group, shall annul the civil relationship arising from natural descent, without prejudice to the consequences of an acknowledgment by the mother, in the event that she is granted the authority due to the ensuing marriage to the father.

Article 285. Acknowledgment which takes place in the course of the marriage by one of the spouses, in order to benefit the natural child, which he, prior to his marriage has conceived with a person other than his spouse, shall not jeopardize that spouse, nor shall it be detrimental to the children born of that marriage. Such acknowledgment, shall, however, have consequences after the dissolution of that marriage, if there are no remaining descendants from the marriage. Bw.199, 277; Civ.337)

Article 286. Any acknowledgment by the father or the mother, including the claim to a certain status by the child may be disputed by those who have an interest therein. (Bw.261v., 282; Civ.339)

Article 287. Investigation of paternity shall be prohibited. (Amended by S.17-497) However, in the event that a misdemeanor as described in articles 285 through 288, 294 or 332 of the penal code, was carried out which resulted in the pregnancy, then the guilty party, can, upon being charged by the interested parties, be declared to be the father of the child. (Bw.252v.; Civ.340)

Article 288. Investigation of maternity shall be permitted. In this regard the child is required to prove that he or she was borne by that mother. No proof by witnesses with respect to the child shall be admitted, unless there already exists initial written proof. (Bw.265, 1902, 1914; Civ.341)

Article 289. No child shall be permitted to investigate his or her paternity or maternity, in the events, where pursuant to article 283, no acknowledgment can take place. (Civ.342).

## **Chapter XIII**

### **Concerning the relationship by blood and marriage**

Article 290. A blood relationship subsists between persons of whom one descends from the other, or between persons who have a common ancestor. A blood relationship shall be calculated by the number of births; each birth shall be referred to as a degree. (Bw.30, 872v., 877, Civ.735)

Article 291. The succession of degrees constitutes a line of descent. A direct line refers to the succession of degrees between individuals of whom one descends from the other; a collateral line, shall be interpreted as the succession of degrees among individuals, who do not descend one from the other, but who have a common ancestor. (Civ.726)

Article 292. A direct line shall be a descending and ascending line. The former subsists between an individual and his descendants; the latter subsists between an individual and his ascendants. (Bw.842, 850, 852v., 857; Civ.736)

Article 293. One can calculate in the direct line, the number of degrees as well as births there are among the individuals; As such, in the descending line, descent from the father to the son, is in the first degree; and from the grandfather to the grandson is in the second, and so forth; and conversely, in the ascending line, the ascent from the son and grandson to father and grandfather shall be in the first or second degree and thereafter accordingly. (Civ.737)

Article 294. In the collateral line the degrees shall be calculated by the number of births, first between one blood relative and the closest common ancestor, and thereafter between them and the other blood relative; as such two brothers shall exist in relation to one another in the second degree, uncles and cousins in the third, nephews in the fourth etc. (Bw.850; Civ.738)

Article 295. Relationship by marriage is the relationship resulting from a marriage, between one of the spouses and the blood relatives of the other. No relationship by marriage shall exist between the mutual blood relatives of the spouses. (Bw.30v., 322, 376)

Article 296. The degrees of relationship by marriage shall be calculated in the same manner as that adopted in blood relationships. (Bw.293)

Article 297. The dissolution of a marriage shall not invalidate the relationship by marriage between one of the spouses and the blood relatives of the other. (ISR.9; Bw.30v., 199, 322-2,323).

## **Chapter XIV**

### **Concerning parental authority**

#### **Section 1**

#### **Concerning the consequences of parental authority with respect to the personal aspects of the child**

Pursuant to the law of July 10, 1947, N.S.No.H 232, the previous titles 15,15a and 16 of the Dutch Civil Code have been revoked and new titles 15,16 and 16a have been supplemented. In titles 14, 14a and 15 there shall be noted in the margin, without any further explanation, the corresponding articles of the Dutch Civil Code which have been revoked in the interim; reference to the new, currently applicable Dutch article shall be indicated with the word "new".

Article 298. Any child, regardless of his age, should revere and respect his parents. (Rv.582; IR.211; Civ.371) (Amended by S.27-31 see also 390, 421) The parents are required to support and raise their minor children. Loss of parental authority or guardianship shall not release them of the obligation to contribute to the costs of support and education in proportion to their income. The provisions in the third section of this chapter shall apply with respect to adult children. (Bw.104, 145v., 193, 230, 320v., 328; Civ.203; S.11-551 see also 13-556, 37-481)

Article 299. (Amended by S.27-31 see also 390, 421) During the marriage of the parents, the child shall be under their parental authority until he comes of age, to the extent that they are not relieved of such or dismissed. (Bw.21,35v., 104, 230, 330, 419, 424, 426, 430, 1367; Civ.372)

Article 300. (Amended by S.27-31 see also 390, 421) Except in the event of relief or dismissal and the provisions regarding the separation from bed and board, only the father shall exercise this authority. In the event that the father is incapable of exercising parental authority, such authority may be exercised by the mother, except in the case of separation from bed and board. In the event that the mother is incapable or incompetent, a guardian shall be appointed by the court of justice pursuant to article 359. (Bw.105, 230, 451, 496; Civ.373) The original article 301 is revoked pursuant to S.27-31 see also 390, 421.

Article 301. (Supplemented by S.38-622) Without prejudice to the stipulation regarding the dissolution of marriage following the separation from bed and board, a divorce and separation from bed and board, the parents are obliged for \*88 the purpose of supporting and educating their minor child, if they do not have the parental authority or guardianship over the child without being relieved or discharged thereof, to pay the guardian council, weekly, monthly or quarterly amounts as shall be stipulated by the court of justice.

Article 302. (Amended by S.27-31 see also 390, 421) In the event that the individual, who exercises parental authority, has significant reasons to be displeased with the child's behavior, the court of justice may, at the person's request or at the request of the guardian council, if so requested by it for his benefit, place the child for a specific period of time in a government or private institution designated by the court of justice. Such placement shall take place at the expense of the individual who exercises parental authority, or if he is unable to do so at the expense of the child; the child shall not be placed for



more than six successive months, if the child has not reached the age of fourteen years during the placement, or if the child has reached such age at that time, for a duration of no longer than one year and in any event not after he reaches adulthood. The court of justice shall not order the placement until after the hearing of the guardian council, and without prejudice to the provisions of the first paragraph of article 303, the hearing of the child; and if one of the parents has not lost his or her parental authority, then they shall also be heard in advance or at least be properly summoned. Paragraph 4 of article 206 shall be applicable to this latter mentioned hearing.

Article 303. (Amended by S.27 see also 390, 421) Failure of the child to appear on the date stipulated for the hearing, shall result in the court of justice postponing the investigation to a date to be stipulated in the future and the said court shall order that the child shall be brought to appear before it on that date by a process server or public authority official; this order shall be enforced upon order of the prosecution counsel; if the child has not yet appeared on the later date, then the court of justice may order or deny the placement without having heard the child. In this regard, no legal formalities shall be taken into consideration other than the order for placement, in which, however, the reasons therefor shall not be expressed. If the court of justice, upon issuing the decree, decides that the individual who exercises parental authority and the child are unable to pay the charges incurred in relation to the placement, then this shall be at the expense of the State. The decree in which the placement is ordered, shall be executed upon the instruction of an officer of justice upon the request of the individual who exercises parental authority.

Article 304. (Amended by S.27-31 see also 390, 421) Upon the decision of the director of justice, the child, may at any time be released from the institution referred to in \*89 article 302, if the reason for the placement no longer exists, or if his physical or mental state does not require him to stay any longer. The individual, who exercises the parental authority, shall always be entitled to expedite the placement. In order to obtain an extension of the time of the placement, the provisions of articles 302 and 303 shall be taken into consideration. The court of justice shall order such extension which shall not exceed six successive months; the order shall not be issued until after the head of the institution, where the child stayed during the request for extension, or his substitute, has been heard in connection with the request or has responded in writing in connection with the request.

Article 305. Revoked: S.27-31 see also 390, 421.

Article 306. (Amended by S.27 see also 390, 421) Natural legally acknowledged children shall be exclusively under guardianship. Article 298 shall be applicable to them. (Bw.280v.; Civ.383) (Supplemented S.38-622) The stipulation in article 301 is applicable to those who have acknowledged a minor natural child, if they do not have guardianship over that child and have not been released or discharged thereof.

## **Section 2**

### **Concerning the consequences of parental authority**

#### **in relation to the assets of the child**

Article 307. (Amended by S.27-31 see also 390, 421) An individual, who exercises or her parental authority over a minor child, shall control the assets belonging to the child, without prejudice to the provisions of article 237 and the last paragraph of article 319e. This stipulation is not applicable to certain assets, which, either by inter vivos deed, or pursuant to a last will, have been granted to the children, with the provision that the management thereof shall be carried out by one or more managers appointed thereto, other than the individual who exercises the parental authority. If the aforementioned management, for any reason, shall be revoked, then the assets in question shall be transferred to be managed by the individual who exercises the parental authority. Notwithstanding the appointment of special managers, as described above, the individual, who exercises parental authority shall be entitled to, ask them to account to or her during the period for which the child has minor status. (Bw.140, 300, 385, 1019; Civ.389)

Article 308. (Amended by S.27-31 see also 390, 421) The individual who, based upon parental authority manages his or her children's assets, shall be responsible, for the assets as well as the proceeds of such assets, which cannot be enjoyed by him or her. With regard to the assets which the law grants him or her the use of, he or she shall be only responsible for the property thereof. (Bw.311, 840; Civ.389)

Article 309. (Amended S.27-31 see also 390, 421) He or she shall not be entitled to make decisions regarding the assets of his or her minor children in any way other than by taking into consideration the rules with regard to the transfer of assets belonging to minor children, as described in the fifteenth chapter of the first book. (Bw.393v.,1685;LN.53-86, art.7\* under BW.383)

Article 310. (Amended by S.27-31 see also 390, 421) In the event that there is a conflict of interest between him or her and his or her children, the latter mentioned shall be represented by a specific representative, to be appointed by the court of justice. (Bw.260, 366, 370; Civ.1055)

Article 311. (Amended by S.27-31 see also 390, 421) The father or the mother, who exercises parental authority or guardianship, shall have the right to enjoy the proceeds \*91 from the assets. (S.27-31) In the event that either one of the parents is relieved of his or her parental authority or guardianship, both parents shall be entitled to enjoy the proceeds from the assets of their minor children. The discharge of the father or the mother who exercises parental authority or guardianship, in circumstances where the other parent is deceased or has been relieved of parental authority or guardianship, shall not affect enjoyment of the proceeds. (Bw.127, 206, 237, 299v.,308,313,321,390,496,756v., 809,840; Civ.384;LN.53-86, art.7\*)

Article 312. Enjoyment of the proceeds shall result in the following duties being imposed:

1. the obvious duties, to which users are subject; (Bw.782v., 785,) 2. the support and education of the children, in accordance with the children's wealth; (Bw.298) 3. the payments of interest and interest on principal sums; (Bw.511-2,796,800) 4. any funeral costs of the child. (Bw.127; Civ.385)

Article 313. Proceeds shall not be enjoyed in respect of the following: (LN.53-86, art.7\*)

1. certain assets, which the children have obtained due to independent work and diligence;
2. assets, which were granted to them by inter vivos deed or pursuant to a last will, with the express condition that the parents shall not be entitled to the enjoy the proceeds. (Bw.307, 318, 840; Civ.387)

Article 314. The enjoyment of the proceeds shall cease upon the death of the children. (Bw.807v.,809)

Article 315. In the event that the surviving spouse fails to prepare an inventory, in accordance with article 127, such spouse shall, lose the entitlement to enjoy the proceeds of the assets, which belong to the minor children. (Bw.318; Civ.1442)

Article 316,317. Revoked: S.27-31 see also 390, 421.

Article 318. (Amended by S.27-31 see also 390, 421) In the event that the entitlement to enjoy the proceeds has been lost pursuant to article 315, the court of justice shall have the authority to grant the surviving spouse an annual sum out of the income of the children to be spent on their education in their minor years. (F.21-5)

Article 319. The father or the mother of natural and legally acknowledged children shall not enjoy the proceeds of the assets belonging to the children. (Bw.306,328,353).

Pursuant to S.27-31 see also 390, 421 the following section is supplemented:

## **Section 2 A**

### **Concerning the release and dismissal from parental authority**

Article 319a. The individual who exercises parental authority may, either with respect to all or one or more children, at the request of the guardian council or based upon the claim of the prosecution counsel, be released on grounds of unsuitability or inability to fulfill his obligation with respect to care and education and the interests of the children shall not be jeopardized by such release. (Bw.382c., 416a.) If the judge deems it necessary in the interest of the children, each one of the parents, to the extent that neither one of them has been deprived of parental authority, may, upon request of the other parent, one of the blood relatives or relatives by marriage, of the children up to and including the fourth

degree, the guardian council or upon demand of the prosecution counsel, be released from parental authority over all or one or more children in the following circumstances:

1. abuse of parental authority or gross neglect of the duty to support and educate one or more children;
2. gross misconduct;
3. irrevocable conviction due to the intentional participation in any misdemeanor with a minor who has been under his authority; (Sw.55v)
4. irrevocable conviction due to a misdemeanor described in titles XIII, XIV, XV, XVIII, XIX and XX of the second book of the Criminal code committed against a minor in his charge;
5. irrevocable conviction resulting in a sentence being imposed of two years or longer. Misdemeanor in this article shall also be interpreted as being an accessory in an attempt to commit a misdemeanor. (Sw.53v., 56)

Article 319b. The requests or claims, mentioned in the previous article, shall set out the facts and circumstances upon which they are based and shall be filed together with the supporting documents with the court of justice at the location of residence, or in absence thereof, in the last residence of the individual whose release or dismissal has been requested, or if it is in connection with the release or dismissal of one of the parents who following separation \*94 from bed and board has been granted parental authority, with the court of justice which has heard the request or claim for a separation from bed and board. The court clerk shall record the date of submission on the filed request or claim. Unless the request for release or dismissal is issued by the guardian council, the request or claim together with the above documents shall be notified immediately in writing to the guardian council by the court clerk of the court of justice. (Bw. 381) Insofar as possible, the manner of exercising the parental authority as well as guardianship shall also be indicated at the request or claim for release, and all requests or claims, mentioned in the previous article, shall also include details of:- the parents' names, their residence, whereabouts to the extent that they are known, the names and residences of the blood relatives or of the relatives by marriage who, in accordance with article 333 should have been summoned, also of the witnesses who could have supported the facts, included in the request or the claim. (Bw.19, 1895) The request for release shall not be granted, if the individual who exercises parental authority opposes it.

Article 319c. The court of justice shall pass judgment after a hearing or appropriate summons of the parents and blood relatives or relatives by marriage of the children and after having heard the guardian council. The court of justice may order that the witnesses appointed by it, whether or not selected from the blood relatives or the relatives by marriage, shall be summoned to be heard under oath. (Bw.381a, 416a, 1895) If the residence or domicile of parents or witnesses to be heard is outside the area (the jurisdiction of the assistant resident) in which the court of justice is established, then the hearing before such court shall be delegated in the same manner as that applicable to the blood relatives and relatives by marriage under the provisions of article 333. The last clause of the fourth paragraph of article 206 is applicable to the parents. (Bw.334, 381a)

Article 319d. All summons shall take place in the manner stipulated in article 333 with regard to the blood relatives and relatives by marriage; however, in the event that it is necessary to summon an individual whose domicile is unknown, the summons shall immediately be published by the court clerk in one or more newspapers to be chosen by the court of justice. The summons, directed to the individual whose release or dismissal is requested or claimed, shall be accompanied by a summary of the contents of the request or the claim, unless his address is unknown. If the court of justice deems it necessary, it may, in addition to the persons already appointed, designate other individuals, who may have appeared on the stipulated date, as witnesses to be heard under oath, as well as instruct further hearing of witnesses; the latter mentioned witnesses shall be appointed in a subsequent decree and shall be summoned in the same manner.

Article 319e. During the investigation, any Indonesian resident, who is competent to be guardian over and to manage any association, foundation and institution of charity \*95 mentioned in article 365, may file an application with the court of justice to be entrusted with the guardianship. The court of justice may order their summons to be heard in relation to this application. The fourth paragraph of article 206 is applicable hereto in respect of the hearing of the individuals in question. (Bw. 381b.) In the event that the request or claim is admitted, the spouse of the individual whose release or dismissal has been ordered, shall exercise parental authority by law, unless this parent has also been released or dismissed from this duty. The court of justice, may, however, at the request of the guardian council, upon the claim of the prosecution counsel or in the course of duty, also release this parent from parental authority,

should there be grounds there for. The last paragraph of article 319b is applicable to this release. (Bw.374a) Upon such release, if the spouse has already been released or dismissed from parental authority, then the court of justice shall also make provision for the guardianship of the children deprived of the parental authority. In the decree of the release or of the dismissal, the individual whose parental authority is removed shall be ordered to account for his or her management to the other spouse or the guardian. The court of justice may, however, if the children who shall be subject to the parental authority or the guardianship of various individuals have property in common, appoint one of them or another individual to manage such property, by providing security as stipulated by the court of justice, until the divorce and the division of property has taken place in accordance with the seventeenth chapter of the second book. (Bw.406a, 573)

Article 319f. The case shall be heard in closed session. (G.168) The decree containing the reasons shall be publicly passed as soon as possible after the last hearing; it can be declared capable of immediate implementation notwithstanding opposition or appeal, with or without security. (G.168; Rv.54v., 297) If the individual, whose release or discharge has been requested or demanded, fails to appear on the summons, he may file an appeal within thirty days against his release or dismissal following notification to him in person of the decree or the deed drafted pursuant to such or the deed drafted to implement such decision, or after committing a certain act, which demonstrates that he is aware of the decree or the initial execution thereof (Rv.83) The individual whose request, or the prosecution counsel whose demand, for release or dismissal from parental authority has been denied, and the individual who has appeared upon the summons and whose parental authority has been released or dismissed, and the individual whose opposition has been denied, may, within thirty days following the decree of the court of justice file a higher appeal. (Rv.341) If the request or the claim constitutes dismissal from parental authority, the court of justice shall be entitled, \*96 during the investigation, to suspend parental authority entirely or partially and to grant such authorities with regard to the children's assets to the other parent or an individual appointed by the court or to the guardian council, as he deems fit. (Bw.416a) No applications whatsoever (such as appeal or opposition) shall be admitted against the decrees referred to in the previous paragraph. They shall remain valid until the ruling regarding the dismissal has obtained legal validity. The costs incurred by the individual appointed by the court of justice or the guardianship council in relation to the support and education of the minors, pursuant to the fifth paragraph may be charged against the assets and income of the minors, and in the event of their insolvency, be charged to their parents; the latter mentioned shall be jointly liable for the settlement of such charges. The individual, who applies to a court for such compensation, shall be regarded as having been granted the judge's consent to file proceedings without being liable for costs. This provision shall not apply to an individual whose suit has been rejected once and who has filed the suit again. (Rv. 872v., 890a)

Article 319g. (Amended by S.28-546) An individual whose parental authority has been released or dismissed may, at his own request as well as at the request of those individuals and the prosecution counsel who are authorized pursuant to article 319a to request or demand the release or dismissal, have his or her parental authority reinstated or be appointed as guardian of his minor children, if it now appears that the facts which formed the basis for the release or dismissal do not conflict with such reinstatement. The individual, who has been released or dismissed from the guardianship of his own children but who subsequently remarries his or her former spouse, shall also have his or her parental authority reinstated during such marriage. The request or the demand shall be filed with the court of justice which has acknowledged the request or the demand for release or dismissal, unless the individual released or dismissed is no longer living with his spouse or his marriage has been dissolved by divorce or following separation from bed and board, in which cases the request or the demand shall be filed with the court of justice which has acknowledged the request or the demand for separation from bed and board, divorce or dissolution of the marriage. The court of justice shall pass judgment after the hearing or proper summons if possible of both parents, of the blood relatives or relatives by marriage of the children as well as the guardian council, and, if the children are under guardianship, of the guardian or the management of the charitable association, foundation or institution in which the guardianship has been assigned to the supervising guardian. If the court of justice deems it necessary, it may instruct that the witnesses, whether they are blood relatives or relatives by marriage, shall be heard under oath. (Bw.381a, 416a, 1895) If the individuals to be heard reside or are domiciled outside the area (the jurisdiction of the assistant resident) in which the court of justice is established, the hearing may be delegated by such court in the same manner as \*97 stipulated in respect of the blood relatives and relatives by marriage in article 333. The stipulation in the last clause of the fourth paragraph of article 206 is applicable hereto except with regard to the witnesses. The case shall be dealt with in closed session (G.168) The decree containing the reasoning on which the decision is based shall be declared in public. Immediate implementation can be ordered notwithstanding opposition or appeal, with or without security. (G.168; Rv.54v., 297) With regard to the decree in which the request or the demand is granted, in the event that the parent, who loses the right to exercise parental authority or guardianship, fails to appear upon the summons, he or she may file an opposition within thirty days after the decree or a deed drafted pursuant to it or implementing it has been notified to him personally, or after performing a deed which makes it apparent that he is aware of the decree or the initial implementation. (Rv.83) Within

thirty days after the judgment, a higher appeal may be filed by those individuals whose request has been denied, or by the prosecution counsel whose demand has been refused, also by the individual whose opposition has been rejected, and by those individuals who have been heard and notwithstanding their opposition have been granted their request or demand. (Rv. 341)

Article 319h. If the minors are not already under the actual authority of the individual or management of the charitable association, foundation or institution to which, pursuant to a legal decree mentioned in this section, parental authority or the guardianship has been assigned, or of the individual or the guardian council to which the children might have been entrusted pursuant to the decree as mentioned in article 319f fifth paragraph, the same legal decree shall also order the delivery of the children to those who have been assigned the authority over the minors. In the event that the individual, who at that time has actual authority over the minors, refuses to deliver them, the individual to whom the authority over the minors has been assigned, shall instruct the process server to whom the implementation of this decree has been transferred to effect this transfer. This implementation shall only take place after the decree has been notified to those whose authority over the minors has been revoked and also to those under whose actual authority the minors may have been. In the event of actual opposition, the process server may seek the assistance of the public civil authority. The process server shall have access to any location where the minors are located or are alleged to be located; if, however, the minors are or are alleged to be in a residence, access to which has been denied by the occupant or of which the doors have been closed to them, then the process server shall appeal to the head of the local government or a European official designated by such head, in whose presence the residence shall be entered. His presence and any official's presence and events which take place in his presence pursuant to this article shall be described in the minutes of the implementation which document shall also be signed by such official. (G.165)

\*98 Article 319i. The officer of justice shall be authorized, based upon the facts, which have resulted in the dismissal from parental authority, as well as based upon the fact that the minors have been abandoned or left unsupervised, to temporarily entrust the minors to the guardian council until the judge decides what provisions, if any, are required for parental authority and until this decree has obtained legal validity. The stipulations in the seventh and eighth paragraphs of article 319f are applicable hereto. (Bw.416a) In the event that the officer of justice shall exercise the above authority prior to a request or demand for dismissal being filed with the judge, he is required to file such demand thereafter without delay. The order for the care of the minor to the guardian council, shall suspend the exercise of parental authority, to the extent that it concerns the minor personally. If the delivery of the minors to the guardian council is refused, the officer of justice may instruct the process server or a public service official, to whom implementation of the written order instruction has been assigned, to effect the transfer. The provisions of the third, fourth and fifth paragraph of article 319h are applicable hereto. (S.28-179)

Article 319j. (Amended by S.38-622) The individual, who has been released or dismissed from parental authority, is required to provide for the support and education of his children who have been removed from his authority, in the form of weekly, monthly or quarterly payments to the guardian council as stipulated by the court of justice pursuant to the claim of the guardian council. In the event that the guardian council, in the request for release or dismissal from parental authority as well as during the investigation mentioned in article 319e, also appeals to the court of justice in respect of the support payments, such stipulation shall be made in the decree, which also covers the release or the dismissal. (Bw.298) Paragraph 2-5 are revoked pursuant to S.38-622.

Article 319k. (Amended by S.38-622) Each judgment providing for the release or dismissal from parental authority, shall be immediately notified in writing by the court clerk of the court of justice to those, to whom the parental authority has been transferred or to those to whom guardianship has been assigned, including the guardian council. The court clerk shall also inform them of the legal decrees referred to in the previous article. Paragraphs 3-8 are revoked pursuant to S.38-622.

Article 319l. Revoked; S.38-622.

Article 319m. All applications, claims, decrees, writs and all other documents, drafted in compliance with the stipulations of this section, shall not be liable to stamp duty. All applications, mentioned in this section, which are filed by the guardian council, shall be dealt with free of charge and the engrossed document, copies and summaries requested by the council in connection with their assignment shall be \*99 made available by the court clerks free of charge.

### **Section 3**

## **Concerning the mutual obligations between the parents or grandparents and the children and further descendants**

Article 320. A child cannot file a lawsuit against his parents for the acquisition of an established status by preparing for it prior to his marriage or in any other manner. (Bw. 104, 298, 1096; Civ.204)

Article 321. The children are obligated to support their parents and blood relatives in the ascending line, in the event that they become destitute. (Bw.311, 323, 329, 1282, 1296, 1429-3; Rv.749-3; Civ.205)

Article 322. Sons-in-law and daughters-in-law shall also and in the same circumstances provide support to their parents-in-law, however, this requirement shall cease upon the following events: 1. if the mother-in-law has remarried; 2. if the spouse, as a result of whom the relationship in-law arose and the children borne out of such marriage have died. (Bw.107, 297, 323; Civ.206)

Article 323. The obligations, which result from the provisions of the two previous articles shall be mutual. (Bw.329; civ.207)

Article 324,325. Revoked: S.38-622.

Article 326. If the individual, who is required to provide support, proves that he is incapable of providing the required amount, the court of justice may order, after having investigated the matter, that he shall take in the individual needing support and fulfill his needs. (Civ.210)

Article 327. If the father or mother offers to feed and support the child needing support at home, then they shall be discharged from the obligation to fulfill the requirement in any other manner. (Bw.104v., 326; Civ.211)

Article 328. Natural and legally acknowledged children are required to support their parents. This obligation is mutual. (Bw.280, 319, 323, 867)

Article 329. All agreements in which the right to enjoy support is waived shall be void and invalid. (AB.23)

*Pursuant to S.38-622 effective as of December 22, 1938, The \*101 following chapter has been supplemented:*

### **Chapter XIVA**

#### **Concerning the stipulation, amendment and revocation of support payments**

Article 329a. Support which must be provided pursuant to this book, including the amount necessary for the support and education of a minor, shall be stipulated to be proportionate to the needs of the minor and to the income and wealth of the individual required to pay, in relation to the number and capacity of the other individuals whose support according to this book has been assigned to him.

Article 329b. The decision in respect of the payment may, upon a claim of the individual responsible for supporting the minor or the individual to whom the payment shall be made, be amended or revoked by the judge. The amendment or revocation shall be based upon whether the actual relationship existing between the needs of the individual entitled to the support and the income and wealth of the individual charged with the support, in connection with his assignments, since the time that the decision in question was issued, has changed so significantly, that had the current relationship existed at that time, the decision taken would have been otherwise. In the same manner, the judge may amend or revoke a stipulation mutually agreed upon by the parties with respect to support which must be provided pursuant to this book.

### **Chapter XV**

#### **Concerning minority and guardianship**

##### **Section 1**

## **Concerning minority**

Article 330. (Amended by S.01-194 see also 05-552) Minors are those who have not reached the full age of twenty one years and who have not previously entered into matrimony. (See old stipulations in S.1819-60, 1839-22; the minority age limit has been changed from 23 years to 21 years on December 1, 1905) If a marriage is dissolved prior to the spouses having reached the full age of twenty one years, they shall not regain the status of a minor. (Amended by S.17-497; 27-31 see also 390, 421) Minors, who are not under the authority of their parents, shall be under guardianship, pursuant to and in the manner described in the third, fourth, fifth and sixth section of this title. (Bw.21, 29, 35, 61-1 and 2, 298v., 306, 333, 365, 379-1, 419v., 424, 427v., 462, 897, 904v., 1006, 1046, 1073, 1446, 1448, 1677, 1798, 1912, 1973, 1987; BS.13, 61-1 and 2; Sv.149; IR. 145, 278; RBg.172, 580; Civ.388, 476).

Stipulation of the interpretation of the term "minor" as used in the legal regulations with regard to the indigenous population

(Ordinance of January 31, 1931) S.31-54)

In order to eliminate the uncertainty caused by the ordinance of December 21, 1917 in A.17-738, this has been revoked and stipulated as follows:

(1) Where the term "minor" is referred to in legal regulations, this term shall be interpreted as follows, to the extent that it concerns the indigenous population: any individual who has not reached the age of twenty one years and who has not previously entered into matrimony,

(2) In the event that the marriage is dissolved prior to the individuals reaching the age of twenty two years, they shall not regain the status of a minor.

(3) Reference to marriage in this ordinance shall not be interpreted as reference to a marriage between children. (Cf. for the previously applicable stipulations: S.1819-60; 1839-22;1917-738, and Tijdschr.66-317, 67-263, 68-69)

## **Section 2**

### **Concerning guardianship in general**

Article 331. (Amended by S.27-31 see also 390, 421) With regard to each guardianship, there shall be only one guardian, pursuant to the stipulations of articles 351 and 361. (Ov.66v.; Bw.355, 365, 452) The guardianship of children who have the same parents shall be considered as one guardianship, provided those children have the same guardian. (Bw. 319a, 380, 382c.)

Article 331a. (Supplemented S.27-31 see also 390, 421) The guardianship shall take effect as follows:

1. if a guardian is appointed by a judge, from the date of his appointment if this took place in his presence, otherwise on the date that the appointment was notified to him; (Bw.359v.)
2. if a guardian is appointed by one of the parents, at the time that the appointment becomes valid, upon the death, and upon the declaration by the appointee that he accepts the appointment; (Bw.332a, 355v.)
3. if a married woman has been appointed as guardian, either by the judge or by one of the parents, from the time that she, pursuant to her husband's authorization or the judge's, declares her acceptance of the guardianship; (Bw.332a, 332b.)
4. if a charitable association, foundation or institution otherwise than voluntarily or upon its own request has been appointed guardian, from the time that it declares its acceptance of the guardianship; (Bw.332a, 365v.)
5. in the case mentioned in article 358, at the time of legalization;
6. if a guardian acts by right, from the time that the event which resulted in the guardianship occurred. (Bw.345, 348, 351, 353, 375) In all events in which a notification regarding the appointment of guardian

is described in this or other articles, the Orphans' Chamber is required to immediately effect such notification. \*108 (Bb.1816)

Article 331b. (Supplemented by S.27-31 see also 390, 421) In the event that another guardian is appointed or acts by right in relation to minors who are under guardianship, the service of the first guardian shall be terminated at the time that the service of the other guardian commences, unless the judge has determined a different time. The guardianship shall be terminated as follows: (Bw.375)

1. if minors, who have been under guardianship, are subsequently under parental authority again, due to the fact that the father or the mother have been reinstated in such position of authority, upon notification of the decree in respect thereof to the guardian; (Bw.382d)

2. (Supplemented by S.28-546) if minors, who have been under guardianship, are subsequently under parental authority again pursuant to articles 206b or 232a, at the time of the execution of the marriage;

3. if minor children legally acknowledged by their natural parents are legitimized, at the time of execution of the marriage, which results in the legitimization, or from the issuance of the legalization letters in the circumstances described in article 247; (Bw.272v.)

4. in the event, that an individual who has been under conservatorship, is subsequently under parental authority again, at the time of withdrawal of the conservatorship .

Article 332. (Amended by S.27-31 see also 390, 421) With the exception of the stipulation in the following article, any individual who is not, pursuant to the eighth and ninth section of this title, excluded or excused from guardianship, is required to accept such assignment. If the appointed guardian refuses or fails to exercise the guardianship, the orphans' chamber shall temporarily manage the children and their assets on behalf of and at the expense of the guardian as stipulated in the instructions for the orphans' chamber. In this regard, the guardian shall be responsible for the acts of the Orphans' Chamber, without prejudice to any claim he may have against them. (Bw.360, 370, 378v., 388, 452, 1365)

Article 332a. (Supplemented by S.27-31 see also 390, 421) Neither the guardian appointed by one of the parents nor the married woman appointed as guardian is obliged to accept the guardianship. Their appointment shall have no effect, unless they declare their acceptance of the guardianship. This declaration shall be submitted to the office of the court clerk of the court of justice located at the residence of the minor, within sixty days after the notification of the appointment to them. If the appointee resides at a distance of more than fifteen poles from the office of the court clerk, then the declaration may also be filed in writing on paper which has not been stamped. The notification shall, if it concerns a married woman, be \*109 forwarded to her as well as to her husband. Notification shall not be required, if the declaration submitted or filed at the office of the court clerk of the court of justice indicates a refusal of the appointment. The previous stipulations shall be applicable to charitable associations, foundations and institutions as mentioned in article 365, unless they have requested or volunteered to act as guardian. (Bw.387, 355v., 377-9, 381b; Rv.3)

Article 332b. (Supplemented by S.27-31 see also 390, 421) A married woman cannot accept guardianship without her husband's assistance or his written consent. In the event that the husband offers his assistance or his consent, or if he was married to the woman after she assumed the role of guardian, also if the woman has assumed guardianship pursuant to article 112 or article 114 upon authorization of the judge, then the married guardian as well as the unmarried guardian, without any further authorization or assistance, shall be authorized to carry out all acts with regard to the guardianship and shall thereafter be responsible therefor. The assignment of a guardianship to a charitable association, foundation or institution shall in effect legally validate the agreements concluded by the married woman as manager of such guardianship without requiring the assistance or consent of her husband. (Bw.105, 109, 113, 365)

Article 333. (Amended by S.25-497; 27-31 see also 390, 421, 456) If, in accordance with the provisions of this Civil Code, the intervention of blood relatives or relatives by marriage of the minor is required, these individuals shall be summoned, if possible in groups of four, and shall be selected from the closest relatives and if possible from both lines, on condition that only the blood relatives and relatives by marriage who reside or are domiciled in the area (the area of the assistant resident) where the judge has its seat shall be summoned by the judge.; if the judge deems it necessary to consult blood relatives and relatives by marriage who reside or are domiciled outside the area, they shall be summoned for that purpose by a residential judge appointed thereto as well as the appointed head of the local government (the assistant resident) which official shall then submit the minutes drafted thereof to the judge. The



blood relatives or relatives by marriage who are summoned shall be of majority age and shall reside or be domiciled in Indonesia. All summons, referred to in this article, shall take place by registered letter. (Bw.334, 338a, 358, 360, 393, 396, 400-403, 408, 422, 427, 438, 445, 452; Civ.407, 409; Wsk.54; Bb.379; Sw.524)

Article 334. (Amended by S.27-31 see also 390, 421) Each time the presence of relatives or relatives by marriage of the minor is required, they may be represented by specific proxy. The written power of attorney shall be free of stamp duty. The proxy shall only represent one person. (Bw.382g, 1793v.; Sw.524; Bb.379)

\*110 Article 335. (Amended by S.27-31 see also 390, 421) All guardians, with the exception of the charitable associations, foundations and institutions mentioned in article 365, are required within one month following the commencement of the guardianship, and if during the guardianship the assets of the minor significantly increase, within one month after being reminded thereof by the Orphans' Chamber, to guarantee their management, provide security, mortgage or pledge collateral, as well as increase the value of the security already provided to the satisfaction of that board. The mortgage shall be registered upon demand of the Orphans' Chamber. In the event of a dispute arising between the guardian and the Orphans' Chamber regarding the sufficiency of the security provided, the court of justice shall decide upon request of the party most prepared. The Orphans' Chamber shall be authorized to release the guardian from his duties referred to in the first paragraph of this article, due to insufficient property of the minors, but shall remain entitled at any time demand to the provision of security pursuant to the stipulations in the first and third paragraphs. (Ov.19, 35, 68; Bw.336v.,342v.,365, 371, 452, 1149-7, 1168, 1179, 1215, 1830; Civ.2121, 2135v.; Wsk.51v.; Bb.379, 3259, 3771)

Article 336. If the guardian fails, within the term stipulated in the first paragraph of the previous article, to provide one or the other stipulated security, the Orphans' Chamber shall register the mortgage at the guardian's expense. (Bw.337) If the guardian objects to this registration on grounds that it was registered for an excessive amount, or it charged more assets than required for the security of the minor, then the decision in relation to this shall be made by the court of justice. (Ov.36; Bw.341, 344, 452; Wsk.52v.)

Article 337. (Amended by S.27-31 see also 390, 421) The guardian, at whose expense the registration is carried out, and the individual, who has provided the security voluntarily, shall be authorized at any time to terminate the effect thereof, by providing another security, at the expense of the Orphans' Chamber, or in the event of a dispute with the latter mentioned regarding the sufficiency of the security offered, based upon the decision of the court of justice, in accordance with the stipulations in article 335. If the matter is regulated without the intervention of the judge, the removal of the mortgage shall occur upon demand of the Orphans' Chamber; if the matter is regulated with the intervention of the judge, the removal shall be ordered by the judge, and upon presentation of the court order, shall be implemented by the registrar of mortgages in the course of his duty. (Supplemented by S.72-42) The guardian shall be permitted to request that the security provided by him be reduced, if, through no fault of his, during his management, there has been a significant reduction in the assets of the minor. In the event of dispute over this between the \*111 guardian and the Orphans' Chamber, the court of justice shall also decide upon the request of the party who first filed such request. (Bw.344, 452; Wsk.52)

Article 338. (Amended by S.27-31 see also 390, 421) If, within the stipulated period of time, the guardian fails to provide the security or collateral, and does not own sufficient fixed assets, the court of justice shall remove him from the management of the minor's assets, upon demand of the Orphans' Chamber to which in these circumstances the management shall be assigned until such time as the guardian shall provide the required security, and if upon his request and after having heard the Orphans' Chamber, he shall be reinstated in the position of management by the court of justice. (Ov.17, 19; Bw.341, 344, 452; Wsk.52; T.XIII-341) (Supplemented by S.27-31 see also 390, 421) A guardian, who has been removed from management, shall only remain responsible for the personal care of the minors based upon and in the manner as required by the court of justice upon the recommendation of the Orphans' Chamber. (Supplemented by S.27-31 see also 390, 421) However, if the management of the fixed assets of the minor requires continuous supervision, the court of justice may stipulate, after consulting the Orphans' Chamber, that such management shall also remain the responsibility of the guardian, provided that he submits to the Orphans' Chamber all funds, precious items and negotiable instruments, belonging to the minor; and in this regard the Orphans' Chamber shall provide the guardian with the sums necessary to support and educate the minor and to provide for the daily management of the fixed assets, with the provision that the guardian is required to account annually for the use of the funds to the Orphans' Chamber in the manner stipulated in article 372.

Article 338a. (Supplemented by S.27-31 see also 390, 421) A guardian, who intends to leave Indonesia, shall apply by letter of request to the court of justice for a cancellation of the business security provided

by him or provided at his expense. This request shall be preceded by a complete account submitted in the manner described in article 372, to the orphans' chamber and the letter of request shall enclose a written statement of the Orphans' Chamber, that they have approved the account submitted to them. The court of justice shall deliberate upon this request after having heard the Orphans' Chamber and the blood relatives or relatives by marriage. (Bw.333v.) The request shall be admitted, if it appears that the guardian has fulfilled his obligations. If, as a result of this, the request for cancellation of the security is admitted, this shall be replaced by a guarantee; if this cannot be provided, then measures shall be taken in accordance with the previous article.

Article 339. (Amended by S.27-31 see also 390, 421) If the guardian leaves Indonesia with the minor, he may, upon his request, be reinstated in the position of management from which he was removed pursuant to article 338, either fully \*112 or partially, by the court of justice, after having heard the Orphans' Chamber, subject to such provisions as the court, in the interest of the minor, shall deem necessary. (Ov.19v; Bw.344, 452)

Article 340. The committed guarantors, shall, without prejudice to the general requirements stipulated in the legal regulations, insofar as possible, establish their domicile within the area of the court of justice within whose legal jurisdiction the guarantee shall be provided.

Article 341. If a committed guarantor moves away from Indonesia, or passes away, then the court of justice, upon the request of the Orphans' Chamber may, within the stipulated time period, instruct the guardian to appoint a new guarantor, upon which appointment the earlier mentioned guarantor or his heir shall be released from their commitment by law. Failure of the guardian to comply with the obligations imposed on him shall be dealt with pursuant to articles 336 and 338. (Bw.344, 452)

Article 342. (Amended by S.27-31 see also 390, 421) The guarantee and lien shall cease to have effect and the mortgage registrations shall be removed, as soon as the management by the guardian is terminated and responsibility shall also cease by submitting the account, the documents and payment of the outstanding funds. (Bw. 335, 409, 413, 452, 1209; Civ.2180)

Article 343. The deeds for the registration of the mortgage and the deletion thereof from the register, which are effected pursuant to this section, shall not be subject to any costs or taxes, with the exception of the registrar's salary, which shall be at the expense of the minor. (Bw. 452)

Article 344. The judgments of the court of justice referred to in this section shall be upon letter of request, after having heard the prosecution counsel, and without any form of suit shall ultimately be passed, and shall not be subject to higher appeal. (Bw.335-339, 341, 452).

### **Section 3**

#### **Concerning the guardianship by the father and the mother**

Article 345. (Amended by S.27-31 see also 390, 421) Following the death of one of the parents, the guardianship of the minor legitimate children shall be the responsibility by law of the surviving parent, to the extent that he or she has not been released or dismissed from parental authority. (Bw.140, 229, 299v., 368, 371, 379-3, 388, 390; Chin.19; Civ.390)

Article 346, 347. Revoked: S.27-31 see also 390, 421.

Article 348. If, after the death of the husband, the wife declares, or upon being legally summoned, acknowledges, that she is pregnant, the Orphans' Chamber shall accept the conservatorship of the unborn child, and shall be obligated to implement all necessary and significant measures, which are required for the maintenance and the management of the assets, and also those necessary for the benefit of the child, if it survives, as well as of all other interested parties. If the child is born alive, then the normal requirements regarding the guardianship shall be taken into consideration. (Bw.2, 359, 836, 899, 1679; Civ.393; Wsk.44v.)

Article 349, 350. Revoked: S.27-31 see also 390, 421.

Article 351. (Amended by S.27-31 see also 390, 41) If the mother acting as guardian marries, her husband shall, unless he has been excluded or dismissed from guardianship, during the marriage, provided that there is no separation from bed and board or of assets between the spouses, be co-

guardian by law and shall be jointly liable together with his wife for all the acts committed after the execution of the marriage. The co-guardianship of the husband shall be revoked, if he is dismissed therefrom or if the mother ceases to be guardian. (Bw. 331, 358, 366, 379; Civ.396)

Article 352. (Amended by S.27-31 see also 390, 421) The father acting as guardian or the mother acting as guardian, who remarries, is required, if the supervising guardian so desires, prior to or after the concluding of that marriage, to submit to him an accurate list which indicates the \*114 property of the minor. The supervising guardian shall, in the event that the requirement mentioned in the previous paragraph is not complied with within a month, apply to the court of justice to dismiss the guardian. The court of justice shall grant this request, unless the guardian submits the requested list within a period of time stipulated by the court of justice which must be notified to the guardian; the court shall then make its decision without any further procedures being necessary. A new guardian shall also be appointed by the court of justice, if possible in the same decree which covers the dismissal. (Bw.357, 360, 381)

Article 353. (Amended by S,27-31 see also 390, 421) An illegitimate child shall by law be under the guardianship of the adult father or the adult mother, who has acknowledged the child, unless they have been excluded from the guardianship or have lost the guardianship, or if the guardianship has been assigned to another person during the minority of the father or the mother who has acknowledged the child, or prior to the acknowledgment of the child. If the child has been acknowledged by both parents, then the guardianship, on the same conditions, shall be implemented by the parent who acknowledged the child first, and if the child has been acknowledged simultaneously by both parents, the father shall be the guardian. If the parent, who, pursuant to the previous stipulations implemented the guardianship, dies or is dismissed from guardianship, has been put under conservatorship, or in the matter mentioned in article 354 has not been established as guardian or re-appointed as guardian, then the other parent shall, unless they are excluded from the guardianship or dismissed or are married, be the guardian by law. In the absence of the father or the mother exercising guardianship pursuant to the previous provisions, a guardian shall be appointed by the court of justice. The father or mother who has not been excluded or dismissed from guardianship but who is married and as a result of which pursuant to the previous paragraph does not become guardian by law, shall apply to the court of justice requesting to be appointed as guardian; the court shall grant this unless it is not in the child's interest; the court of justice shall decide after having heard or appropriately summoned the spouse of the applicant and the other parent if he or she is still alive and the supervising guardian. With regard to the hearing of the individuals in question, the provisions of the fourth paragraph of article 206 shall also apply. With regard to guardianship by the mother of the natural child who has been acknowledged, and her husband, the stipulations in article 351 shall apply, unless the child is legitimized by the marriage. (Bw.280, 299v., 306, 363)

Article 354. (Amended by S.27-31 see also 390, 421) If the individual, who exercises guardianship over his natural child who has been acknowledged, intends to enter into matrimony, he shall apply to the court of justice requesting to be appointed as the guardian, unless the marriage will result in the legitimization of the child. The court of justice shall decide after hearing or properly summoning the \*115 other parent in the event that he or she has also acknowledged the child, and the supervising guardian. With regard to the hearing of the individuals mentioned, the stipulations of the fourth paragraph of article 206 shall be applicable. The individual, who fails to comply with the requirement mentioned in the first sentence of the first paragraph, shall lose the guardianship by law; the spouses shall be jointly liable for all consequences of their actions in connection with the guardianship, which were carried out without any authority. The loss of the guardianship, as described above, shall not prevent the individual, who, pursuant to the stipulation in the previous paragraph, has lost the guardianship, in the event that there are grounds therefor, from being re-appointed by the court of justice having regard to the requirements of the fifth section of this title. (Bw.280v, 284; BS.42)

Article 354a. (Supplemented by S.27-31 see also 390, 421) If the guardianship has been assigned to another party in one of the circumstances mentioned in the first paragraph of article 353, the adult mother or father, of an illegitimate child who has been acknowledged, who has not been excluded, nor relieved of, nor dismissed from the guardianship, may apply to the court of justice to be appointed as guardian instead of the other party. The court of justice shall decide whether or not to grant the request after having heard or properly summoned the applicant, the guardian, the supervising guardian, the spouse of the applicant if he or she is married, and the other parent if he or she has also acknowledged the child and is still alive, as well as the guardian council. The court shall grant the request, unless there are legitimate concerns that the child may be neglected by the father or the mother. The stipulation in the last sentence of article 353 shall apply hereto. The stipulation in the fourth paragraph of article 206 shall apply to the hearing of individuals referred to herein.

#### **Section 4**

## **Concerning guardianship, assigned by the father or the mother**

Article 355. (Amended by S.27-31 see also 390, 421) Each of the parents, who exercises parental authority or guardianship over one or more children, shall be entitled to appoint a guardian for those children in the event that after his or her death the guardianship is not assigned to the other parent by law or pursuant to the legal decree mentioned in the final paragraph of article 353. Legal entities shall not be appointed as guardians. The appointment shall be effected by indicating such in the parent's will or in a notarial deed drafted for that specific purpose. Additional persons may also be appointed pursuant to this procedure, in which, according to the sequence in which it takes place, the mentioned shall act as guardian, should the one mentioned earlier be absent. (Ov.67; Bw.140, 331, 358, 368; Civ.397)

Article 356. (Amended by S.27-31 see also 390, 421) The appointment of a guardian shall not take effect, if the parent, who has made the nomination, was not guardian over his children or was not exercising his parental authority at the time of his death. (Bw.411, 931, 1898; Civ.398)

Article 357. (Amended by S.27-31 see also 390, 421) Article 319g and 382d, shall remain valid in the event that a guardian appointed by one of the parents has started to exercise his authority. If, during the guardianship by one of the parents who have not lost either their parental authority or guardianship, the other parent appoints a guardian and subsequently passes away, then the guardianship by law up the appointed guardian shall be terminated by law, upon cessation of the parental authority. (Bw.331b; Civ.399)

Article 358. (Amended by S.27-31 see also 390, 421) The appointment of a guardian, with regard to a child who has been legally acknowledged by the natural father or the mother, who has been appointed or re-appointed as a guardian, shall be invalid, unless it has been legalized by the court of justice. (Bw.333v., 355; Civ.400)

## **Section 5**

### **Concerning guardianship ordered by the court of justice**

Article 359. (Amended by S.27-31 see also 390, 421) In respect of all minors who are not under parental authority and whose guardianship has not already been provided for by law, a guardian shall be appointed by the court of justice after having heard or properly summoned the blood relatives or relatives by marriage. (Bw.333v.) In the event that it is required to make provisions due to temporary inability to exercise parental authority or guardianship, the court of justice shall appoint a guardian for such period of inability. This guardian shall, at the request of the individual for whom he is substitute upon the reasons for his appointment becoming invalid, be discharged by the court of justice. Should a provision be necessary on the grounds that the existence or the residence of the father or the mother are unknown, a guardian shall then also be appointed by the court of justice. This guardian can, at the request of the person whom he replaces, as soon as the reasons that have led to his appointment have ceased to exist, again be dismissed by the court of justice. The court of justice shall decide whether or not to grant this request after a hearing or proper summons of the applicant, the guardian, the supervising guardian, the blood relatives or relatives by marriage of the minor, and the guardian council; if the request concerns the guardianship over a natural child, then the court of justice shall decide after a hearing or proper summons in the manner stipulated in article 354a. The court shall grant the request, unless there are legitimate concerns that the child may be neglected by the father or the mother. The stipulation in the fourth paragraph of article 206 shall apply to the hearing of the above individuals. The exercise of parental authority shall be suspended during the guardianship referred to in the second and third paragraphs. In all circumstances, in which the appointment of a guardian takes place, the Orphans' Chamber shall, if so required, make provisions prior to as well as after the appointment, for the management of the child's personal affairs and assets, during the period up to the commencement of the guardianship. ( Bw. 260, 332, 345, \*119 348v., 355, 357v., 361, 364, 369, 379v., 453; Wsk.55; Civ. 405v.; Bb.1816; S.28-179\*)

Article 360. (Amended by S.27-31 see also 390, 421) The appointment of a guardian shall take place at the request of the blood relatives of the minor, his creditors or other interested parties, or even in the course of duty by the court of justice, within whose jurisdiction the minor is established. (Bw. 364) If the minor does not have a place of domicile within Indonesia or if his address is unknown, the appointment shall be carried out by the court of justice in his last place of residence, and in the absence of this, by the court of justice in Jakarta. (Bw. 17, 21) The official of the civil registry shall be obligated to inform the Orphans' Chamber of all deaths, which are required to be recorded in the registers, and to indicate also whether the deceased left any minor children, and to inform of the execution of marriages recorded in

the registers of parents who have minor children. (Ov.41; Bw.21, 362, 381; BS.83; BS.Chin.91; Civ.406; Wsk.55; Bb.2322, 3501, 4483)

Article 361. If the minor, established within Indonesia, owns assets in the Royal Kingdom of the Netherlands or in one or more of the overseas colonies of the Netherlands outside Indonesia, the management of the assets shall be entrusted to a trustee in the Kingdom and in each of the Colonies, at the request of the guardian. (Bw. 1803) In this regard, the guardian shall not be responsible for the actions of the trustee. The trustee shall be elected in the same manner as the guardian. (Bw.331, 350v., 388; Civ.417)

Article 362. (Amended by S.27-31 see also 390, 421) The guardian is required to, without delay, after the commencement of the guardianship, pledge under oath to the Orphans' Chamber that he shall carry out duties as the entrusted guardian properly and faithfully. If at the guardian's residence or within a distance of fifteen poles from such residence there is no Orphans' Chamber nor an agency established, then the oath shall be taken before the district judge as well as the head of the government at the residence of the guardian. An official report shall be made of the oath being taken. (Ov.21; Bw.365, 369, 378; Civ. 418; Wsk.49, 55; Bb.379)

Article 363. (Amended by S.27-31 see also 390, 421) Without prejudice to the provisions of the second paragraph of article 354a and of the fourth paragraph of article 359, the court of justice shall, without any prior hearing, make provisions for the guardianship of the natural children. (Bw.280, 353, 369)

Article 364. (Amended by S.27-31 see also 390, 421) The decisions of the court of justice regarding the provisions for guardianships, shall not be subject to higher appeal unless otherwise stipulated. (Bw.353v., 358v.)

## **Section 6**

### **Concerning guardianship by charitable associations, foundations or institutions**

Article 365. (Amended by S.27-31 see also 390, 421) In all instances, in which the judge appoints a guardian, the guardianship may be assigned to a legal entity being a charitable association, foundation or institution established in Indonesia, the statutes, establishment documents or regulations of which stipulate care for minors for the duration. Article 362 shall not be applicable. The charitable association, foundation or institution shall, with respect to the designated guardianship, have the same authorizations and obligations as those which are granted or assigned to the guardian, unless the law stipulates otherwise. The members of the management shall be personally and jointly liable for the implementation of the guardianship, to the extent that this is carried out by the management and to the extent that that the members of the management have not acted against the satisfaction of the judges, whether they have properly implemented the guardianship, or whether they have been proven incapable of protecting such. The management may authorize in writing one or more of its members to implement the guardianship over the minors mentioned in the authorization. The management shall also be authorized in writing if they so desire, to assign the management of the property of specific minors to the Orphans' Chamber which shall then be obligated to take over that management and to implement the provisions applicable to it. This transfer shall be irrevocable. (Bw. 330v., 335, 366, 379; Wsk.57; S.28-179\*)

Article 365a. (Supplemented by S.27-31 see also 390, 421) The court clerk of the legal board, which assigned the guardianship, shall provide written notification of the assignment to the guardian council and the officer of justice at the court of justice, within whose jurisdiction the charitable association, foundation or institution is established. The management of the charitable association, foundation or institution shall provide written notification of the admission of the minors to houses or institutions to the guardian council and the officer of justice at the court of justice within whose jurisdiction those houses or institutions are located. The houses and institutions herein mentioned shall be visited by an officer of justice or an official appointed by him or by the guardian council to check the condition of the minors placed therein, at any time they deem it necessary or advisable. The supervising guardian shall if so desired be provided with the opportunity to visit the minors, who are under his guardianship. (Bw.380)

## **Section 7**

### **Concerning supervisory guardianship**

Article 366. (Amended by S.27-31 see also 390, 421) In respect of each guardianship assigned in Indonesia, supervisory guardianship shall be assigned to the Orphans' Chamber. (Ab.16; Bw.351v., 365, 367, 379, 415v., 418; Civ. 420)

Article 367. (Amended by S.28-546) The provisions of the previous article shall not be applicable to and shall not result in any changes to the supervising guardians assigned to minors in the Netherlands who could be subsequently located in Indonesia. (Amended by S.27-31 see also 390, 421) If the supervising guardian, appointed in the Netherlands, is not located in Indonesia and he has not authorized a specific individual to represent him in all acts which require his presence or intervention, he shall be deemed to have assigned his functions, in the instances where he is required to be in Indonesia, to the Orphans' Chamber located in the area where the minors reside, which chamber must effect the assignment. (Bw. 452)

Article 368. (Amended by S.27-31 see also 390, 421) The guardians, who are referred to in the third section of this title, are obligated, without undue delay, to inform the Orphans' Chamber of the establishment of the guardianship. Failure to do so, shall result in dismissal, without prejudice to rights to reimbursement of costs, damages and interest. (Bw.345, 355, 359, 366, 380v.; Civ.421; S.27-31)

Article 369. (Amended by S.27-31 see also 390, 421) In all circumstances in which the guardianship is assigned by the judge, the court clerk of the relevant legal board shall immediately notify the Orphans' Chamber in writing of the appointment stating also that this occurred in the presence of the guardian, and, if the guardianship has been assigned to a charitable association, foundation or institution, whether this occurred at their own request or voluntarily. The court clerk shall also be required to give notification of the statements, pursuant to the stipulations in article 332a, submitted to the court clerk or filed \*123 with the court clerk including the legalization referred to in article 358. (Bw.332, 359, 362v., 452; Civ.422)

Article 370. (Amended by S.27-31 see also 390, 421) In the event that the interests of the guardian conflict with those of the minor, the supervising guardian shall be responsible for the interests of the minor, without prejudice to the special obligations of the Orphans' Chambers in the event that supervisory guardianship is assigned to them pursuant to the instruction letter. The supervising guardian, upon whom the penalty of compensation in the form of costs, damages and interest has been imposed, shall be obligated to ensure that the guardian draws up an inventory of the estate in all inheritances, which have devolved upon the minor. (Bw.127, 381, 386, 390, 395, 399v., 408, 452; Civ.420)

Article 371. (Amended by S.27-31 see also 390, 421) The Orphans' Chamber, upon whom the penalty of compensation in the form of compensation of costs, damages and interest has been imposed, shall be obligated to implement the measures stipulated by law, for the purpose of compelling the guardian, even without being so instructed by the judge, to provide the required security, or in the absence thereof, provisions shall be made for the management in the manner stipulated by law. (Bw.335, 351, 386, 401, 452, 1023, 1171, 1179v., 1365v.; Civ.451, 2137)

Article 372. (Amended by s.27-31 see also 390, 421) The supervising guardian shall claim annually from the guardian (with the exception of the father and mother) a summarized account, and shall request to be shown the stocks and negotiable instruments belonging to the minor. The summarized account shall be presented on paper which has not been stamped and its submission shall not be subject to any costs or the need to comply with any legal format. (Ov.19; Bw.373, 409, 452; Civ.470; Wsk.58)

Article 373. (Amended by S.27-31 see also 390, 421) If the guardian refuses to comply with the requirement in the previous article, or if the supervising guardian detects fraud or gross negligence in the summarized account, then he shall demand the dismissal of the guardian. He shall also request the dismissal in all other instances where so required by law. (Ov.20; Bw.380v.; 452; Civ.446)

Article 374. (Amended by S.27-31 see also 390, 421) If the position of guardian becomes vacant, or is abandoned by virtue of the guardian's absence, or if the guardian is temporarily unable to fulfill his duties as guardian due to incapacitation, the supervising guardian shall arrange for the nomination of a temporary or new guardian by the court of justice and failure to do so shall render him liable for costs damages and interest. (Ov.20; Bw.359v., 452, 463, 1365v.; civ.424)

Article 375. (Amended by S.27-31 see also 390, 421) The supervisory guardianship shall commence and terminate simultaneously with the commencement and termination of the guardianship. (Bw.330, 331a, 331b, 410, 419, 452; Civ. \*124 425)

## **Section 8**

### **Concerning the reasons by virtue of which a person may be excused from guardianship**

Article 376. Revoked; S.27-31 see also 390, 421.

Article 377. The following may be excused from guardianship:

1. individuals, who are located outside Indonesia for the purpose of serving their country;
2. members of the army or navy;
3. individuals, who, outside their residence, occupy public positions, including individuals, who, due to those positions are required to leave their place of residence at certain times; the individuals, mentioned in the three previous numbers, may excuse themselves from guardianship, if the reasons for excusing themselves from guardianship arose after their nomination;
4. individuals, who have reached the age of sixty years; if they are nominated prior to that, they may release themselves from guardianship when they reach the age of sixty five years;
5. individuals, who suffer from a severe and properly proven illness or infirmity; these individuals may request their release, if the illness or the infirmity, arose after their appointment as guardian;
6. individuals, who are childless and to whom two guardianships have been assigned;
7. individuals, who have one or more children and to whom one guardianship has been assigned;
8. individuals, who on the date of their appointment have five legal children, including those who died during their service in the army.
9. (Supplemented by S.27-31 see also 390, 421) women. A woman, who has assumed the role of guardian while \*126 unmarried, may, following her marriage, release herself from the guardianship.
10. (Supplemented by S.27-31 see also 390, 421) Individuals, who are not related to the minor, whether by blood or marriage, if there are blood relatives or relatives by marriage, who can effect the guardianship within the legal jurisdiction of the court of justice, where the guardianship is designated,. The father and the mother shall not be permitted to release themselves from guardianship for any of the above reasons. (Bw.378, 452, 459; Civ.427-436)

Article 378. (Amended by S.27-31 see also 390, 421) An individual, who wishes to be excused from guardianship, shall request a dismissal from the judge who assigned the guardianship or if it was not preceded by a legal appointment, from the court of justice at his place of residence. With the exception of the individuals referred to in article 377 under numbers 1 through 5, the applicant is required, subject to the penalty of the loss of his authority thereof, to file his request within thirty days after the date on which the guardianship commences if he is in Indonesia and within ninety days if he is outside Indonesia. The applicant's request shall not be granted, if the guardianship commenced pursuant to a statement by him that he shall assume guardianship. The judge shall decide without any form of procedure and such decision shall not be subject to appeal. Notwithstanding the presentation of the reasons for release, the guardian is required to continue to occupy his position as guardian pending a final decision being reached. (Bw.362, 452; Civ.438-440)

## **Section 9**

### **Concerning the exclusion, the release and the dismissal of the guardian**

Article 379. (Amended by S.27-31 see also 390, 421) In addition to the exclusion in respect of the guardianship as referred to in Article 9 of the regulation of the legal organization and the policy of justice with respect to European legal officials, the following shall be excluded from guardianship:

1. individuals of unsound mind; 2. minors; 3. individuals placed under conservatorship; 4. individuals, who have been dismissed either from parental authority or guardianship; in this regard only with respect to minors, who, by court decision have lost the parental authority or guardianship without prejudice to the stipulations in articles 319g and 382d; 5. the presidents, vice-presidents, members, secretaries, vice-secretaries, cashiers, bookkeepers and agents of the Orphans' Chamber, with the exception of their children or stepchildren. (Bw. 330, 359, 433, 452, 1330; Ov.69; Weesk.9; Civ.442; Bb.1608)

Article 380. (Amended by S.17-497; 27-31 see also 390, 421) If the judge, in the interest of the minor deems it necessary, the following may be dismissed from guardianship of all or one or more minors under one guardianship: (Bw. 352, 359, 368, 373, 381v., 382a, 452)

1. individuals whose conduct is bad;

2. individuals who, in assuming the role of guardian, have displayed their incompetence, abused their authority, or neglected their duties;

3. individuals who have been released from guardianship pursuant to numbers 1 and 2 of this article or from parental authority pursuant to articles 319a, second paragraph numbers 1 or 2;

4. individuals who are bankrupt; (F.1, 22; Civ.443v.)

5. individuals who have personally or whose father, mother, \*128 spouse or children have filed a lawsuit against the minor, in which the issues relating to the status of the minor, his property or a significant part of his assets are involved;

6. individuals who have been convicted of deliberate participation in any misdemeanor with a minor under their authority;

7. individuals who have been convicted of any misdemeanor, described in the titles XIII, XIV, XV, XVIII, XIX and XX of the second book of the Penal Code, committed against a minor under their authority;

8. individuals who have been sentenced to imprisonment of two years or more (Sw.10, 35, 37v.) The father and the mother cannot either in the circumstances mentioned under 4 and 5, or upon grounds of incompetence be released. A charitable association, foundation or institution, may, if the judge deems it necessary in the interest of the minors, be dismissed from guardianship in the circumstances as mentioned under 2, 3, 4 and 5. They can also be dismissed, if they fail to provide the written notification referred to in article 365a, second paragraph, or if the visits, described therein, are obstructed. A person who commits a misdemeanor in this article shall be interpreted as a person who is an accessory to and who attempts to commit a misdemeanor. (Sw.53, 56; Civ.443v.)

Article 381. (Amended S.27-31 see also 390, 421) The dismissal of a guardian shall be effected by the court of justice at his place of residence or in the absence thereof at his last place of residence, at the request of the supervising guardian, one of the blood relatives or relatives by marriage of the minor up to and including the fourth degree, of the guardian council or at the request of the prosecution counsel. The dismissal of the father or mother nominated as guardian after the divorce shall be effected by the court of justice, who has acknowledged the demand for divorce. The request or the claim shall contain the facts and circumstances upon which it is based, and shall also include the names of the parents, the guardian and the supervising guardian and their residences and abodes, to the extent that they are known, the names and abodes of the blood relatives or relatives by marriage, who in accordance with article 333 shall be summoned and of the witnesses who shall be able to support the facts mentioned in the request or the claim. Unless the request for dismissal has been filed by the guardian council, the request or the claim, filed with the supporting documents, shall be notified as soon as possible in writing by the clerk to such council. The date on which it was filed shall be indicated by the court clerk on the request or the claim. (Bw.319b., 370, 373, 409, 417, 452; Civ.446v.)

Article 381a. (Supplemented by S.27-31 see also 390, 421) The court of justice shall pass the decision after having heard or properly summoned the parents, the guardian and the \*129 supervising guardian, the blood relatives or relatives by marriage of the children and the guardian council. The court of justice may instruct that the witnesses to be designated by them, whether or not selected from the blood relatives or relatives by marriage, shall be summoned to be heard under oath. If the parents, guardian, supervising guardian or witnesses to be heard, are residing or have their abode outside the area in which the court of justice is established, the hearing may be delegated by this court in the same manner as is stipulated in article 333 with respect to the blood relatives and relatives by marriage. The last



clause in the fourth paragraph of article 206 shall apply to the parents, guardian and supervising guardian. All summons shall take place in the manner stipulated in article 333 with regard to blood relatives and in laws; if however, a summons is directed to an individual whose address is unknown, this summons shall immediately be published in one or more newspapers designated by the court of justice. The summons of an individual, whose release or dismissal has been requested or demanded, shall, unless his address is unknown, be accompanied by a summarized version of the contents of the request or demand. If the court of justice deems it necessary, it may summon other individuals in addition to the designated individuals who have already appeared on that specific date to be heard under oath as witnesses, and may also instruct further hearing of the witnesses to take place; the latter mentioned witnesses shall be appointed by a further decree and be summoned in the same manner. (Bw.1895v.)

Article 381b. (Supplemented by S.27-31 see also 390, 421) During the investigation, any Indonesian resident, who is competent to carry out the functions of a guardian and the management of each of the charitable associations, foundations and institutions mentioned in article 365, may appeal by letter of request to the court of justice to be appointed as guardian. The court of justice may order that he be summoned to be questioned regarding their letter of request. The fourth paragraph of article 206 shall apply to the hearing of the individuals mentioned herein. (Bw. 319e.) In the event that the request or the claim is admitted the court of justice shall make provisions regarding the guardianship. The judgment ordering the dismissal of the guardian, shall also order him to submit an account of his management to his successor. (Bw.350v., 400v.)

Article 382. (Amended by S.27-31 see also 390, 421) The case shall be heard in a closed session. (G.168) The decree setting out the reasons shall be made public as soon as possible after the last hearing; it can be stipulated that it shall be implemented immediately notwithstanding opposition or appeal with or without security. (Rv.55) The court of justice shall be entitled to suspend the performance of the functions of the guardianship in their entirety or partly, during the investigation and to give such authority to a designated individual or the guardian council \*130 with respect to the minor personally and to his assets as they shall deem appropriate. With regard to the stipulations mentioned in the previous paragraph, no higher appeals shall be admitted. The stipulations shall be valid until the judgment regarding the dismissal has obtained legal validity. The stipulations in the seventh and eighth paragraph of article 319f are applicable hereto.

Article 382a. (Supplemented by S.17-497; amended by 27-31 see also 390, 421) The officer of justice shall be authorized to temporarily entrust the minors, in the event that the guardian acts in a manner that could result in his dismissal or in the event that the minors have been abandoned or unsupervised, to the court of justice, until the judge provides for their guardianship or he decides that no provisions are required to be made and the decision shall have obtained legal validity. The stipulations of the seventh and eighth paragraph of article 319f shall be applicable hereto. If the officer of justice exercises the authority mentioned above prior to a request or demand for dismissal being filed or prior to provisions being made for the guardianship, he is required to immediately carry out whatever functions are necessary for the court of justice to make provisions for the guardianship. In the event of refusal to deliver the minors to the guardian council, the officer of justice shall instruct the process server or public servant by letter to implement their transfer. The stipulations of the third, fourth and fifth paragraph of article 319h shall be applicable hereto. The entrustment of the care of the minor in accordance with the first paragraph of this article shall result in the suspension of the guardianship, to the extent that it concerns the minor personally.

Article 382b. (Supplemented by S.27-31 see also 390, 421) If the individual, whose release or dismissal has been requested or demanded, fails to appear upon the summons, he may oppose his dismissal within thirty days after the decree or any documents made pursuant to or for its implementation have been notified to him personally or after committing any act which would indicate that he was aware of the decree or its implementation. An individual, whose request, or the prosecution counsel, whose demand for dismissal has been denied and an individual who, despite his opposition, has been released from guardianship, including an individual, whose opposition has been denied, may, within thirty days after the passing of the decision of the court of justice, appeal to a higher court. (Rv.83, 341) No higher appeal shall be permitted against the decisions mentioned in the second paragraph.

Article 382c. (Supplemented by S.27-31 see also 390, 421) The father acting as guardian and mother acting as guardian may, whether with regard to all or one or more of their children, at the request of the guardian council or upon demand of the prosecution counsel, be released from their guardianship by the court of justice at their place of \*131 residence or in the absence thereof at their last residence, based upon their unsuitability or incompetence to fulfill their obligation with regard to the care and education, provided that the children's interest for any other reasons does not conflict with such release. The release, of the father or mother appointed as guardians after the divorce, shall be carried out by the court of justice which has acknowledged the demand for divorce. The manner in which the guardianship

shall be conducted shall be set out as much as possible at the request or demand for release. This release shall not be ordered, if the individual, whose release has been requested or demanded, opposes it. (Bw. 319a.) Other guardians may, upon their own written request, be released from their guardianship in respect of all or one or more minors under their authority, by the court of justice at their place of residence, if an Indonesian resident who is competent to perform the functions of a guardian or to manage one of the charitable associations, foundations or institutions mentioned in article 365 has declared in writing his or her willingness to assume the role of guardian and the court of justice deems the transfer to be for the benefit of the minor. The court of justice shall decide after having heard or properly summoned the parents, the guardian and the supervising guardian, the blood relatives or relatives by marriage of the minor and the guardian council and shall make provisions at the same time for the guardianship if the request or the demand is admitted. The stipulations in the third paragraph of article 381 and in the second, third and fourth paragraphs of article 381a are applicable hereto. The case shall be heard in a closed session. The decree indicating the reasons shall be made public as soon as possible after the last public hearing and shall be declared capable of implementation notwithstanding opposition or appeal, with or without security and such with immediate effect. (G.168; Rv.55). In the event that the individual, whose release pursuant to the first paragraph has been requested or demanded, fails to appear upon the summons, he may oppose his release within thirty days after the decree has been notified to him in person or within thirty days after committing an act which indicates that he is aware of the decree or the implementation thereof. An individual, whose request, or the prosecution counsel whose demand for release has been denied, and the individual, who, having appeared upon the summons, has been released from the guardianship, and the individual, whose opposition has been denied, may within thirty days after the passing of the decision of the court of justice file a higher appeal.

Article 382d. (Supplemented by S.27-31 see also 390, 421) The father or the mother, who has been released or dismissed from the guardianship of their own children, may at their own request as well as at the request of those who are authorized to request their release or dismissal, and upon the demand of the prosecution counsel, be re-instated as guardian, if it appears that the facts, which formed grounds for the release or dismissal, no longer support such release or dismissal. The request or demand shall be filed with the court of justice which has acknowledged the request or \*132 demand for release or dismissal, unless the marriage of the individual released or dismissed has been dissolved by divorce, in which case the request or the demand shall be filed with the court of justice which has acknowledged the petition for divorce. (Bw.331; Rv.207, 211, 221) The court of justice shall pass the judgment, following the hearing or proper summons if possible of both parents, including the guardian or the management of the charitable association, foundation or institution, to which the guardianship has been assigned, of the supervising guardian, the blood relatives or relatives by marriage of the children and the guardian council. If the court of justice deems it necessary, it may instruct that the witnesses, whether or not selected from the blood relatives or relatives by marriage, shall be heard under oath. The third, fourth, fifth, sixth and seventh paragraphs of article 310g are applicable hereto.

Article 382e. (Supplemented by S.27-31 see also 390, 421) If the minors are not already under the actual authority of an individual or the management of the charitable association, foundation or institution, to which pursuant to a legal decree, referred to in this section, the guardianship has been assigned, or of the individual or the guardian council, to which the children might have been entrusted pursuant to the decree, mentioned in article 382, third paragraph; such decree shall also order the delivery of the children to the individual to whom authority over the minors is given pursuant to the legal decree. The stipulations of the second, third, fourth and fifth paragraph of article 319h are applicable hereto.

Article 382f. (Supplemented by s.27-31 see also 390, 421; amended by 38-622) The stipulations in article 319f shall also apply to the release or dismissal of the father or the mother from the guardianship of their own children.

Article 382g. (Supplemented by S.27-31 see also 390, 421) All letters of request, claims, writs and all other documents drawn up in compliance with the stipulations of this section, shall not be liable to stamp duty. (Zeg.31, II, 61). All requests, referred to in this section, which originate from the guardian council, shall be handled free of charge and the engrossed documents, copies and summaries requested by the council in the interest of their assignment shall be furnished to them by the court clerk free of charge. (Rv. 888v.)

## **Section 10**

### **Concerning the supervision by the guardian with regard to the minor**

Article 383. (Amended by S.27-31 see also 390, 421) The guardian shall be responsible for the support and the education of the minor, in accordance with his wealth and shall represent him in all civil acts. (LN.53-86, art.7) 1 The minor shall respect his guardian. (Bw.78, 151, 282, 298, 361, 288, 399, 421, 452, 904, 1330, 1447v., 1798; Civ. 450)

Article 384. (Amended by S. 27-31 see also 390, 421) If the guardian has significant reasons for being displeased with the behavior of the minor, the court of justice may, at his request or at the request of the guardian council provided that it has been requested to do so on his behalf, place the minor for a specific period of time in a state or private institution designated by the director of justice. The placement shall be at the expense of the minor and in the event of his insolvency, at the expense of the guardian; instruction that the placement shall be no longer than for six consecutive months shall be given, if the minor, at the time of the issue of the decree, has not reached the age of fourteen years, or if the minor has reached such age at that time, for a period of one year at the most and in any event the placement shall not continue after the age of majority is reached by the minor. (Bw.320v., 452; Civ.468) The court of justice cannot order the placement before a hearing or proper summons of the supervising guardian and the blood relatives or relatives by marriage of the minor together with a hearing of the guardian council, and without prejudice to the stipulations in the next paragraph, also of the minor. Failure of the minor to appear on the date set down for the hearing shall cause the court of justice to suspend the investigation until a date to be further stipulated and shall instruct that the minor shall be brought to him on that date by a process server or an official of public authorities; this decree shall be implemented upon order of the prosecution counsel; in the event that the minor fails to appear on that date, the court of justice shall order or deny the placement without having heard the minor. In this regard, no further legal formalities shall be taken into consideration, with the exception of the order for the \*134 placement, in which, the reasons therefor shall not be stipulated. If the court of justice in issuing the decree, decides, that the minor and the guardian are incapable of paying for the expenses incurred in connection with the placement, then these shall be charged to the state. The decree, in which the placement is ordered, shall be implemented upon the order of the officer of justice following a request filed with him by the guardian.

Article 384a. (Supplemented by S.27-31 see also 390, 421) Upon decision being made by the director of justice the minor may, at any time, be released from the institution referred to in the previous article, in the event that the reasons for his placement appear to be no longer valid or his physical or mental condition do not necessitate any further stay. Any reduction in the period of the placement stipulated in the instruction for placement shall always be decided upon by the guardian. In order to obtain an extension of the period of the placement, the provisions in the previous article shall have to be taken into consideration again. No extension ordered by the court of justice shall be for more than six consecutive months; the order shall not be issued, until after the head or the substitute head of the institution, where the child has been staying during the period of the request for extension, has been heard.

1 (1) The Postspaarbank-ord., S.34-653, has been revoked and replaced by L.N. 53-86, of which article 7, translated reads as follows: 7.(1) Minors may, without intervention of their parents or guardian, take savings books, enter money therein, and personally receive the balance of savings, which has been recorded in their names in the books at the Savings Bank (Postspaarbank). (2) However, the refund cannot take place if their parents or guardians oppose this. (3) Without prejudice to the stipulation in the fourth paragraph of article 5 of this code, the refund of the funds which has been deposited in the name of the minor, may also be claimed by the one, who exercises the parental authority over the minor, or by his guardian; however, if the minor has reached the age of sixteen, then the refund may only take place after authorization from the Central Court has been obtained. This authorization shall not be granted, if the money is not applied to a strictly necessary expense. If the court deems it necessary, the blood relatives of the minor shall be summoned for their opinion to be heard, however, failure to appear shall not require a repeat summons provided their summons was done properly. (4) The father and the mother of the minor saver do not have any right to withdraw the interest of the savings which has been recorded in the books of the Postspaarbank in the minor's name

## **Section 11**

### **Concerning the management by the guardian**

Article 385. The guardian shall manage the assets of the minor in the manner of a good head of the household and shall be liable for any costs, damages and interest, which result from his bad management. (Amended by S.27-31 see also 390, 421) In the event that assets have been granted by will or inter vivos gift to the minor and the administration thereof has been assigned to one or more administrators, the stipulations applicable to those individuals who exercise parental authority, set forth in article 307, shall be applicable to the guardian. (Bw.391, 400, 452; Civ.450)

Article 386. (Amended by S.27-31 see also 390, 421) The guardian shall, within ten days after the commencement of the guardianship, demand that the sealing be released, if a sealing has taken place, and immediately, in the presence of the supervising guardian shall make or organize an inventory to be made of the minor's assets. (Ov.100v.) The inventory or estate description may also be drawn up privately; in any event, the validity thereof shall be certified by the guardian under oath, before the Orphans' Chamber; if the inventory is drawn up privately, it shall be submitted to the Orphans' Chamber. (Bw. 370v., 417, 452; Rv.663v., 672v.; Civ.451; Wsk.50)

Article 387. If the minor is indebted to the guardian, the latter mentioned shall include this in the inventory; if he fails to include this information, the guardian cannot claim that which was owing to him, prior to the minor reaching the age of majority; he shall in addition not be entitled to interest which expired on the principal sum since the inventory was drawn up until the minor reaches the age of majority; provided however that during that period, that which is owed to the guardian shall not be canceled due to such expiration during that period. (Bw. 452, 1986; Civ.451)

Article 388. (Amended by S.27-31 see also 390, 421) Following the commencement of the guardianship, with the exception of guardianships carried out by the father or the mother, the Orphans' Chamber shall, after having heard the supervising guardian in the event that the supervisory guardianship has not been assigned to them, and after \*136 summoning the blood relatives or relatives by marriage of the minor in accordance with the estimate and in proportion to the assets which require management, determine the amount of the capital which the minor uses annually, including the costs incurred in managing the assets; the aforementioned shall be subject to the appeal to the court of justice, in the event that the Orphans' Chamber does not agree with the views of the majority of the relatives who appear. This same deed shall also stipulate whether the guardian shall be authorized to use in the course of his management one or more specific paid administrators, to administer the affairs for which he is responsible. (Bw. 333v., 345, 361, 372, 452; Civ.454)

Article 389. (Amended by S.27-31 see also 390, 421) The guardian is required to sell all furniture or household items, which the minor has acquired at the commencement of or during the course of the guardianship, including movable assets, which do not produce any profit, income or gains, with the exception of those, which, upon approval of the Orphans' Chamber, and after a hearing or proper summons of the supervising guardian if the supervisory guardianship is not being implemented by the Orphans' Chamber, and of the blood relatives or relatives by marriage of the minor, may be retained in their original condition. The sale shall take place in public and shall be conducted by an authorized official, having regard to the local customs, unless the court of justice, after a hearing or summons as mentioned above, shall order that some specific objects, in the interest of the minor, shall be disposed of in a private sale, at or exceeding the price that they have been estimated at by the experts appointed for the purpose thereof. (Bw.417) The court of justice shall also, after the same hearing, approve the public or private sale of movable assets, which, pursuant to the first paragraph of this article, have been retained in their original condition, if such is required in the interest of the minor. Businesses may be sold by the guardian privately, through brokers or similar such individuals, at the prevailing market rate, and produce of the land shall be sold at the market or otherwise at the market price. (Bw.333v., 390, 511v., 515, 1012; K.62, 76; Rv.678v.; Civ.452)

Article 390. (Amended by S.27-31 see also 390, 421) The father and the mother, to the extent that they have the legal use of the assets belonging to the minor, shall not be obliged to sell the furniture or other movable assets, should they elect to keep these for the purpose of returning these later in their original state. In this regard, they shall, at their expense, have the actual value of the assets appraised by an expert, appointed by the supervising guardian, who shall take an oath before the head of the local government. The experts shall put an estimated value on the assets which cannot be delivered in their original state. (Bw.311, 370. 389, 1078; Civ. 453; Wsk.38; Bb.379)

Article 391. The guardians are obligated to invest that which remains of the income after the minor's expenses have \*137 been deducted, if the profit balance exceeds one fourth of the regular income of the minor. (S.97-231) They shall not be permitted to invest the minor's money in any manner other than by purchasing the registration certificates in the main ledger of actual debts of the Royal Kingdom of the Netherlands, by purchasing debentures chargeable to Indonesia, registered in the name of the minor, by investing in immovable assets, or in interest bearing debentures, mortgaged on fixed assets, the unencumbered value of which exceeds at least one third of the sum invested. If the guardians during a period of one year fail to invest specific sums of money, in accordance with the requirements of this article, then they shall be liable for payment of the interest by law. (Bw.370, 372, 385, 393, 452, 1250, 1767; Civ. 455v.; S.1848-22)

Article 392. (Amended by S.27-31 see also 390, 421) If the assets of the minor include certificates of national debt, the guardians shall be required to effect the recording thereof in the main ledger on behalf

of the minor. The debentures chargeable to Indonesia shall also be transferred by the guardian into the minor's name. The supervising guardian shall be responsible for this transfer, and failure to do so shall render him liable for compensation of costs, damages and interest. The manner in which, in the event that the Orphans' Chamber pursuant to this article and articles 371 and 374 shall act, and the liabilities as a result thereof for compensation in respect of all the members of that board together or individually, shall be regulated by the Governor General in the letter of instruction to the Orphans' Chamber. (Bw.370, 372, 391, 416, 452, 1365v.; S.191-21, cvf.Wsk.24)

Article 393. (Amended by S.27-31 see also 390, 421) The guardian shall not be permitted, on behalf of the minor to:- borrow any money, or dispose of or mortgage his fixed assets, or dispose of or transfer his stocks, debt claims and shares, without having been authorized to do so by the court of justice. The court of justice shall not render this authority, unless it is absolutely necessary or it appears that it will yield profit, and after having heard or properly summoned the blood relatives or relatives by marriage of the minor, and the supervising guardian. (Bw.309, 333v., 372, 397v., 412, 425, 452, 1076, 1170, 1216, 1330v., 1448, 1852; Rv.684v.; Civ.457; LN.53-86 article 7 note Bw.383)

Article 394. In the event of a sale of fixed assets, the guardian shall include a list of all assets of the minor in his letter of request, and shall indicate those which he might wish to dispose of. The court of justice shall be authorized to permit the sale, either of the designated assets, or of other specific items, the disposal of which may appear to be less burdensome upon the minor (Bw.425, 452; Civ.457v.)

Article 395. (Amended by S.27-31 see also 390, 421) The sale shall take place in public, in the presence of the supervising guardian, conducted by an authorized official, and in accordance with local customs. (Ab.15, Bw.370, 396, 452; Rv.684.; Civ.459)

\*138 Article 396. (Amended by S.27-31 see also 390, 421) The court of justice shall be authorized to, in extraordinary circumstances, and if necessary in the interest of a minor, grant approval for the private sale of immovable assets. Such approval shall not be permitted, in circumstances other than if it is pursuant to a request from the guardian detailing the reasons therefor, and by mutual approval of the supervising guardian and the blood relatives or relatives by marriage of the minor. If all of the blood relatives or relatives by marriage summoned do not appear upon the summons, then the mutual consent of those who do appear shall be sufficient. The immovable assets shall not be sold for a price which is lower than the price estimated by three experts, to be nominated by the court of justice, prior to the approval being granted. (Bw. 333v., 397v., 452; Rv.685)

Article 397. The formalities, described in article 393, shall not be applicable, if, in the judgment, at the request of one of the co-owners of an undivided asset, the sale may have been ordered, provided that the sale shall always be held in public. (Bw.452; Rv.684v.; Civ.460)

Article 398. If the judge, pursuant to article 393, grants his approval to the sale of stocks and bonds belonging to the minor, he may also determine that such sale shall be held in private, provided that the stocks and bonds are of the same value on the date of the sale as displayed in the usual price lists printed in the newspapers or similar information customary in Indonesia. (Bw.396, 452; K.62)

Article 399. The guardian shall not allow the immovable assets of the minor to be purchased in any manner other than by public auction. In this regard the purchase shall be invalid unless it is approved by the court of justice which approval shall be granted pursuant to the requirements and subject to the stipulations of the second, third and fourth paragraphs of article 396. (Bw.452, 1470; civ.450, 1596 No.1)

Article 400. (Amended by S.27-31 see also 390, 421) The guardian shall not be permitted to personally lease or use the assets of the minor, unless in accordance with the requirements of the court of justice which, after having heard or properly summoned the blood relatives or relatives by marriage of the minor, including the supervising guardian, have been approved, in which case the latter mentioned shall be authorized to conclude an agreement with the guardian. (Bw. 417, 452) He shall not, without the same approval, accept an assignment of rights or debts in respect of which claims have been filed against the individual under his guardianship. (Bw. 33v., 370, 385, 452, 613, 1533, 1548; Civ.450)

Article 401. The guardian, shall not accept that which is acquired by the minor by inheritance unless it is under the privilege of the estate description. (Bw.1046) He shall not refuse to accept that which is acquired by inheritance without having obtained approval therefor in the \*139 manner as mentioned in article 393. (Bw.371, 386, 430, 452, 1023, 1057, 1448; Civ.461)

Article 402. The same approval shall be required for the acceptance of a gift granted to the minor; this shall have the same consequences with regard to the minor as with regard to an adult. (Bw.452, 1448, 1677, 1685, 1687; Civ.463)

Article 403. (Amended by S.27-31 see also 390, 421) Prior to filing a legal claim on behalf of the minor, or to defending oneself against a legal claim filed against him, the guardian may, at his risk, obtain authority therefor from the Orphans' Chamber, which shall consult the blood relatives or relatives by marriage of the minor and of the supervising guardian, if the supervisory guardianship is not carried out by the Orphans' Chamber. The guardian, to whom this consent has not been granted, and who files a legal claim, or defends oneself against a legal claim, may be charged with the payment of the costs of the proceedings, if it is revealed that he has commenced or maintained proceedings in respect of the legal claim without reasonable grounds, without prejudice to his liability for further compensation in the form of costs, damages and interest, in the event that there are grounds therefor. The same shall apply, if it is revealed that the guardian obtained the approval by providing false information or by concealing the truth. (Bw. 333v., 404v., 452, 1448; Wsk.13; Rv.58v.; civ.464)

Article 404. The guardian shall not be permitted to admit a legal claim filed against the minor, without having been authorized to do so by the Orphans' Chamber, in the manner mentioned at the beginning of the previous article. (Bw.403, 452; Wsk.13; Civ.464)

Article 405. The same approval shall be required, in the event that the guardian requests a separation or division; he may however, without such approval, respond to a claim for separation or division filed against the minor. (Bw. 403, 452, 1066; Civ.465)

Article 406. The rules, which, with regard to the separation and division of the assets, are in the minor's interest and must be taken into account, are stipulated in the seventeenth chapter of the second book, regarding division of the estate (Bw. 401, 452, 1066v., 1072v., 1448; Civ.466)

Article 406a. (Supplemented by S.27-31 see also 390, 421) If minors, who are under guardianship of different guardians, have property in common, then the court of justice may appoint one of them or another individual, to administer the assets until the separation and division have taken place, upon the necessary security being provided by the court of justice. (Bw. 319e)

Article 407. The guardian shall not, without the approval set forth in article 393, commit an act on behalf of the minor, or assign the decision of a case to arbitrators. (Bw.452, 1448, 1851; Rv.615v.; Civ.467)

\*140 Article 408. (Amended by S.27-31 see also 390, 421) If the father or the mother has been married to the late spouse on the basis that all or part of their property would be community property, then the surviving spouse may, after the blood relatives or relatives by marriage, as well as the supervising guardian, have been heard or properly summoned be authorized by the court of justice to maintain the assets - the gains, the enterprise, the trade, the factory or such similar business activity, for a specific duration, in common with the minor, and also until the minor reaches the age of majority. This approval shall not be granted, unless the court of justice, after review of the estate description, is satisfied that it is in the significant interest of the minor and of the security, which the male or female guardian has provided. The same approval may, at the request of the guardian, or the supervising guardian, after a hearing as aforementioned, be revoked. The prosecution counsel may in the course of duty order the revocation. (Bw.119, 127, 153, 155, 333v., 370, 452)

## **Section 12**

### **Concerning the rendering of account of the guardianship**

Article 409. Each guardian shall be, upon termination of his management, obliged to submit a final financial and management account (Bw.342, 372, 378, 381b, 452; Rv.580-8; IR.233; Civ.469)

Article 410. (Amended by S.17-497; 27-31 see also 390, 421) The account shall be rendered at the expense of the minor when he or she reaches the age of majority, or to his or her heir if the minor passes away, or to the successor in the management. The guardian shall advance the costs in respect thereof. In the final account the guardian shall be compensated for all the necessary, appropriate and justifiable expenses. (Bw.330, 370, 419, 452; Rv.99, 764v.; civ.471)

Article 411. (Amended by S.28-546) The guardians, with the exception of the father, the mother and the co-guardian, shall in respect of their remuneration include in the account 3% of the income, 2% of the

expenses, and 1.5% of the capital received by them; unless they prefer to obtain compensation, which shall be granted to them in a last will or in the authentic deed mentioned in article 355, in which case they shall not be permitted to include any other compensation in the account.(Ov.22, 80; Bw.388, 452, 1794; S.24-523; T.XIII-404) In S.27-31 a second paragraph is supplemented, which has been revoked in S.27-456.

Article 412. Each agreement, relevant to the guardianship or the guardianship account, entered into between a guardian and a minor having reached the age of majority, shall be void and invalid if it has not been preceded by a proper account having been rendered by submitting the necessary evidence which shall be properly documented by the individual to whom the account shall be rendered, and of which written acknowledgment shall be submitted at least ten days prior to the agreement. (AB.23; Bw.452, 904, 1451, 1852; Civ.472)

Article 413. The final account due from the guardian, shall, without being demanded, bear interest from the date that the account is closed. The interest that the minor owes to the guardian shall not \*142 commence earlier than from the date of the reminder to pay, following the closing of the account rendered. (Bw.335v., 452, 1149-7, 1250, 1767; Rv.580-8, 704-3, 774; Civ.474; Wsk.33; S.1848-22, note Bw. 391)

Article 414. All legal claims filed by the minor against his guardian in connection with his acts, shall expire ten years after the date of majority . (Bw.452, 1946; Civ. 475)

## **Section 13**

### **Concerning the orphans' chamber and guardian council**

Article 415. (Amended by s.21-489; 33-564) An Orphans' Chamber shall be established in the legal jurisdiction of each court of justice, which area and place of establishment shall be identical to that of the court of justice. (RO. 117v.; RBg.73v) The Governor General may stipulate that the authority granted to an Orphans' Chamber and the tasks assigned to it shall be implemented and carried out by or on behalf of one of the other Orphans' Chambers. In this regard, the latter mentioned Orphans' Chamber shall be represented at the place of establishment of the earlier mentioned board by a member delegated by an office established there. In addition to the matters stipulated in the instruction to the Orphans' Chambers, the delegated member shall at all times be authorized to represent the Orphans' Chamber. (Wsk.13; S.34-28 see also 48-35) In the event that the Governor General exercises the authority granted to him in the previous paragraph, the Orphans' Chamber to which the functions of another chamber have been assigned, shall be considered to have its place of residence exclusively at the office of the delegated member regarding all matters pertaining to that other chamber. (Amended by S.02-222) In respect of each Orphans' Chamber, agents shall be nominated at the places as required. (Wsk.40) (Supplemented by S.16-325) The appointment of the representative of the Orphans' Chambers in the Netherlands shall be done by the Minister of Overseas Royal Locations, who shall also determine the instruction of such representative.

Article 416. The instruction to the Orphans' Chambers shall, after consultation with the supreme court, be stipulated by the Governor General. He shall regulate the composition and structure of each one, in accordance with the requirements of the new laws. (Ov.70; Bw.366, 452; Rv.787; S.72-166)

Article 416a. (Supplemented by S.27-31 see also 390, 421; amended by 33-564) In the legal jurisdiction of each court \*144 of justice, a guardian council shall be established which, with the exception of the tasks specifically referred to in this Civil Code or in other general ordinances, has been delegated responsibility for the care of those minors, who, pursuant to the court judgment based upon articles 214, 319f, fifth paragraph of 382, third paragraph, have been entrusted to his care, including those, who through the officer of justice at the court of justice pursuant to article 319i or 382a shall be put at his disposal. (S.27-382) (Supplemented by S.33-564) The area and place of establishment of the guardian council shall be the same as that of the court of justice. The costs incurred by the guardian council shall be at the State's expense. (Supplemented by S.38-622) If the guardian council in connection with the stipulations of this chapter or titles X,XI, XIV and XIV A of this book appeals to a legal board, the cooperation of a solicitor or barrister shall not be required. (Supplemented by S.38-622) The guardian council shall ensure that the funds paid to him by individuals, who pursuant to this code are obliged to pay for the support and education of their children, shall be spent in accordance with their instructions.

Article 416b. (Supplemented by S.27-31 see also 390, 421; amended by 33-564) Without prejudice to the stipulation in the following paragraph, the guardian council shall consist of the locally established Orphans' Chamber, together with a number of members to be stipulated by the Governor General.

(S.27-382) In the event that the Governor General exercises the authority granted to him pursuant to the second paragraph of article 415, the guardian council shall consist of an appointed member of the local office of an Orphans' Chamber established elsewhere and a number of members to be stipulated by the Governor General. (S.34-28) The personnel of the Orphans' Chamber shall perform the same duties at the guardian council as at the Orphans' Chamber. The manner, in which the guardian council shall perform its function shall be regulated by the Governor General. (S.27-382) With respect to each guardian council, agents shall be appointed at places, as required.

Article 417. (Amended by S.25-113 see also 181; 27-31 see also 390, 421) The Orphans' Chambers and guardian councils may be substituted or represented by one or more of their members or other officials, as well as by one of their agents, in circumstances where they perform their duties as a board outside the building designated for their meetings. (Bw.127, 386, 395, 452, 1071v., 1075; F.67v.) In the event that the Orphans' Chambers and guardian councils are consulted, they shall at all times express their opinions and supporting facts in writing. (Bw.38, 41, 381, 384, 389, 393, 400, 408, 418, 422, 455, 1075, 1127; Wsk.36)

\*145 Article 418. (Amended by S.27-31 see also 390, 421) The Orphans' Chambers and guardian councils shall not be excluded from the tasks which were assigned to them by legal stipulations. (Bw.366, 449, 451v., 1127) All acts and suits in violation thereof shall be deemed void and invalid. (AB.23)

Article 418a. (Supplemented by s.27-31 see also 390, 421) The heads of the local government (assistant resident) and the officials of the civil registry are required, to the extent that they are capable, to provide information free of charge to the Orphans' Chambers and guardian councils and are furthermore obligated to provide all copies and summaries from their registers free of charge, which the board and the council have requested in the interest of their assignment; the copies and summaries shall not be subject to stamp duty. (Zeg.31, II, 61)

## **Chapter XVI**

### **Concerning emancipation**

Article 419. The minor may be deemed to have reached the age of majority through emancipation, or he may be granted certain rights attaching to adulthood. (Bw.307, 330, 399, 420v.,426v.; Civ.476v.)

Article 420. The emancipation, by virtue of which the minor becomes an adult, shall be obtained through *venia aetatis* (a privilege granted by a sovereign prince by virtue of which a person is entitled to act *sui juris* as though he were of full age) or letters of declaration of full age rendered by the Governor General, after consultation with the supreme court. (Bw.274; Bb.1941)

Article 421. The request for the letters of declaration of full age may be made by the minor to the Governor General, if he has reached the full age of twenty years. A birth certificate shall be enclosed with the letter of request, or in the absence of this, other reliable evidence of the required age. (Bw.72, 330, 383; BS.40; Bb.3369)

Article 422. (Amended by S.27-31 see also 390, 421) The supreme court shall not provide any information until after a hearing or proper summons of both parents of the minor or of the surviving parent, and if the minor is under guardianship, of his guardian, his supervising guardian and his blood relatives or relatives by marriage. (Bw. 300, 306, 333v.)

Article 423. (Amended by S.25-497; 27-31 see also 390, 421) The fourth paragraph of article 206 shall apply with respect to the hearing mentioned in the previous article with regard to the parents, the guardian and the supervising guardian, who reside or have their domicile outside the area, in which the supreme court is established. The official to whom the hearing has been assigned, shall enclose all information with the minutes when forwarding same, as he deems necessary. The minutes of the hearing shall, together with such information, be enclosed with the advice issued by the supreme court to the Governor General. (Bb.379)

Article 424. The individual declared to be of full age shall be deemed to be identical to an adult in all respects. (Amended by S.01-194 see also 05-552; 27-31 see also 390, 421) With respect to the concluding of a marriage, he shall, however, still be obliged, in accordance with the stipulations of articles 35 and 37, to obtain the approval \*148 of his parents or grandparents or the court of justice, until he has reached the full age of twenty one years, and in respect of natural children who have been



legally acknowledged, article 39 first paragraph shall remain applicable until they have reached the full age of twenty one years. (Bw.299, 330, 1006; Civ. 481v.)

Article 425. (Amended by S.01-194 see also 05-552; 27-31 see also 390, 421) The Governor General shall be entitled, to include a provision in the letter of declaration of full age, that in the interest of the minor to whom this is granted, until he has reached the full age of twenty one years, he shall not be permitted to dispose of or encumber his fixed assets without the consent of the court of justice in his place of residence, after a hearing or proper summons of both parents, or of the surviving parent, or in the absence of both of these of the blood relatives or relatives by marriage. In the event of a sale, the court of justice may consent to the sale being conducted in private. (Bw.393, 396; Rv.685) The fourth paragraph of article 206 shall be applicable with regard to the hearing of the parents.

Article 426. (Amended by S.75-257; 27-31 see also 390, 421) Emancipation, pursuant to which a minor is granted specific rights of an adult, may, if the minor has reached the full age of eighteen years, at his request, be granted by the court of justice. It shall not be granted against the will of one of the parents, who exercises parental authority or guardianship. (Bw.140, 299v., 307v., 430v.; civ.477)

Article 427. (Amended by S.75-257; 27-31 see also 390, 421) The court of justice shall not make any decision until after the hearing or proper summons of both parents, if the minor is under parental authority, or if he is under guardianship his supervising guardian, his blood relatives or relatives by marriage including both parents or the surviving parent, if somebody other than one of the parents exercises guardianship over the minor. The fourth paragraph of article 206 shall apply to the hearing of the parents, the guardian and the supervising guardian. The court of justice, may, prior to making its decision, order the personal appearance of the minor. Prior to the closing of the hearing, the court of justice shall appoint the date on which they shall pass their decision. The decision of the court of justice shall not be subject to higher appeal. (Bw.299v., 330, 349, 350, 352, 380v., 428; Rv.327v.; Civ. 478v.)

Article 428. (Amended by S.75-257) Upon granting emancipation, the court of justice shall stipulate, which rights of adulthood shall be awarded to the minor. (Bw.430; Civ.481v.)

Article 429. The minor, who has been granted such emancipation shall be regarded as an adult only in relation \*149 to the deeds and acts specifically stipulated to be assigned to him, but cannot rely on his minority in order to deny the validity of any of his deeds or acts. With regard to other matters, he shall be deemed to have minority status. (Bw. 428, 1446v.)

Article 430. The authority and the rights, pursuant to articles 426, 427 and 428, awarded to the minor, shall not extend beyond the partial or entire income, the expenditure and disposal of his income, the conclusion of leases, the cultivation of his land, and the operation of such enterprises as deemed necessary, handicraft, the construction of or participation in a factory, and lastly the undertaking of trade and businesses. (Amended by S.75-257) In the two latter mentioned instances the minor shall be authorized, in the capacity of an adult, to conclude all agreements related to such factory, trade and business, with the exception of the transfer and encumbrance of his fixed assets and the transfer or pledging of his interest bearing stocks, registrations in the main ledger of the public debt, mortgage debt collection and shares in limited liability companies or other companies. (Supplemented by S.75-257) He may, in regard to the acts, which he is authorized to commit pursuant to the emancipation granted, act as a plaintiff or defendant in court. Article 21 shall not be applicable to these acts. (Bw.299,307, 383, 385, 506v., 613, 814, 1385, 1446, 1448, 1548v., 1677; K.19v., 40v.; Civ.481v., 487)

Article 431. (Amended by S.75-257; 27-31 see also 390, 421) The emancipation as described in the five previous articles, may be revoked by the court of justice, if the minor abuses this emancipation or if there are reasonable grounds for fearing that he may do so. Revocation shall take place if both parents are still alive, at the request of the father, or if parental authority is exercised by the mother, at her request; if the minor is under guardianship, at the request of the guardian or the supervising guardian. The decision as to whether or not to grant the request shall not be made until after the hearing or proper summons of the minor and the guardian, if the request is made by the supervising guardian, or of the latter mentioned if the request has been made by the guardian. The court of justice may also order that the blood relatives or the relatives by marriage, and the father or the mother, if one of them is still alive, to whom the guardianship has not been assigned, shall be summoned to a hearing. The decision of the court of justice shall not be subject to higher appeal. (Bw.299v., 330, 333v., 370, 427, Civ.485v.) (Supplemented by S.27-31 see also 390, 421) The fourth paragraph of article 206 shall apply to the hearing of the parents, the guardian and the supervising guardian.

Article 432. All matters regarding emancipation mentioned in this title, including the revocation pursuant to the previous article shall be made public, by proper \*150 announcement and publication in the official

newspaper. (Ov.105) The announcement regarding the emancipation shall accurately state how and to what extent this emancipation has been granted. Prior to this announcement, neither the emancipation nor the revocation thereof shall apply towards third parties. (Bw.430v.; S.1851-51)

## **Chapter XVII**

### **Concerning conservatorship**

Article 433. An adult, who is in a continuous state of simple-mindedness, insanity or rage, shall be placed under conservatorship, notwithstanding that he might have mental capacity from time to time. An adult individual may be placed under conservatorship as a result of improvidence. (Bw.456v., 460, 462, 895, 1006, 1330; Civ.489, 513)

Article 434. Each blood relative shall be authorized to request conservatorship on behalf of one of his relatives, due to his simple-mindedness, insanity or rage. Conservatorship in respect of a person who is improvident may only be requested by the blood relatives in direct line, and by those in a collateral line up to and including the fourth degree. Due to one or more reasons, one spouse may request to put the other under conservatorship. An individual, who feels unable to take proper care of his affairs, due to limited mental capacity, may himself request to be placed under conservatorship. (Bw. 114, 290v., 445; IR.229v.; Civ.490, 514)

Article 435. If, in the case of rage, conservatorship is not be requested by the individuals described in the previous article, the prosecution counsel shall be obligated to do so. In the case of simple-mindedness or insanity, conservatorship may also be ordered by the prosecution counsel in respect of an individual who does not have a spouse or known blood relatives within Indonesia. (Civ.491)

Article 436. All requests for conservatorship shall be filed with the court of justice within whose legal jurisdiction the individual in respect of whom such conservatorship is requested is domiciled. (Bw. 17v.; Civ.492)

Article 437. The events, which demonstrate simple-mindedness, insanity, rage or improvidence, shall be specifically described in the letter of request, and the evidential documents as well as a submission of one of the witnesses shall also be enclosed. (Bw.440, 456v.,1909, 1914; Civ.493)

Article 438. If the court of justice is of the opinion that the events are sufficiently significant to lead to a conservatorship, then the court shall conduct a hearing of the blood relatives or relatives by marriage. (Bw.290,333v., 453; IR.230; Civ.494)

Article 439. The court of justice shall, after a hearing or proper summons of the individuals as referred to in the previous article, question the individual whose conservatorship has been requested; in the event that he is immobile, the questioning shall take place in his residence by one or more judges designated thereto, accompanied by the court clerk, and in all matters, in the presence of the prosecution counsel. (Bw. 445) If the residence of the individual whose conservatorship has been requested, is located more than ten poles from the seat of establishment of the court of justice, the questioning shall be assigned to the head of the local government. The prosecution counsel is not required to be present at this questioning; minutes shall be drawn up of the questioning of which an authentic copy shall be submitted to the court of justice. (Bw. 445, 1023) The questioning shall not take place before the letter of request as well as the report containing the views of the blood relatives, have been notified to the individual whose conservatorship is requested. (Bw.441, 443, 455; Civ.496; Bb.379)

Article 440. In the event that the court of justice, after the hearing or proper summons of the blood relatives or relatives by marriage, or after having heard the individual whose conservatorship is requested, decides that it has been adequately informed, the court shall, without any further formalities, deliberate upon the letter of request; in the event that it decides otherwise, the court shall instruct the hearing of the witnesses for the purpose of clarifying the matters presented. (Bw.437; 445; Pr.893)

Article 441. Following the questioning mentioned in article 439, the court of justice shall, in the event that there are grounds therefor, nominate a provisional administrator, to take care of the personal matters and assets of the individual, whose in conservatorship has been requested. (Bw.445v., 449; IR.231; Civ.497)

Article 442. The judgment upon a request for conservatorship shall be passed in a public court session, after a hearing or proper summons of the parties, and pursuant to the conclusions of the prosecution counsel. (Bw. 445; Civ.498, 515)

Article 443. In the event of appeal the judge of the higher court may, in the event that there are grounds therefor, question or order that the individual in respect of whom conservatorship has been requested, be questioned again. (Bw. 439; IR. 236; Civ.500)

Article 444. All judgments or decisions granting conservatorship, shall, for the benefit of the applicants, be notified to the opposing party within a period of time to be stipulated in the judgment or decision and shall be made public by publication in the official newspaper; failure to do so shall result in liability for costs, \*154 damages and interest, in the event that there are grounds therefor. (Ov.105; Bw.445v., 461; Civ.501)

Article 445. If the conservatorship is requested pursuant to the fourth paragraph of article 434, then the court of justice shall conduct a hearing of the blood relatives or relatives by marriage and the spouse of the applicant in person or his or her representative, if they are located in Indonesia; and shall comply with stipulations contained in articles 439, first and second paragraph, 440, 441 and 442. The prosecution counsel shall ensure that the judgment in relation to this, is published, in the manner described in article 444. (Bb.379)

Article 446. The conservatorship shall be effective as of the date that the judgment or decision is passed. All acts committed thereafter by the individual placed in conservatorship shall be invalid by law. However, an individual who has been placed in conservatorship due to improvidence shall have capacity to make wills. (Bw.88, 441, 444, 449, 895, 1330, 1446, 1813; Rv.248-2; C9v. 502)

Article 447. All acts committed as a result of simple-mindedness, insanity or rage, prior to the judgment granting conservatorship, may be invalidated if the grounds for seeking guardianship appeared to have existed at the time that the acts were committed . (Bw. 61-3, 88, 1330-2; Civ.503)

Article 448. Following an individual's death, the acts committed by him, with the exception of making last wills, cannot be disputed on grounds of simple-mindedness, insanity or rage, unless the conservatorship was granted or requested prior to his death, or if his mental handicap was evident at the time of committing the disputed acts. (Bw. 446, 895, 1320-1; Civ.504)

Article 449. Upon the judgment in respect of conservatorship obtaining legal validity, the court of justice shall appoint a conservator. The appointment shall be immediately notified by the court to the Orphans' Chamber. The supervising conservatorship shall be assigned to the Orphans' Chamber (Bw. 418) (Amended by S.27-31 see also 390, 421) In this regard, the provisional administrator's involvement shall cease, and he shall be required to submit an account of his administration; in the event that he is appointed as conservator, the account shall be submitted to the supervising conservator. (Bw. 359v., 377, 379v., 441, 446; Rv.580-8; Civ.505; Wsk.60)

Article 450. Revoked: S.27-31 see also 390, 421.

Article 451. (Amended by S.27-31 see also 390, 421) Unless there are significant reasons to nominate another conservator, one spouse shall be appointed as conservator over the other spouse, provided that a wife shall not \*155 require further assistance or authorization in order to be granted conservatorship over her husband. (Bw.103, 300, 349, 359, 377v., 379-3, 380, 418; Civ.507)

Article 452. An individual placed in conservatorship shall be deemed to be of equal status to a minor. The stipulations in articles 38 and 151 shall apply in the event that the individual, who has been placed in conservatorship due to improvidence, intends to enter into matrimony. (Amended by S.27-31 see also 390, 421) The legal regulations regarding guardianship pertaining to minors, stipulated in articles 331 through 344, articles 362, 367, 369 through 388, 391 and the subsequent articles in the eleventh, twelfth and thirteenth section of the fifteenth title, shall also apply to the conservatorship of individuals. (Ov.23; Bw.63, 330, 458, 539, 1006, 1046, 1149-7, 1330v., 1446, 1454, 1813; Rv.336; Civ.509; Sw.35, 37, 524)

Article 453. (Amended by S.27-31 see also 390, 421) In the event that the individual placed under conservatorship has minor children in respect of whom he exercises parental authority, and the other parent has been released from parental authority or dismissed, and pursuant to article 246 has not been granted parental authority, or is incapable of exercising such authority, also if the individual placed under conservatorship is the guardian of his legitimate children, then the conservator shall by law be guardian

of the minor until the conservatorship of the individual is revoked or until the other parent, pursuant to the decree referred to in article 206 and article 330, has been appointed guardian or has been granted parental authority pursuant to article 246a or has been re-instated in parental authority or as guardian. (Bw.300, 345, 353, 458)

Article 454. The income of the individual who, due to simple-mindedness, insanity or rage, has been placed under conservatorship, shall be spent for the sole purpose of minimizing his suffering and to expedite his recovery. (Bw. 388, 391, 451; Civ.510)

Article 455. Revoked; S.97-53

Article 456. (Amended by S.97-53) Individuals, who due to continuous misconduct, are unfit to be left alone, or endanger the safety of others, shall be treated in the manner stipulated in the regulation concerning the legal organization and the policy of justice. (RO.134; Bw.455, 457; IR.234)

Article 457. In the event of an emergency, the heads of the local government shall be authorized to take the individuals mentioned in the previous article into secured custody, subject to further approval of the court of justice. They are required to act with the utmost caution and shall within four days, or in the event that the seat of the relevant court of justice is established on another \*156 island, at the first shipping opportunity, by submission of the documents, notify the authorized officer of justice of the temporary detention, who shall, immediately after the receipt of the documents, submit these with his address to the court. If the court of justice does not find any reasons for validating the detention, the judgment shall contain the order for the release. This judgment, shall be implemented by the relevant head of the local government, immediately after receipt of same, and shall be notified to the officer of justice, in the manner described in the second paragraph of this article. (Bw. 462; Bb.379)

Article 458. A minor child of an individual who is placed under conservatorship shall not enter into matrimony, or make any provisions therefor, unless they have complied with the requirements set forth in articles 38 and 151. (Bw.453; Civ. 511)

Article 459. No one, with the exception of spouses and blood relatives in the ascending or descending line, is required to remain as conservator for more than eight years; after the expiration of this time period, the conservator may demand his release, and it shall be granted to him. (Bw. 290v., 376v.; Civ.508)

Article 460. The conservatorship shall be terminated, if the reasons for which it arose no longer exist notwithstanding this, the release of the conservator shall not be granted unless the formalities stipulated by law in order to become conservator are complied with, and the individual placed under conservatorship, shall not be able to resume the exercise of his rights, until the judgment for release of conservatorship has become legally valid. (Bw.88, 433v.; IR.232; Civ.512)

Article 461. The release of the conservator shall be made known, in the manner described in article 444.

### **Closing provision**

Article 462. A minor, who is in a state of simple-mindedness, insanity or rage, shall not be placed under conservatorship, but shall remain under the supervision of his father, mother or guardian.(Bw.299, 330, 383, 433) Paragraphs 2 and 3 are revoked pursuant to S.97-53.

## **Chapter XVIII**

### **Concerning absence**

#### **Section 1**

### **Concerning provisional provisions**

Article 463. In the event that an individual has left his residence without granting any authorization for the administration of his affairs and interests, or without leaving the management thereof in order, or if the authorization granted by him has expired, and if continued full or partial management, or representation of him is necessary, then at the request of the interested parties or upon the demand of the prosecution counsel, the court of justice, at the place of domicile of the absent party, shall assign the

full or partial management and administration of his assets and interests, to defend his rights, and to represent him therein to the Orphans' Chamber. (IR.235; RBg.271) The above shall be without prejudice to the specific legal regulations, with regard to bankruptcy or evident insolvency. (Bw.17, 374, 470, 1079, 1813; F.1v; civ.112) (Supplemented by S.25-113 see also 181) The court of justice shall be further authorized, either by decree as mentioned in the first paragraph, or pursuant to a subsequent decree, at the request or claim as referred to above as well as by deviating from the request submitted or the claim filed in the course of duty, to leave the management of the assets and the administration of the interests of the absent party due to the size being so small, to one or more blood relatives or relatives by marriage to be nominated by the court or to the spouse, subject only to the requirement to return the assets or the value thereof, after deducting the debts owed, without any gain or income. The requirements set forth in the following articles of this section shall not apply to managers.

Article 464. The Orphans' Chamber is obligated, if so required, after the sealing, to prepare a proper description of the assets entrusted to their care. They shall further comply with the requirements regarding the management of the assets belonging to the minor, to the extent that they apply to their management, unless the court of justice has stipulated otherwise. (Ov. 100v.; Bw.385v., 391, 465v.; Rv.672; Civ.113)

Article 465. The Orphans' Chamber is obligated to submit annually to the prosecution counsel at the court of justice by which they were nominated, a summarized balance sheet, and shall present the effects and documents relevant to this management. This account shall be drawn up on paper which has not been stamped, and shall be submitted without any legal format. The prosecution counsel \*159 shall submit such proposals as it deems necessary in the interest of the absent party. The approval of this account shall not interfere with the right which the absent party or other interested parties may have pursuant to any objection they may have made to such account. (Bw.464, 472, 483, 791, 803; Rv.764; Civ.114)

Article 466. Revoked: S.28-210; authority granted for management in Bw.463v. specific wage to be stipulated.

## **Section 2**

### **Concerning the declaration of presumed demise**

Article 467. In the event that an individual leaves his residence without granting any authorization in respect of the administration of his affairs and interests or leaving the management thereof in order, and if five years have elapsed since his departure, or since the most recent communication which could have revealed that he was still alive during that period, provided that there has been no evidence within those five years of his existence or his demise, regardless of whether or not temporary provisions have been ordered, then that absent party shall, at the request of interested parties, after having obtained approval of the court of justice at the place of his abandoned domicile, be summoned to appear before the same court pursuant to a public subpoena valid for three months or longer as may be instructed by the court. If neither the absent party, nor a representative who may prove his existence appears upon the subpoena, permission shall be granted for a second such subpoena, and if no appearance as referred to above is made upon the second subpoena, permission for a third such subpoena shall be granted. This subpoena shall each time be placed in such newspapers as the court of justice, at the time of granting of the first permission is granted, shall specifically indicate, and shall also be affixed to the main door of the session room of the court of justice, and on the entrance of the office building of the residency within which the absent party resided. (Bw.463, 469v., 472, 475v., 493, 1792; Rv.6-7; Civ.115; Bb.3372)

Article 468. If neither the absent party nor a representative who proves his existence appears upon the third subpoena, the court of justice may declare, pursuant to the claim filed, after having heard the prosecution counsel, that there are legal presumptions of demise effective as of the date that the absent party may be presumed to have left his residence, or after the most recent communication of his existence, which date shall be stipulated in the judgment. (Bw.463, 467, 469, 471, 482, 1916; Civ.119; Bb.3372)

Article 469. The court of justice shall, if necessary, prior to issuing a decision upon the claim, after a hearing of the witnesses summoned thereto which must be held in the presence of the prosecution counsel, consider the causes of the absence, matters which could have prevented \*161 the receipt of information from the absent party, and all other circumstances relevant to the presumed demise. The court of justice may, on these grounds, delay the issuance of the decision for not more than five years beyond the time period mentioned in article 467, and order such other summons and publication thereof

in the newspapers, as the court may deem necessary in the interest of the absent party. (Bw.494; Rv.171v.; Civ. 116v., 119)

Article 470. If an individual, upon departing his residence, granted an authorization for the administration of his affairs or left the management thereof in order, and ten years have elapsed since his departure or since the most recent communication of his existence, and provided that during those ten years there has been no evidence of his existence or demise, such absent party, at the request of the interested parties, shall be summoned and it shall be declared that there are legal presumptions of demise in the manner and pursuant to the requirements as mentioned in the three previous articles. This period of ten years shall be applicable notwithstanding that the authority granted by or orderly management on behalf of the absent party may have terminated earlier. In the latter mentioned instance, the management shall be provided for in the manner referred to in the first section of this title. (Bw.463, 467, 1795, 1813; Civ. 121v.; cf. note Bw.467)

Article 471. The declaration of presumed demise shall be published in the same newspapers, in which the public subpoenas have been published. (Bw. 468; Civ.118)

### **Section 3**

#### **Concerning the rights and obligations of presumed heirs and other interested parties, consequent upon the declaration of presumed demise**

Article 472. The presumed heirs of the absent party who, either pursuant to right of succession or by will, should be entitled to the inheritance on the date specified in the judgment, shall be authorized to demand an account and submission by the Orphans' Chamber in the event that the management of the assets of the absent party has been assigned to them, and to take possession of the assets of the absent party; subject to them providing an approved personal or business guarantee that the assets shall be used in such a way that does not result in them being damaged, impaired or neglected and that they shall have the same value when returned, if the nature of the goods so permits, and such for the benefit of the absent party in the event that he returns or of other heirs who subsequently appear to have a superior right to their. In the event that a will exists, the presumed heirs, together with all interested parties, shall hereafter be authorized to demand that the will shall be opened. (Bw. 463, 465, 468, 473v., 483, 784, 832v., 943, 1051, 1162, 1820; Rv.611v., 764; Civ. 120, 123).

Article 473. Failure to provide the security mentioned in the previous articles shall result in the assets being placed under the management of a third party, and with regard to movable assets a sale may be instructed, having regard to the requirements set forth in articles 786 and 787 of this Civil Code. (Bw.789, 792, 803, 1730; Civ.126)

Article 474. The presumed heirs, shall have the same rights with regard to enjoyment of the assets of the absent party, and shall be subject to the same obligations which have been imposed on the users of the proceeds, to the extent that the stipulations in respect of such matters are applicable, and there are no other provisions regarding such matter. (Bw.482, 761, 782)

Article 475. Pursuant to the provisions set forth in the three previous articles regarding the presumed heirs of the absent party, the legatees, and all others who would have had any rights in respect of the assets of the absent party, following his death, shall immediately exercise their rights. (Bw. 472, 807-1, 880v., 959; Civ.123)

Article 476. Individuals who have gained possession or \*163 management of some assets are, to the extent applicable to them, required to submit a balance sheet and account for their actions to the absent party, should he return, or to other heirs or rightful individuals who might appear and prove their superior rights. (Bw.472v., 475; Civ.125)

Article 477. The presumed heirs are, immediately upon taking possession, required to accurately record all the assets left by the absent party. They shall be granted the benefit of the estate description. In the absence of such estate registration, and in the circumstances described in article 1031, they shall lose the privilege granted above, without prejudice to the obligations described in the previous article. (Bw. 783, 1023v.; Civ.126)

Article 478. Without prejudice to the aforementioned provisions and insofar as it is not otherwise instructed, the presumed heirs may immediately distribute among one other the assets of the absent party, of which they have taken possession, having regard to the requirements, drawn up regarding

estate distribution. The sale of the fixed assets shall not be permitted for the purpose of distribution, but shall, in the event that they cannot be divided or can not be part of a plot of land, be sequestered, and the income there from shall be paid out, as agreed in the allotment. A deed shall be drawn up and executed regarding the above matter, further setting out that which has been paid out to legatees or other entitled individuals. (Bw.479v., 484, 1066v., 1169, 1730; Civ.130)

Article 479. The estate description and the deed, referred to in the previous article, together with the deed of security, shall be submitted and kept with the court clerk at the court of justice which has passed the judgment of presumed demise. (Bw.467, 472, 480; Rv.612v.)

Article 480. The individuals, who pursuant to the previous stipulations, have received their share of fixed assets, or to whom the management thereof has been assigned, may demand as their security, that those assets shall be assessed by experts who shall be nominated by the court of justice within whose legal jurisdiction they are established, and a description of their condition shall be drawn up. Following the report of the experts to the court, and after obtaining the approval of the court upon hearing the prosecution counsel, the description and the report shall be kept with the court clerk. (Bw.487, 783; Civ.126)

Article 481. Those fixed assets of the absent party, which have been distributed to one of the presumed heirs or have been placed in his management, shall thereafter not be transferred or encumbered prior to the expiration of the time period hereafter stipulated in article 484, unless there are significant reasons and by approval of the court of justice. (Bw. 1168, 1170; Civ.128)

Article 482. If the absent party returns after the declaration of presumed demise, or if there is evidence \*164 that he is still alive, the individuals who have profited from the gains and income from his assets must return such, as follows:- one half at the time of the return or at the time of receipt of evidence that he is alive, within fifteen years after the date of the presumed demise stipulated in the judgment; or otherwise one fourth, if such takes place later, or prior to the lapse of thirty years following such time. This is subject to the court of justice which has passed the judgment of presumed demise, due to the minimal number of assets remaining, stipulating otherwise with regard to the return of gains and income or totally discharging the individuals from the obligation to return gains and income. (Bw.468, 474, 486, 492; Civ.127, 131)

Article 483. If the absent party has entered into a marriage on the basis that there would be community of property, or based upon profit and loss only, or upon gains and income, and his or her spouse chooses to retain community of property, he or she may delay the provisional possession by the presumed heirs and the exercise of the rights, which would arise only upon the death of the absent party, and pursuant to the requirement for description mentioned in article 477, assume or maintain the management of the assets prior to all others. Not with standing this, the delay of possession and the consequences thereof shall continue to exist for more than ten full years, effective as of the date stipulated in the judgment in which the presumed demise is declared. If, however, the spouse does not object to possession by the presumed heirs, he or she shall take his or her share in the community property, or several assets, and anything that he or she might be entitled to, provided that he or she provides security in respect of several assets which may need to be returned. A wife who chooses to continue community of property shall reserve the right to dissolve such community of property in the passage of time. (Bw.114, 119, 124v., 132, 136, 155, 164, 465, 468, 472, 484, 493; Civ.124)

Article 484. In the event that thirty years have elapsed since the date of the presumed demise stipulated in the judgment, or if less than one hundred full years have elapsed since the birth of the absent party, the guarantors shall be dismissed, and the distribution of the assets that has already taken place shall remain valid, or else the presumed heirs shall pass on to a definite distribution, and all other rights to the inheritance shall be implemented definitely. The privilege of estate description shall then cease, and the presumed heirs shall be required to accept or refuse, pursuant to the stipulations regarding such matter. (Bw.472, 478, 486v., 1029, 1066v.; BS.40; Civ.129)

Article 485. If, prior to the time period stipulated in the previous article, information is received regarding the demise of the absent party, the individuals who, at the time of death, pursuant to the law or based upon stipulations of the absent party, obtained rights to his estate or pursued those rights, shall demand the \*165 submission of a balance sheet and account, pursuant to articles 476 and 482. (Bw.126; Civ.130)

Article 486. In the event that the absent party returns or indicates that he is still alive after thirty years have elapsed since the date of his presumed death, stipulated in the judgment, then he shall only be entitled to claim for the return of his assets in the condition that they are in at that time, together with the

price of the assets which have been disposed of, as well as those which have been purchased from the proceeds of his sold assets, provided that he shall not be entitled to any gain or income in respect thereof. (Bw.468, 482, 484, 830; Civ.132)

Article 487. In this regard the children and other descendants of the absent party shall also be entitled to claim the return of his assets, in the event that they appear within thirty years after the period of time stipulated in article 484. (Civ.133)

Article 488. If the judgment indicates a legal presumption of demise, then all legal claims on behalf of the absent party shall be filed against the presumed heirs who have taken possession of his assets; without prejudice to the entitlement of the latter mentioned to invoke the privilege of estate description. (Bw, 463, 468, 483, 781, 1032; Civ.134).

#### **Section 4**

##### **Concerning the rights awarded to an absent party, whose existence is uncertain**

Article 489. The individual, who has a claim to a right which would have passed on to him from an absent party, but which was granted previously to the absent party after his existence had become uncertain, shall be required to prove that the absent party was alive at the time that this right was granted to him; if he cannot prove this, he shall be declared ineligible to file a claim. (Bw. 468, 836, 847, 899, 1865; Civ.135)

Article 490. If the absent party whose existence is uncertain has become entitled to an inheritance or legacy, which, if he was not alive, other individuals would be entitled to, or which other individuals would share with him, then those other individuals shall take possession of such inheritance or legacy or part thereof as if the absent party has passed away and they shall not be required to prove his death; they shall, however, obtain prior consent from the court of justice in whose jurisdiction the morgue is located, which shall order a public summons, and for the benefit of the interested parties shall stipulate the necessary protective measures. (Bw.467, 472v., 477, 836, 847, 852v.,880, 899; Civ.136)

Article 491. The provisions of the two previous articles shall not preclude any authority to claim in respect of the inheritances and all other rights which are thereafter awarded to the absent party or individual entitled thereto. The authority and rights shall become void due to the lapse of time under the statute of limitations. (Bw.1055, 1987v.; Civ.137)

Article 492. In the event that the absent party returns thereafter or the right to his name is prosecuted, then the return of gain and income may be claimed, effective as of the date on which the right is awarded to the absent party, pursuant to and subject to the stipulations of article 482. (Civ.131, 138)

#### **Section 5**

##### **Concerning the consequences of absence with regard to marriage**

Article 493. In the event that, with the exception of willful abandonment, one of the spouses has been absent from his or her residence for a duration of ten full years, without submitting any information as to whether or not he or she is still alive, the abandoned spouse shall be authorized, upon approval obtained from the court of justice at their communal residence, to summon the absent party by three successive public subpoenas, in the manner described in articles 467 and 468. (Ov.65; Bw.27, 86, 114, 126-2, 199-2, 209-2, 211; Civ.139, 227; Bb.3372; cf. note Bw.467)

Article 494. If, upon the third subpoena, neither the absent party nor his or her representative who shall provide proper proof of his existence appears, the court of justice may permit the abandoned spouse to enter into another marriage. The stipulations of article 469 are applicable hereto. (Ov.65)

Article 495. If, following such permission, but prior to the conclusion of another marriage, the absent party reappears, or if an individual submits proper evidence of the absent party's existence, then the permission granted shall be deemed void by law. Following the conclusion of another marriage, the absent party, for his part, shall also have the right to enter into another marriage. (Ov.65; Bw.199-2)

Article 496, 497, 498. Revoked: S.27-31 see also 390, 421.



## **BOOK TWO - ASSETS**

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### **Chapter I**

#### **Concerning assets and the distinctions between them**

##### **Section 1**

##### **Concerning assets in general**

Article 499. The law interprets as assets all goods and rights which can be the subject of property. (Bw.503, 519, 833, 955, 1131)

Article 500. Anything that, due to a property right, comprises part of a property, including products, either produced naturally or through labor, to the extent that these are attached to the branch or roots, or attached to the soil, shall be deemed to comprise part of the assets. (Bw.502, 588v.; Cred.verb.4; Civ.547)

Article 501. The civil proceeds shall be considered to be part of the assets, to the extent that they are not claimable, without prejudice to special legal regulations and agreements. (Bw.761v., 960, 1251v.,1397; Cred.verb.4; Civ.547)

Article 502. Natural products are as follows: 1. those which have been produced by the land; 2. anything that has been produced by livestock or has been bred by livestock. Products which as a result of labor have been extracted from the soil, are those which have been produced by cultivating the soil. Civil proceeds are proceeds from the lease and use of the land, interest from monetary sums and outstanding rent. (Bw.762; Civ.583v.)

## **Section 2**

### **Concerning the distinction between assets**

Article 503. Assets are tangible and non-tangible . (Bw.547, 559, 612; Civ.1607, 2075)

Article 504. Assets are movable or immovable, in accordance with the provisions of the following two sections. (AB.17; Bw.519, 545v., 550, 555, 1150, 1162, 1963, 1977; Rv.443, 493, 714, 720, 763a, etc.; Civ. 516)

Article 505. Movable assets are consumable or non-consumable; consumable assets are those which disappear through use. (Bw.757, 822, 1384, 1427, 1742, 1754; Civ.587, 589)

## **Section 3**

### **Concerning immovable assets**

Article 506. Immovable assets are as follows: 1. plots of land and anything constructed thereon; (Bb.1330) 2. mills, with the exception of those that are described in article 510; 3. trees and field crops, which have their roots attached to the soil, unpicked fruit from trees, as well as minerals, such as: coal, peat and similar products, to the extent that these objects have not been separated and dug from the soil; (Bw.500, 1140; Rv.509) 4. shrubs from felled forests and wood from trees with tall trunks, to the extent that these have not been felled; 5. pipes or drains, which serve to transmit water in a house or below the surface of a plot of land; and, in general, anything which is attached to the soil or permanently fixed on a plot of land or to a building. (Cred.berb.4; Civ.517-521, 523)

Article 507. Immovable assets due to their purpose shall be interpreted as follows: 1. in factories; trafijken, mills, smithies and such immovable assets, presses, distillery kettles, ovens, vats and other equipment, specifically of the same kind, even though such objects are not attached or permanently fixed to the ground; 2. in residences; the mirrors, paintings and other accessories, if the wood or wall to which they are attached is part of the wainscoting, the wall or plaster work, of the room; notwithstanding that the objects have not been nailed; 3. on land; the dunghill designated for the fertilization of the land; the pigeons belonging to a flock of pigeons; the edible birds nests, to the extent that they have not been collected; the fish in the rivers; 4. building materials resulting from the demolition of the building, if they are designated to be used to re-build the building; and, in general, all such objects, which the owner has attached to his immovable asset for permanent use. The owner shall be considered to have attached such objects to his immovable asset for permanent use in the event that such objects are attached thereto by pottery, carpentry or plaster work, or if they cannot be removed therefrom without breaking or damaging the objects themselves, or without breaking or damaging part of the immovable asset to which they are attached. (Bw.506, 517, 586, 780, 1164, 1567, 1921; Rv.451-1; Cred.verb.4; \*173 Civ.524, 525, 532)

Article 508. The following rights shall also qualify as immovable assets; (Bb.2936) 1. the use of the proceeds from and use of the immovable assets; (Bw.756v., 811v.) 2. servitude; (Bw.674v.) 3. the right

to have buildings, structures or plants on another person's property (opstal); (Bw.711v.; S.1834-41 see also 1838-46) 4. the hereditary right of a tenant to occupy a piece of land; (Bw.727v.; S.15-422, article 6) 5. ground rent, either due in the form of money or in kind; (Bw.737v.) 6. the one tenth right; (Bw.740v.) 7. the bazaars or markets, acknowledged by the government, and the privileges relevant thereto; (S.1829-111; 1854-1; 1854-63; 1855-72; 69-66; 78-320; RPL. 46) 8. the lawsuits, filed to reclaim immovable assets or deliver them. (Bw.1162v.; Civ.526; Mijnw.18)

## **Section 4**

### **Concerning movable assets**

Article 509. Movable assets by virtue of their nature are those which are movable or can be moved. (Bw.513; Civ.528)

Article 510. Ships, barges, ferries, mills and wood storage facilities placed on vessels or independently, and other such objects, are movable assets. (Bw.506-2; K.309; Civ.531)

Article 511. Pursuant to legal regulations, the following shall be considered as movable assets: 1. the use of the proceeds from and the use of movable assets; (Bw.756, 818v.) 2. fixed interests, either permanent or life interest; (Bw.1770v.) 3. agreements and claims, the object of which is claimable monetary sums or movable assets; 4. evidence of shares or shares in enterprises pertaining to monetary trade, commerce or industry; notwithstanding that immovable assets, relevant to such undertakings, belong to those enterprises. Evidence of the shares or shares shall be considered to be movable assets, however, this shall apply to the respective shareholders only to the extent of the duration of the association; (K.40) 5. shares in the State's indebtedness, and those imposed on Indonesia, whether they are registered in the main ledger, or in the form of certificates, acknowledgments of debts, bonds or other stocks, with the relevant coupons or proof of interest; 6. shares or bonds coupons in respect of all other monetary loans, including those which were concluded by foreign entities. (Bw.508, 513v.; Civ.529)

Article 512. In the event that the law or any other civil deed shall use the term movable assets, household furnishings, furniture or household goods, furnishing, or a house fully furnished, without any addition, expansion or limitation, the aforementioned terms shall be deemed to include the objects, which are indicated in the following articles.

Article 513. The term movable assets includes, without exception, any objects that, according to the regulations stipulated above, are regarded as movable assets. (Bw. 509v.; Civ. 533v.)

Article 514. (Amended by S.33-47 see also 38-2) The term household furnishings includes anything that is regarded as movable pursuant to the above description, with the exception of ready cash, shares, debts and other \*175 rights, mentioned in article 511, regarding trade and basic material, implements for factories, trafijken, or agricultural products, building material designated for construction or resulting from demolition, as well as ships and ship's shares. (Civ.533)

Article 515. The term furniture or household goods includes everything, which pursuant to the previous article is included in household furnishings, with the exception of horses and livestock, carriages and their equipment, precious stones, books and writings, drawings, prints, paintings, statues, commemorative medals scientific equipment, and other valuables and curiosities, personal clothing, weapons, grains, wine and other means of livelihood. (Bw. 511; Civ.533)

Article 516. The expression a house with all its furnishings includes everything, which, pursuant to article 513, qualifies as movable assets, and is located in the house, with the exception of ready cash and document in respect of indebtedness and other rights which might be found in the house. (Bw.511; Civ.536)

Article 517. The expression furnishing only includes furniture, which is used and which decorates the rooms, such as: wallpaper and carpets, beds, chairs, mirrors, clocks, tables, porcelain and other objects of that nature. Paintings and statues, which form part of the furniture of a room, are also included in the term furnishing, but the collection of paintings, prints and statues which are displayed in galleries and special rooms is excluded. This is also applicable to porcelain; those which comprise part of the decorations of a room, are included in the term furnishing. (Bw.515; Civ. 534)

Article 518. The term a furnished house or a house with furniture shall only cover the furnishings. (Bw.517; Civ.535)

## **Section 5**

### **Concerning the relationship between owners and their assets**

Article 519. There exist assets which do not belong to anybody; all other assets are the property of the State, or of communities, or of specific individuals. (Bw.520v., 523v., 526v.,570, 585; Civ.537, 542, 713v.)

Article 520. Plots of land and other immovable assets, which are unmanaged and do not have an owner, including the assets of an individual who dies without leaving any heir, or whose inheritance has been abandoned, belong to the State. (Bw. 585, 621, 832, 873, 1126, 1129; Rv.800v.; Civ.539; S.1850-3. cf. note Bw.1129; 70-118 art.1; 75-119a.)

Article 521. The following also belong to the State:- roads and the streets, which have been assigned thereto, the beaches, the streams and rivers including their banks which are navigable and floatable, the big and small islands and reefs which come up in the waters, also the harbors and mooring places; without prejudice to the rights acquired by title or ownership by specific individuals or communities. (Bw.519, 522, 524, 537, 554, 591, 597, 629, 1953; Civ.538, 560; S.1854-95 see also Inv.Sw.6-14; 70-119 see also Inv.Sw.6-33)

Article 522. Banks in the previous article shall include the borders of the rivers, lakes or streams, which in normal circumstances, when the tide is in, are covered by such water within its normal confines. (Bw.672)

Article 523. The State's property shall also be deemed to include all grounds and carpentry work which comprise the State's fortifications, and pursuant to which all grounds on which any structure of defense has been erected, such as: banks, parapets, canals, covered roads, dikes or embankments, squares on which forts are constructed, lines, posts, barricades, small fortress, dikes, flood gate, canals and their borders; also without prejudice to the rights acquired by title or ownership of specific individuals or communities (Bw.521, 524v.; Civ.540)

Article 524. The total area of State fortresses regarded as military grounds shall be determined as follows: 1. in respect of fortresses equipped with hidden roads and glacis, sloping from the foot of the primary wall to the foot of the covered road, and to the extent that this is preceded by a moat, to the outside border of this moat. The rampart of the bastions is included herein, in accordance with a line drawn through the gorges of the \*177 bastion from one curtain wall to the other; 2. in respect of fortresses without covered roads or glacis, from the inner foot of the primary wall to the outside borders of the moats or outer structures; 3. in respect of fortresses without any outer structures, from the inner foot of the bank up to and including the outer borders of the surrounding moats; 4. finally, if there are boundary ditches, elevated banks etc. these plots of land including their vegetation and other buildings from behind the inner foot of the banks shall also be considered as belonging to the military grounds.

Article 525. All uninhabited forts, together with fortification, jutting posts, barricades, lines and canons, are considered to be military grounds including the surrounding grounds, purchased by the government at the time the fort was constructed. The provisions of the previous article are applicable to all inhabited forts. (Bw.523v.)

Article 526. Assets belonging to a community are those which are the common property of an association. (Bw.517, 1653v.; Civ.542)

Article 527. Assets belonging to specific individuals are those which comprise the separate property of one or more individuals. (Bw.519, 570; Civ. 537)

Article 528. An individual can have right of ownership or right of property, right due to inheritance, right to use of proceeds, right of servitude or right of collateral or mortgage on assets. (Bw.529v.,570v., 674v., 711v., 720v., 737v., 756v., 756v., 818v., 874v., 1150v., 1162; Civ.543; Oogstv.1.; Mijnw.18; Mijnnord.; Cred.verb.I; RPL.6; see note Bw.508)

## **Chapter II**

## **Concerning possession and the rights resulting therefrom**

### **Section 1**

#### **Concerning the nature of possession, and the objects subject thereto**

Article 529. Possession is interpreted as the holding or enjoyment of assets, which an individual, either in person or through another person, has within his power, as if he has actual title thereto. (Bw. 499, 538, 540, 543, 547, 1955; Civ. 2228)

Article 530. Possession may be either in good faith or in bad faith. (Bw.531v.)

Article 531. Possession is in good faith, if at the time the owner acquired the assets he was unaware of the defects therein. (Bw. 533, 575v., 581, 584, 1360, 1363, 1963v., 1966; Civ.550)

Article 532. Possession is in bad faith, if the owner is aware that the assets in his possession are not his property. The owner shall be considered to possess in bad faith from the time that a lawsuit is filed against him, in the event that the judgment pursuant to the lawsuit is against him. (Bw.531, 535, 579, 581, 584, 1360, 1362; Civ.550)

Article 533. The good faith of the owner shall always be presumed; the onus of proof of bad faith shall be on the individual who alleges bad faith. (Bw.531, 1865, 1916, 1965v.; Civ.2268)

Article 534. An individual shall at all times be deemed to hold possession on his own behalf insofar as it is not proven that the individual holds possession on another individual's behalf. (Bw.1916, 1921, 1957; Civ.2230)

Article 535. If an individual commences possession on behalf of another person, the individual shall always be presumed to retain the possession under the same title, unless it has been proven otherwise. (Bw.536, 540, 1916, 1921, 1959; Civ.2231)

Article 536. An individual cannot, due to his intent, or due to the passage of time, change the origin and the basis of his personal possession. (Bw.540, 1960; Civ.2240)

Article 537. Assets which cannot be traded commercially, cannot be an object of possession. The same applies with respect to temporary and invisible servitudes, without prejudice to the provision of article 553. (Bw.521, 677v.,699, 1332, 1953; Civ.691)

### **Section 2**

#### **Concerning the manner in which possession is acquired, maintained and lost**

Article 538. An individual shall acquire possession by placing assets in his power with the intention of retaining these for himself. (Bw.529, 540)

Article 539. Individuals who are insane cannot acquire possession for themselves. Minors and married women, may acquire possession of assets in the manner set out above. (Bw. 108, 383, 446v., 452)

Article 540. An individual can acquire possession of property, either personally or through another person who has commenced possession on his behalf. In the latter mentioned instance, the individual shall be deemed to acquire the possession before he is aware that possession of the assets has been taken. (Bw.383, 452, 535, 538v., 1354v., 1655, 1972v.; Civ.2224)

Article 541. The possession of a deceased individual shall, from the time of his death, pass to his heirs, together with all characteristics thereof and defects therein. (Bw.833, 955, 1958; Civ.724, 1004, 1006)

Article 542. An individual shall retain possession, to the extent that it is not passed on to another individual, or has clearly been abandoned. (Bw.543v.)

Article 543. An individual shall voluntarily divest himself of the possession, upon its assignment to another individual. (Bw.529, 538, 542)

Article 544. An individual shall forfeit the possession, notwithstanding the absence of intent to assign the assets to another person, if the individual clearly abandons such. ( Bw.529, 538, 542)

Article 545. An individual shall forfeit his possession of a plot of land, yard or building: 1. If another individual, against the wishes of the owner, takes possession thereof, and enjoys it for the duration of one year; 2. if a plot of land due to extraordinary circumstances is flooded. (Bw.594) The property shall not be forfeited in the event of a temporary flood. (Bw.593) One shall lose possession of a generality of movable assets in the manner described in the first paragraph of this article. (Bw.538, 550, 562v.; Civ.2243)

\*182 Article 546. Possession of movable assets shall be forfeited in the following circumstances: 1. if the assets are removed or stolen; 2. if the assets are lost, and the individual does not know where they are located. (Bw.550, 555, 582, 1977; Civ.2279v.)

Article 547. An individual shall forfeit possession of intangible assets, if another person has had the peaceful enjoyment thereof for the duration of one year. (Bw.503, 545, 555, 695, 699, 707; Civ. 2243).

### **Section 3**

#### **Concerning the rights arising from possession**

Article 548. An owner with possession in good faith, shall in relation to assets, have the following rights: (Bw.531)

1. he shall, in advance, and until the exact time of the rightful reclaim, be noted as the owner; (Bw.549-1, 1865)
2. he shall obtain title to the assets, by prescription (Bw.1963)
3. he shall enjoy the proceeds from the assets until the rightful reclaim; (Bw.492, 549-2, 575v.)
4. he shall maintain possession of the assets, should he be interrupted, or he shall be re-instated in possession, in the event that he loses it. (Bw.550, 557, 562v., 567, 580, 1363v.; Civ.549, 2229, 2233)

Article 549. An owner of assets with possession in bad faith shall with regard to the assets, have the following rights: (Bw.532)

1. he shall, in advance, and until the time of the legal reclaim, be noted as the owner; (Bw.548-1, 1865)
2. he shall enjoy the proceeds of the assets, provided however that he shall return these to the rightful owner; (Bw.579)
3. he shall maintain or regain possession of the assets, as mentioned in the fourth paragraph of the previous article. (Bw.550, 557, 562v., 567, 1362, 1364; Civ. 2233)

Article 550. The legal claim for maintaining the possession of the property shall proceed, if an individual's possession of a plot of land or yard, of a house or building, of a property right or generalities in movable assets is interrupted. (Bw.529, 555, 557, 561, 567; Rv.55-9, 103v.,115-4, 191,244-3, 403)

Article 551. This legal claim shall also be admitted, notwithstanding that the possession was obtained from an individual who was not authorized to dispose of it. (Bw.108, 539, 1330)

Article 552. This legal claim shall not be filed against an individual who disputes the right to servitude, unless the dispute relates to a continuous and visible servitude. (Bw.637, 677v.)

\*184 Article 553. In the event of a dispute concerning the validity of the right of title to a non-continuous or invisible servitude, the judge may instruct that the party, who had the benefit thereof at the time the dispute arose, shall retain such benefit during the lawsuit. (Bw.537, 561, 677v., 699)

Article 554. No legal claim shall be filed for the retainment of possession of the property or visible objects which the owner may not possess according to the law.

Article 555. Movable tangible objects shall not be the subject of a legal claim for retaining possession of an individual's property, without prejudice to the closing provision of article 550. (Bw.537, 546, 1977; Civ. 2279)

Article 556. Lessees, holders of any right of use of land and those who hold assets on behalf of others, shall not file a legal claim for retaining possession of an individual's property. (Bw.535, 540, 781, 1558, 1959; Pr.23)

Article 557. A legal claim for retaining possession of an individual's property may be filed, against any individual who interrupts the owner's possession of the property, even against the owner, without prejudice to his claim to file a claim based upon his title. However, if such possession is obtained by request, secretly or by force, the owner may not file a legal claim to retain his possession against an individual who has obtained such possession in the aforementioned manner, or who has been deprived of his title. (Bw.538, 548v., 556, 580, 1956; Rv.105)

Article 558. A legal claim to retain possession of the property shall be filed within the year, from the date on which the owner's possession of his property has been interrupted. (Bw.568; Pr.23)

Article 559. This legal claim shall have the effect of ceasing the interruption and retaining the owner's possession of the property, resulting in compensation of costs, damages and interest.

Article 560. The individual whose possession of a property has been validated by a judge shall be deemed to have been at all times in possession thereof, without prejudice to that which has been further regulated regarding the proceeds. (Bw.562, 566, 1955)

Article 561. In the event that a legal claim to retain possession of a property filed by both sides, is determined by the judge to be inadequately proven, he shall, without passing judgment with regard to the right of possession, order that the object shall be placed in legal custody or that the parties shall file a petitory action, or, he shall grant possession to one of the parties on a temporary basis. Such possession shall only confer the right to enjoy the disputed asset during the lawsuit regarding the property, \*185 and shall oblige the party to account for the proceeds enjoyed. (Bw.529, 548-1 and 3, 549-1 and 2, 579, 1738; Rv.53)

Article 562. If the possessor of a plot of land or a building has lost possession thereof without being forced thereto, he may file a legal claim against the holder, for the purpose of being re-instated and retaining possession of the property. (Bw.545, 548v., 564v.,568; Rv.55-9, 103v., 244-3, 403)

Article 563. In the event of forced vacation, the legal claim for restoration of possession of the property shall proceed, with a claim against those who have committed and those who ordered the committal of an act of force. All parties shall be personally liable for all the consequences thereof. To succeed in the legal claim, the defendant shall only be required to prove the act of forced vacation. (Bw.564, 568, 1278v.; Rv.55-9, 103v., 244-3, 403, 580-2)

Article 564. The same legal claim may be filed against all those who have disposed of the property in bad faith. (Bw.543, 834)

Article 565. The legal claim for restoration and retainment, as described in article 562, shall be filed within a year, effective as of the date on which possession of the property is interrupted; and in the event of forced vacation, the legal claim for restoration of possession of the property shall be filed within the same period, effective as of the date on which the force ceased. An individual shall not be permitted to file a legal claim after a petitory action has been filed. (Bw.545, 547, 563, 568; Pr.23)

Article 566. The legal claim for retainment to and restoration of the possession of property, when admitted, shall at all times result in the previous possessor being reinstated in or retaining his

possession of the property and being regarded as if he had not lost possession of the property. (Bw.560, 562v., 1955)

Article 567. The rules regarding claims against possession set forth in the Third Chapter shall apply to these legal claims by the owners, either in good faith or in bad faith, in respect of their rights in relation to the enjoyment of the proceeds and the costs incurred during the possession. (Bw.548v., 575-581, 1364)

Article 568. Even after the expiration of the year, which the law has granted for filing the legal claim for restoration of possession, the individual who has been forcefully dispossessed shall be entitled to, by way of ordinary legal claim, demand that the individual who has committed the act of force be ordered to return that which has been removed from him and to provide compensation of costs, damages and interest, resulting from those events. (Bw.558, 562v., 1365; Sv.163)

\*186 Article 569. Revoked: S.73-229.

### **Chapter III**

#### **Concerning ownership**

##### **Section 1**

##### **General provisions**

Article 570. Ownership is the right to have free enjoyment of property and to dispose thereof absolutely, provided that an individual does not violate the laws of the public ordinances stipulated by those who have been granted authority to do so, in the course of using such assets, and provided that an individual does not interfere with other individuals rights; the aforementioned shall be without prejudice to expropriation in the public interest subject to the individual's right to appropriate compensation, pursuant to the legal regulations. (ISR.133; Bw.527v., 584, 594, 625v.; Civ.537, 544v.; Onteig, Hinderord)

Article 571. Ownership of land includes ownership of anything that is on and in the land. (Bw.591) The owner may plant and construct buildings on the land, as required; without prejudice to the exceptions stipulated in the fourth and sixth chapter of this book. He may build and dig below the land as required, and may remove all products of the digging, which could have been produced; without prejudice to the amendments, pursuant to the laws and policy ordinances regarding mining, and other exploitation which produces natural resources. (Bw.587v., 595, 600, 625v., 1165, 1481v.; Civ.546, 552; Mijnw.; Mijnard.)

Article 572. Each property shall be presumed to be free of any claim. (Bw.624) An individual who claims any right to another individual's assets, shall be obliged to prove that right. (Bw.1865, 1916)

Article 573. The distribution of assets, which belong to more than one person, shall take place in accordance with the rules which have been described with regard to the division and distribution of inheritances. (Bw. 1066v.; Civ.1872)

Article 574. The owner shall have the right to reclaim the assets within his ownership from each holder, in the condition that they were in at the time that the holder acquired them. (Bw.567, 582, 602, 834, 1977; Rv.714)

Article 575. An individual who has possession good faith shall be entitled to keep all the proceeds from the reclaimed assets which he has enjoyed until the date on which the legal claim is filed. He is required to return the proceeds, enjoyed as of the date on which the legal claim is filed, after deduction of the expenses incurred in acquiring the product, in cultivating, seeding and ploughing the land. \*189 In addition, he shall have the right to reclaim the expenditures necessary for the maintenance and benefit of the assets, and shall also be entitled to retain the reclaimed assets, as long as the costs and expenses mentioned in this article have not been reimbursed to him. (Bw.531v.,548-3, 561, 567, 576v., 1139-4, 1364; Civ. 548v.)

Article 576. Based upon the same right and in the same manner, the owner may, in good faith, upon the return of the reclaimed assets, claim the costs incurred in the aforementioned manner in acquiring the products which at the time of the return have not been separated from the land. (Bw.500, 575; Civ.548)



Article 577. He shall not, however be entitled to the return of such costs incurred by him in acquiring the products which he has retained on the basis of his possession. (Bw.575v.)

Article 578. In addition he shall not be entitled, upon the return of the assets, to claim the costs and expenditures incurred by him in maintaining the assets, which do not qualify as expenses for the maintenance and interest of the assets as mentioned above in article 575. In the event that there is a dispute regarding what constitutes expenses for maintenance, the requirements with regard to the use of proceeds shall be complied with. (Bw.793).

Article 579. An individual who has possession in bad faith is obligated to do the following: 1. to return all the proceeds of the returned assets together with the assets, including those which have not been enjoyed in the event that the owner is able to do so; he may, however, as stipulated in article 575, deduct the costs or reclaim those costs which were incurred by him during his possession, in respect of the maintenance of the assets, and he may also reclaim those costs which were incurred for the cultivation, seeding and ploughing of the land; 2. to compensate for all costs, damages and interests; 3. to pay the value of the assets in the event that it is impossible to return the assets, notwithstanding that those assets may have been lost accidentally or through no fault of his, unless he can prove that those assets could also have been extinguished while in the possession of the owner. (Bw.532, 549, 561, 567, 1139-4, 1362, 1364; Civ.549)

Article 580. An individual who has obtained possession by violent means shall not reclaim the expenses made, notwithstanding that these were necessary for the maintenance of the assets. (Bw.548, 557, 563, 568)

Article 581. Expenses in respect of utility and improvement in appearance shall be charged to the individual who has possessed the assets either in good or bad faith; he shall however, be entitled to keep the objects for the \*190 use and improvement of the assets, provided that the assets shall not be damaged as a result thereof. (Bw.779v.)

Article 582. (Amended by S.17-497) A person, who claims the return of transferred or lost assets, is not required to return the sale price paid to the current holder of the assets, unless the holder has purchased the assets at an annual or other market, public auction, or from a seller who is known to usually trade in such objects. (Bw.546, 1720, 1977; Civ.2297v.)

Article 583. Assets thrown in the sea and objects tossed by the sea may be reclaimed by the owner, by having regard to the legal requirements in connection with such matter. (K.556; Civ.717)

## **Section 2**

### **Concerning the manner in which ownership is acquired**

Article 584. Ownership of assets cannot be acquired in any manner other than by appropriation, attachment, prescription, legal or testamentary succession, and by assignment or delivery pursuant to a transfer of legal title, originating from the individual who was entitled to dispose of the property. (Bw.119, 570, 585v., 588v., 592, 610v., 830v., 874v., 1946, 1963v.; Oteig.; Octr.38; Aut.2; Civ.711v.)

Article 585. Movable assets, which are not within any individual's ownership, shall become the property of the individual who shall be the first to appropriate them. (Bw.509v.,519v.; Civ.713; S.18-125; Bb.1470)

Article 586. The right to appropriate wild animals or fish belongs exclusively to the owner of the land on which the wild animals or the water containing the fish are located. (Bw.507-3, 521, 721, 774; Civ.715)

Article 587. Ownership of a treasure lies with the individual, who has found such on his own land. If the treasure is found on another individual's land, one half shall belong to the finder and the other half to the landowner. (Bb.2831) A Treasure shall be interpreted as hidden or buried objects, of which no one can prove right of ownership, and which have been discovered by accident. (Bw. 777; Civ.716; Mijnw.; Bb.1470)

Article 588. Anything attached to or which forms part of assets, shall belong to the owner, in accordance with the rules stipulated in the following articles. (Bw.500v., 571, 1482; Civ.551)

Article 589. Large and small islands, and shoals dried out by mud, which are in rivers which are not sailable and not floatable, shall belong to the owners of the banks at the side where they are formed. If the island is not elevated on one side, then it shall belong to the owners of both banks, from the line that is presumed to have been drawn along the center of the river. (Bw.521, 591; Civ.555, 661)

Article 590. If a stream of a river, by making a new branch, cuts across land located at a bank and makes it into an island, the owner shall maintain property of his land, even if such island forms into a stream or navigable and floatable river. (Bw.521; Civ.562)

\*192 Article 591. Ownership of streams and rivers shall include the land over which the water flows. (Bw.519, 521, 571, 589, 629)

Article 592. If a stream or river takes a new course and leaves its old bed, the owners of the land over which the new course is taken, shall take possession of the abandoned beds in order to indemnify themselves, each in proportion to his ownership of the land over which the new course is taken. (Bw.704v.; Civ.563)

Article 593. The temporary flooding of a stream or river shall not result in acquisition or loss of property. (Bw.545, 594, 598)

Article 594. Submerged lands shall remain as the property of the owner. (Bw.545) Notwithstanding this, in the event that the poldering or drying, by the Governor General, in the general interest, or for the safety of the property located in the vicinity is considered necessary, and the experts have proven that those submerged lands are suitable for poldering or drying, then those same owners shall be required to have this implemented or participate therein, and in case of refusal or failure to do so, their property can be expropriated for the benefit of the land, and the owner shall be entitled to compensation in a sum equal to the market value of the submerged lands. (ISR.133; Bw.570, 811; Oteig.)

Article 595. The owner of a sand dune is by law the owner of the land on which the sand dune is located. If the land adjacent to the sand dune has been covered by sand as a result of the wind in such manner that the land and the sand dune have become one, and one cannot be distinguished from the other, the land shall become the property of the individual who owns the sand dune, unless the dune shall become separated by a fence of poles within five years of the covering. (Bw.571)

Article 596. Accretion of land resulting from the gradual and imperceptible accumulation of land on land located at running waters shall be termed alluvion. Accretion shall benefit the owners of the bank, regardless of whether or not the area of the land is mentioned in the property title; the aforementioned shall be without prejudice to the laws and ordinances regarding footpaths and hunting paths. (Bw.597v., 774, 1165; Civ.556)

Article 597. The stipulation in the second paragraph of the previous article shall also apply to accretion, which takes place at the banks of navigable lakes. The said stipulation shall also apply to alluvion, which has been washed ashore by the sea to the beaches and the river banks or the land shores which belong to specific individuals or communities, by the ebb and flow of the tide. (Bw.521; Civ.557)

Article 598. Accretion shall not take place in relation to ponds. \*193 The owners shall continue to maintain possession of land which is covered by water, in the event that it reaches a level at which the pond is disembogued, regardless of whether the volume of water decreases again subsequently. However, the owner of the pond shall not obtain title to the land located at the banks, which is covered due to the unusual level of the water in his pond, . (Bw.596; Civ.588)

Article 599. The separation of the soil from one area of land and its deposit on another as a result of the force of a stream shall not be deemed to be accretion, provided that the owner shall enforce his right, within three years after the above-mentioned events occur. After the lapse of time, the separated and unclaimed land shall also become the property of the individual, on whose land it was deposited. (Bw.596; Civ.559)

Article 600. Anything planted or sown, shall belong to the owner of the land. (Bw.571, 603v., 711; Civ.553)

Article 601. Anything constructed on land, shall belong to the owner of the land, provided the construction is attached to the land; without prejudice to the amendments stipulated in article 603 and 604. (Bw.571, 711; civ.553; Bb.1330)

Article 602. The owner of the land, who has constructed a building using building materials which do not belong to him, shall be obliged to reimburse the value thereof; he may be charged with compensation in the form of costs, damages and interest, in the event that there are grounds therefor, however, the owner of the building materials shall not be entitled to remove the building materials. (Bw.574, 605, 1365; Civ.554)

Article 603. In the event that an individual has erected a construction using his own building materials on land owned by another individual, the landowner may retain the construction on his own behalf or demand the removal thereof by the other party. In the event that the landowner demands that the construction be removed, the demolition shall take place at the expense of the individual who has erected such construction, which individual may be found liable to pay compensation in the form of costs, damages and interest. In the event that the landowner wishes to retain the construction, he shall compensate for the cost of the building materials and shall pay for the wages owed, without, taking into account the increasing value of the plot of land. (Bw.532, 549, 579, 601, 604v., 715, 725v., 779, 1567; Civ.555)

Article 604. If the building has been constructed by an owner in good faith, the owner cannot demand the removal of the construction, but he shall have the option, either, to reimburse the value of the building materials and the wages owed, or pay a monetary sum, equivalent to the increased value of the plot of land. (Bw.531, 548, 575, 601, 603, 605; Civ.555)

\*194 Article 605. The above three articles shall also apply to planting and sowing. (Bw.600, 602v.; civ.555)

Article 606. An individual, who creates a new object from material which does not belong to him, shall become the owner of such object, provided that he pays for the material employed, and provided that in the event that there are grounds therefor, he shall compensate for the costs, damages and interest. (Bw.1365; Civ.566-577)

Article 607. If, without any intervention of a human being and due to the incidental contact between various materials, belonging to several owners, a new object is produced, the new object shall become the joint property of the owners, in proportion to the value of the material, which originally belonged to each of them. (Civ.566-577)

Article 608. In the event that the new object is produced as a result of contact between various materials, which belong to several owners, but as a result of the actions of one of the owners, the latter mentioned shall become the owner thereof, provided that the value of the material shall be reimbursed to the other parties, and that compensation in the form of costs, damages and interests shall be provided, if there are grounds therefor. (Civ.566-577)

Article 609. In the event that the materials referred to in the two preceding articles can be properly separated, each individual may claim that which belongs to him.(Civ.566-577)

Article 610. Ownership shall be acquired by prescription, if an individual possesses assets for a period stipulated by the law, and in accordance with the conditions and distinctions which are stipulated in the seventh chapter of the fourth book of this Civil Code. (Bw.595, 946v., 1973; Civ.2219)

Article 611. The manner in which ownership is acquired by virtue of legal succession or testamentary succession is dealt with in the twelfth and thirteenth chapter of this book. (Bw.830, 874)

Article 612. The delivery of movable assets, with the exception of intangibles, shall take place by a single handover which is carried out by the owner or on his behalf, or by the delivery of the keys of the building in which the assets are located. Delivery shall not be required in the event that the individual entitled to the assets already has such in his possession by virtue of another title. (Bw.503, 509v.,760, 1235v., 1459, 1475; 1686; K.314; Tbs.3v., 21v.; Civ.1606)

Article 613. (Amended by S.38-276) The transfer of registered debts and other intangible assets, shall be effected by using an authentic or private deed, in which the rights to such objects shall be transferred to another \*195 individual. Such transfer shall have no consequences with respect to the debtor, until he has been notified thereof, or if he has accepted the transfer in writing or has acknowledged it. (Amended by S.38-276) The delivery of bearer claims for indebtedness shall take place by handover, the bearer claims for indebtedness by submission and endorsement of the paper. (Bw. 612, 1152, 1385, 1459, 1540, 1686; K.110v., 176, 191v., 457, 508, 531v.; Civ.1607, 1689v.)

Article 614, 615. revoked; S.38-276.

Article 616. The delivery or order of immovable assets shall be effected by publication of the deed, in the manner stipulated in article 620. (Ov.50; Bw.506v.,696, 713, 720, 737, 760, 818, 1179, 1459, 1475, 1686, 1690; K.314; Tbs.3v., 21v.; Rv.526; Civ.1583, 1605)

Article 617. All deeds, by virtue of which immovable assets are disposed of, bequeathed, distributed, encumbered, or transferred, shall be rendered invalid unless drawn up in an authentic form. (Bw.1868, 1870) Evidence of the sale of the assets shall be in the form of excerpts from the roll or registers of the auction department in the customary format effected with the assistance of the aforementioned department, pursuant to the prevailing or future ordinances (Ov.50; Bw.620; Rv.526; Venduregl.42)

Article 618. The deeds regarding estate division, to the extent that it concerns immovable assets, shall be made public in the manner, stipulated in article 620. (Ov.50; Bw.619v., 1069, 1074)

Article 619. The individual to whom the assets are being transferred shall not obtain a deed of transfer of estate division, without an express authorization from the party transferring the assets or a participant, either pursuant to the deed itself, or by a further authentic deed, or simultaneously and in the same manner as the deed of transfer or division shall be made public. In the absence of such authorization, the registrar of mortgages shall refuse to accept the deed for public notice. All public notices in contravention of this stipulation, shall be invalid, without prejudice to the responsibility of the official who has issued the copy without the required authorization, or to the keeper who has announced the public notice without having proven the authorization,. (Ov.50; Bw.618, 620)

Article 620. Having regard to the requirements contained in the three preceding articles, the public notification shall take place:- by submitting to the office of the registrar of the mortgages within whose area the immovable assets to be delivered or ordered are located, an authentic and complete copy of the authentic deed or of the judgment, and by the recording of the copy in the register designated thereto. The interested party shall at the same time offer a second \*196 certified copy or a certified excerpt of the deed or judgment for the purpose of notification by the registrar of the date of submission, together with the section and number of the register. (Ov.50; Bw.616, 618, 622, 696, 713, 720, 737, 760, 818, 986, 1179, 1182)

Article 621. Any individual may have his property title to immovable assets, which he owns, acknowledged by the court of justice, within whose legal jurisdiction the assets are located. The legal regulations regarding civil legal claims shall regulate the manner in which this legal claim shall be filed. (Rv.800v.; Bb.509)

Article 622. After the judgment of acknowledgment has obtained legal validity, the same shall, be made public by or at the direction of the applicant, at the office of the registrar of mortgages, by submitting a copy and by recording such in the register designated thereto, in the manner described in article 620. (Ov.27; Bw.623; Rv.808; Bb.509)

Article 623. Following submission and recording the individual who has possession shall be regarded as the owner, with regard to all acts towards third parties concerning such assets. (Ov.27)

Article 624. No changes shall be made to the rights of the occupants of the land or grounds transferred by the government to specific individuals, in the event that the rights, stipulated in relation to ownership and title, shall remain as they are, either according to old origins and customs or according to special ordinances, without the stipulations of this civil code causing any infringement upon those rights, or in general to the relationship between the land occupants and owners. (S.80-150, etc.; RPL; S.18-287)

#### **Chapter IV**

##### **Concerning the rights and obligations among owners of neighboring plots of land**

Article 625. There exist rights and obligations among owners of neighboring plots of land, which arise from natural location of the plots of land or legal regulations. (Civ.639)

Article 626. Plots of land, which are located at a lower level, are, for the benefit of those individuals who are located at a higher level, required to receive that water, which flows naturally, without human intervention. The owner of the plots of land located at a lower level shall not erect a dam or dike, which

would obstruct the flow of such waters; nor shall the owner of the yards located at a higher level do anything that might impair the condition of the plots of land located at a lower level. (Bw. 629v., 652, 677, 688, 697v., 1365, 1367; Civ.640)

Article 627. An individual, who has a spring on his plot of land, may use it as he desires, without prejudice to any right which the owners of plots of plots of land at a lower level, might have acquired either by title, or prescription, pursuant to article 698. (Bw.576, 628, 677, 688, 695; Civ.641)

Article 628. The owner of the spring shall not alter the flow of the spring, if it provides water required by the inhabitants of a city, a village or hamlet. In this regard, the owner shall be entitled to demand compensation which shall be regulated by experts, unless the right to use the water has been acquired legally or by prescription. (Bw.688, 695, 697v.; Civ.643)

Article 629. An individual, whose property is located at the bank of flowing waters, which do not belong to the public, may use this water for the watering of his plots of land. (Bw.519) The individual, whose plots of land are crossed by such water, may use the water at the locations where the water runs, provided that, at the boundary of his lands, he shall redirect the water to its natural flow. (Bw. 521, 690; Civ.644)

Article 630. In the event of a dispute among owners who might be benefited by the water, the judge shall, in the course of making his decision, compare the interest of agriculture with the inviolability of the property right, and shall, with regard to all matters, take into consideration the special and local ordinances and customs with respect to the flow, level and use of the waters. (ISR.133; Bw.570; Civ.645)

\*199 Article 630a. (Supplemented by S.81-95) Each owner may demand that his neighbor shall erect boundaries between their properties. The boundaries shall be erected at the expense of both parties. (Bw. 570, 635, 642, 663, 721, 781; Rv.102; Civ. 646)

Article 631. Each owner may enclose his plot of land, without prejudice to the exception made in article 667. (Bw.570, 635, 642, 664, 721, 781; Civ.647)

Article 632. The owner who has enclosed his plot of land, shall lose the right to put his herd to graze on that part of the communal grazing grounds that has the same area as plot of land yard which he has closed off from the community. (Civ.648)

Article 633. All walls serving as boundaries between the buildings, grounds, gardens shall be regarded as communal walls, unless there is a title or sign, indicating otherwise. In the event that the buildings are not of equal height, the boundary wall shall only be considered communal, up to the height of the least elevated building. (Bw.634v., 637v., 640, 643v., 658, 662, 1916; Civ. 653)

Article 634. The following shall be indications that a boundary wall is not communal: 1. if the top of the wall on one side is perpendicular to its base, and slopes off on the other side; 2. if the wall supports a building or a terrace on one side with no building or other construction present on the other side; 3. that at time the wall was built, the coping, stone frames and jutting stones were only placed on one side. In such circumstances, the wall shall be considered to belong exclusively to the owner, on whose side the building, the terrace, the frames and jutting stones, or the gutters of such coping are found. (Bw.645, 659, 664, 1916; Civ.654)

Article 635. The repairs and restructuring of the communal boundary wall shall be carried out at the expense of all those who have an interest in the wall which expense shall be proportionate to their interest. Each owner may release himself from the obligation to contribute to the costs for repairs and restructuring, by relinquishing his right of co-ownership of the wall due to be restructured or repaired, provided that the boundary wall does not support a building belonging to him, or does not serve as a boundary between bordering houses in the cities, suburbs, villages, open spaces and gardens. (Bw. 630a, 637, 634v., 654, 679, 689; Civ. 655v.)

Article 636. Each co-owner may build against the communal wall, and place as far as the midpoint of the width of the wall, beams, paneling, anchors or other iron or woodwork, provided the wall itself shall not suffer any damage as a result thereof. (Bw.641, 655, 684; Civ.657)

\*200 Article 637. Each co-owner may raise the height of the communal boundary wall, at his own expense; in addition, he shall be liable for repairs for the maintenance of anything that is beyond the

height of the communal boundary, and compensation for the damage caused by the weight, in proportion to the burden and according to the value thereof. If the communal boundary wall cannot support the elevation, the individual who wishes to raise the height of the wall shall at his own expense rebuild the entire wall, and the additional area of the wall shall be built on his grounds. (Bw.633, 635, 639, 641, 681; Civ.658v.)

Article 638. Each co-owner of a communal boundary wall may install a gutter on the side belonging to him, and allow the water to flow, either on his plot of land, or on the public road, if such is not prohibited by law or ordinances. (Bw.652, 682)

Article 639. The co-owner of the wall, who has not contributed to the elevation of the wall, may become a co-owner of such elevation, provided that he pays one half of the costs incurred, together with one half of the value of the land, if used for the widening. (Bw.635, 637; Civ.660).

Article 640. No wall may become communal unless such is agreed to by its owner. (Bw.633v.; civ.661)

Article 641. No co-owner may, without the consent of the other co-owners, make any holes in the communal wall, or build anything against it or use it to support anything. In the instances described in article 636 and 637, the co-owner may request experts to make necessary arrangements to ensure that his rights are not prejudiced by the new construction. If the new construction causes damage to the neighbor's property, he shall be compensated therefor; however, the damage caused during the course of improving the boundary wall, shall not be taken into account in assessing the compensation. (Bw.644; Civ.662)

Article 642. Each individual may require that his neighbor in the cities and suburbs and villages contributes to the construction and repair of boundaries, which serve as partitions between their houses, open spaces and gardens. The manner and the height of the boundary shall be regulated in accordance with the special ordinances and local customs. (AB.15; Bw.630a, 631, 635; Rv.102; Civ.663)

Article 643. Each of the neighbors may at his expense erect a communal wall instead of a communal fence, but may not erect a fence instead of a wall. (Bw.635, 650)

Article 644. No neighbor, may, without the consent of the other neighbors put a window or any other opening in the communal boundary wall, regardless of the manner in which it was done. He may however, do so with regard to a part of the wall which he has erected at his own expense, \*201 provided that this is done immediately upon the erection, in the manner described in the two subsequent articles. (Bw.636v., 639, 741; civ.675)

Article 645. The owner of a wall which is not communal, and which borders the plot of land belonging to other individuals, may install in the wall, lights or windows equipped with close iron bars, and with windows that are securely shut permanently. The bars shall have not more than one palm space between them. (Bw.634, 647v., 680; Civ.676)

Article 646. These windows or openings may not be lower than twenty five palm lengths above the floor or bottom of the room which it is intended to light, if this is at the same level as the street, and not lower than twenty palm lengths above the floor, for higher floors. (Bw.645, 680; Civ.677)

Article 647. An individual shall not have direct views of his neighbor's enclosed or open plot of land, nor shall he have windows, that overlook another person's plot of land, or balconies or other construction projecting outwards, unless there is a distance of twenty palm lengths between the wall to which such construction is added and the plot of land. (Bw.645, 649, 680; Civ.678).

Article 648. An individual shall not be entitled to any views from the side or over his neighbor's plot of land unless such shall be from a distance of five palm lengths. (Bw. 645, 647, 649, 680; Civ. 679)

Article 649. The distance referred to in the two previous articles shall be calculated from the outer side of the wall where the opening is made, and in the event that there are balconies or other such similar constructions projecting outwards, from their outermost rim to the partitioning line of both plots of land. (Bw.647v.; Civ.680)

Article 650. The stipulations contained in article 633 through article 649 shall apply to every wooden partition, which serves as a barrier between buildings, open spaces and gardens. (Civ.653)

Article 651. In the event that, due to repairs made to a building, it is deemed necessary to erect scaffolding on a neighbor's land or to carry building materials across such land, the owner of the grounds must tolerate such, without prejudice to his right to compensation if there are grounds there for. (Bw.1246v.)

Article 652. Each owner shall be required to construct his roof in such manner, that the rainwater on his plot of land shall flow onto a public road, if the latter mentioned is not prohibited by law or ordinances; he shall not allow the water to flow onto his neighbor's grounds. (Bw.626, 638, 677, 682, 1365; Civ.681)

Article 653. An individual may not allow water or dirt to \*202 flow through the gutters of another individual's plot of land, unless he has been granted the right to do so. (Bw.677, 683, 1365)

Article 654. All buildings, chimneys, walls, fences or other partitions, which, either due to age or other reasons, are likely to collapse, and which endanger the neighboring plot of land, or are suspended over it, shall be demolished, restructured or repaired, upon first being notified to do so by the owner of the neighboring plot of land. (Bw.635, 1241, 1369; Civ.1386)

Article 655. An individual, who, within the area surrounding a communal or non-communal wall, has had a well, sewer, or outhouse dug, intends to install a chimney, a fireplace, an oven or furnace, intends to build a stable or fertilizer container, or build a salt storehouse or warehouse, or install a storage place of corrosive material, or intends to build other harmful or dangerous constructions, shall be required to leave or create space in the manner described in the special ordinances or customs in that regard, or to carry out constructions as required by the regulations and customs, in order to prevent any damage which may be caused to the neighboring plots of land. (AB.15; Bw.636, 641; Civ.674)

Article 656. Objects such as rain containers, wells, outhouses, sewers, gutters, which are communal property between the neighboring plots of land, shall be maintained and cleaned at the expense of the owners. (Bw.657, 720v., 756v., 1584)

Article 657. The cleaning of the outhouses shall take place alternately between plots of land.

Article 658. All trenches or ditches between two plots of land shall be regarded as communal property, unless otherwise indicated by another title or sign. (Bw.633, 662, 1916; Civ.666)

Article 659. One indication that the trenches or ditches are not regarded as communal property shall be, if the embankment or the accumulation of soil is found on one side of the ditch only. In such circumstances, the entire trench or ditch shall be considered to be the property of the individual on whose side the accumulation of soil is found. (Bw.634, 664, 1916; Civ.667v.)

Article 660. Communal trenches or ditches shall be maintained at the expense of all parties. (Civ.669)

Article 661. Each of the bordering owners may fish in, sail on, have his animals drink and take water for his own use from the communal trench or ditch. (Bw.685)

Article 662. Each fence, which divides one plot of land from another, shall be considered to be communal, unless stipulated otherwise by title, ownership or indication. Each of the owners of trees which are located in the \*203 communal hedge which communal hedge is also communal, shall be entitled to demand that the trees be felled. (Bw.633, 658, 664, 1916; Civ.670, 673)

Article 663. One neighbor can demand that the other shall plant new hedges, at communal expense, if the previous hedge was communal and served as a partition between both plots of land. (Bw.630a, 642; Civ.663)

Article 664. The hedge shall not be regarded as communal, if only one of the plots of land is enclosed. (Bw.634, 659, 1916; Civ.670)

Article 665. It shall not be permitted to plant trees or hedges which grow very tall, other than at the distance which is stipulated in the currently prevailing special regulations, or pursuant to permanent and acknowledged customs, and in the absence of regulations or customs, at a distance of twenty palm lengths from the boundary line of both plots of land, to the extent that it concerns trees which grow tall, and at a distance of five palm lengths, from the hedges. (Ab.15; Bw.662v., 1365v.; Civ.671)

Article 666. A neighbor shall be entitled to demand that the trees and hedge, which are planted at a shorter distance, shall be uprooted. An individual whose plot of land is overhung by branches from trees belonging to his neighbor may demand that his neighbor cut off the branches. If the roots of the trees grow out onto his plot of land, he shall be entitled to chop these off; he shall also be entitled to cut off the branches, in the event that his neighbor, upon receiving his first warning, refuses to do so, provided that he does not trespass on his neighbor's property. (Bw.571, 1240; Civ.672)

Article 667. The owner of a piece of land or yard, which is enclosed by other property, as a result of which his access to the public road or waters is blocked, shall be authorized to demand that the owners of the neighboring lands shall grant him an exit for the use of his property or lands, provided that he shall compensate for the damage caused thereby. (Bw.631, 669v., 690; Civ.682)

Article 668. This exit shall be placed at the site where the access from this plot of land or yard is closest to the public road or waters, provided, if possible, that the location selected shall be that which causes the least damage to the land over which the exit has been granted. (Bw.686, 691v.; civ.683v.)

Article 669. The exit shall remain in existence notwithstanding that the right to compensation, mentioned in article 667, may expire due to prescription. (Bw.1997; Civ.685)

Article 670. The exit granted shall cease, from the time that the circumstances, mentioned in article 667, no longer exist, and no one may invoke prescription, regardless of how long the exit might have existed. (Bw.537, \*204 690, 692)

Article 671. Footpaths, lanes or roads which are the communal property of several neighbors, and which serve as their exit, shall not be diverted, destroyed or used for some purpose other than that which they were designated for, unless upon mutual consent. (Bw.686,692)

Article 672. The rights and obligations stipulated for the benefit of the public interest or communal interest, in relation to footpaths and hunting paths along navigable or sailable rivers, the making or repairing of roads, dikes and other public or communal works are regulated in specific laws and ordinances. (Bw.521; Civ. 650)

## **Chapter V**

### **Concerning compulsory labor**

Article 673. Compulsory labor as acknowledged by the high authorities shall be maintained; the stipulations of this civil code shall not alter this in any way. The Governor General shall be authorized to stipulate such further provisions with regard to compulsory labor as he deems necessary. (ISR.46, see note with respect thereto)

## **Chapter VI**

### **Concerning servitude**

#### **Section 1**

##### **Concerning the nature and kinds of servitude**

Article 674. A servitude is a charge encumbering lands for the benefit and advantage of lands which belong to another individual. The charge shall not be imposed on or be for the benefit of an individual. (Bw.508-2, 528, 572, 706, 1206; Civ.637, 686)

Article 675. All servitudes shall consist of an obligation to permit something or refrain from doing something. (Bw.689)

Article 676. A servitude shall not grant any priority to any plot of land. (Civ.638)

Article 677. Servitudes may be either continuous or not. Continuing servitudes are those of which the use continues or may continue, without the necessity for human involvement; servitude's of this nature are the leading of water, gutter rights, views and other such similar matters. Non-continuing servitudes



are those which require human involvement, such as: the right to cross over, to take water, to graze animals and other matters that require human involvement. (Bw.537, 552v., 687, 697, 699; Civ.689)

Article 678. Servitudes may be visible or invisible. Visible servitudes are those that are physically apparent such as a door, a window, a water pipe and other such similar objects. Invisible servitudes are those whose existence is imperceptible, such as the prohibition against building on a plot of land, or against building above a certain height, the right to graze cattle and other matters that require human involvement. (Bw.537, 552v., 687, 697, 699; Civ.689)

Article 679. If an individual re-builds a wall or a building, the grantor and beneficiary of the servitude shall maintain the servitude with regard to the new wall or new building, provided that they are not further encumbered, and provided that the reconstruction shall take place prior to the acquisition of the servitude by prescription. (Bw.681, 648, 691v., 703, 705, 707; Civ.665, 704)

Article 680. An individual who is entitled to the benefit of a servitude with regard to views or light, shall be permitted to install as many windows or lights as he wishes; he shall not be permitted to increase that number in the future, after having built or exercised his right. Light shall be interpreted as the light which is \*209 necessary, without any views. (Bw.645, 647v., 677v., 691)

Article 681. An individual shall be authorized to build to that height which he deems fit, provided that the elevation of the building shall not be prohibited in the interest of another plot of land. In this regard, the owner of the dominant plot of land shall have the right to prevent or remove all carpentry or elevation, prohibited in the title. (Bw.571, 637, 678v.)

Article 682. The servitude of leading water and dripping water shall be interpreted as the right to transmission of clean water and not water containing waste. (Bw.652, 677)

Article 683. The servitude of gutter right is the right to run water and water containing waste. (Bw.653, 677)

Article 684. The owner of a plot of land, who has the right to install beams or anchors in somebody else's wall, shall be authorized to replace those which become damaged by use with new beams and anchors, provided that he shall not increase their number or change their location. (Bw.636, 679)

Article 685. Individuals who have the right to sail on neighboring waters, shall contribute to the costs incurred in maintaining the water as navigable, unless he chooses to relinquish this right. (Bw.661)

Article 686. The servitude: - of a footpath is the right to go on foot over another person's land; - of riding path or lanes is the right to ride horses or to herd animals over another person's land; - of a road is the right to drive across with a car, carriage, etc. If the width of a footpath, lane, or road, is not stipulated in the title, then the width shall be regulated in accordance with the special ordinances or local customs. The servitude of riding path or lane shall include a footpath; the riding path, lane and footpath shall, by implication be included in the servitude of a road. (AB.15; Bw.671, 677)

Article 687. The servitude of a water pipe is the right to transmit water from a neighboring plot of land to one's own. (Bw.626v., 678)

Article 688. An individual, whose land has the benefit of a servitude, has the right to install any kind of construction which is necessary for the use and maintenance of such servitude. The construction shall be at his expense, and shall not be charged to the owner of the plot of land charged with the servitude. (Bw.626, 675, 680, 693; Civ.697v.)

Article 689. In the event that the owner of the estate burdened by the servitude is made liable, pursuant to the \*210 title, for the expenses incurred in the construction of any structure for the use and maintenance of the servitude, he may, at any time release himself from such liability, by transferring the part of the estate charged with servitude to the owner of the estate who imposed such servitude, as deemed necessary for the enjoyment of the servitude. (Bw.635, 695, 706; Civ.699)

Article 690. In the event that it is intended to divide the dominant plot of land, the servitude in respect of each division shall remain in effect, provided that it shall not burden the condition of the plot of land charged with the servitude. In the event that it also concerns a right of crossing over, all the co-owners

of the divided plot of land shall be required to exercise that right along the same road that existed prior to the division. (Bw.667v., 691, 694, 701; Civ.700)

Article 691. An individual, whose land has the benefit of a servitude, shall only make use thereof pursuant to his title, and in the absence of such, pursuant to the ordinances or local customs, provided always that he shall make use thereof in the manner which is least burdensome. He shall not carry out alterations on the estate charged with the servitude, nor on the dominant estate which might further burden the condition of the aforementioned plot of land. (AB.15; Bw.668, 695; Civ.702)

Article 692. The owner of the plot of land charged with the servitude shall not commit any acts which could restrict the use of the servitude or make it more inconvenient. He shall not alter the condition of the location, or move the location at which the right to the servitude can be exercised to a location that differs from the one where the servitude was originally established, unless the change can take place without disadvantaging the owner benefited by the servitude. (Bw.691; Civ.701)

Article 693. An individual whose land has the benefit of a servitude shall be deemed to have all that is necessary to make use thereof in the least encumbering manner for the owner of the plot of land charged with the servitude. The right to take water from somebody else's spring shall include the right of access to the spring on the plot of land charged with the servitude. (Bw.688; Civ.696)

Article 694. If it is intended to divide the plot of land charged with the servitude, the servitude shall remain effective over each division to the extent that it is required for the enjoyment of the servitude. (Bw.690, 701; Civ.700)

## **Section 2**

### **The origin of servitude**

Article 695. A servitude may be established by either title or prescription. (Bw.696v., 700, 712, 724, 1955v., 1963; Civ.960)

Article 696. Chapter to servitude's shall be made public, in the manner stipulated in article 620. (Ov.26; Bw.616)

Article 697. A continuous and visible servitude can be obtained either by prescription or by title. (Bw.547, 552, 677v., 699v.,707, 1955, 1963; Civ.690)

Article 698. With respect to an individual who uses a spring on a plot of land which is located at a higher altitude than his own plot of land, acquisition by prescription shall not take place before he has constructed and finalized those physical structures designated for the improvement of the fall and the flow of the water on his property. (Bw.627; Civ.642)

Article 699. Servitudes which are simultaneously continuous and invisible, such as the non-continuous, whether they are visible or invisible, shall only be established by title. The enjoyment, notwithstanding that it has lasted for numerous years shall not be sufficient to acquire this servitude. (Bw.537, 553, 677v., 1955v.; Civ.691)

Article 700. In the event that it is proven that plots of land which are currently divided previously belonged to the same owner, and that he has been responsible for the condition of the plots of land which could have resulted in a continuous and visible servitude, then this designation shall apply instead of a servitude by title. (Bw.677v.,695, 697, 706; Civ.692v.)

Article 701. If the owner of two plots of land, of which one displayed visible signs of servitude prior to the acquisition thereof, makes use of one of these estates, without any provisions relating to servitude existing in the agreement, then this servitude shall apply with respect to the owner of the plot of land benefited by the servitude or the owner of the plot of land charged with the servitude. (Bw.690, 694, 700, 706, 1206; Civ.694)

Article 702. One of the co-owners of a plot of land, may, of his own volition and without the knowledge of the others, obtain the benefit of a servitude for their joint property. (Bw.710; Civ.709)

## **Section 3**

## **Nullification of a servitude**

Article 703. A servitude shall be null and void, if the property to which the servitude is attached is in such condition that an individual cannot use it. (Bw.705, 718, 736, 754, 807; Civ.703)

Article 704. If the plot of land charged with servitude or the dominant plot of land has been partially demolished or destroyed, the servitude shall continue, to the extent that the condition of the estate so permits. (Bw.703, 705)

Article 705. Servitude's, which are nullified, for the reason mentioned in article 703, shall be restored, if the property is restored to such a condition, that an individual can make use thereof, unless the period of time which has elapsed, is sufficient for prescription in accordance with article 707. (Bw.679, 708; Civ.704)

Article 706. All servitude's shall be nullified, if the dominant plot of land and the servient plot of land become the property of the same individual, without prejudice to the provisions of article 701. (Bw.674, 700v., 718, 736, 754, 807, 1206, 1436v.; Civ.705)

Article 707. A servitude shall also become void if it has not been used during thirty consecutive years. The said period of thirty years shall only commence on the date upon which one has committed an apparent and conflicting act against the servitude. (Bw.547, 679, 700, 705, 710, 718, 736, 754, 807; Civ.706v.)

Article 708. If, the dominant plot of land is in such condition, that prevents the exercise of the servitude, then prescription shall take place following the lapse of thirty years, effective as of the time that the plot of land should have been restored to its previous condition, thereby rendering it possible to exercise the servitude again. (Bw.700, 703, 705, 1986v.)

Article 709. The manner in which an individual can make use of a servitude, shall expire in the same manner as the expiration of the servitude itself. (Bw. 707v., 710; Civ.708)

Article 710. If the dominant plot of land indivisibly belongs to several owners, then the enjoyment by one of the owners shall preclude the expiration of the servitude with respect to the other owners. (Bw.702, 1985; Civ.709v.)

## **Chapter VII**

### **Concerning prenuptial agreements**

Article 711. The right of building is a property right to have buildings, structures or plantings on another person's land. (Bw. 508-3, 528v.. 600v., 616, 717)

Article 712. An individual, who has a right of building may dispose of such and encumber it by mortgage. He may encumber the property, subject to right of building, by establishing a servitude, but only for the period during which he has the enjoyment of such right. (Bw.695, 1164-3; Rv.493-3; S.72-124)

Article 713. The basis upon which the right of building was established shall be made public, in the manner stipulated in article 620. (Ov.26; Bw.616, 696, 1963)

Article 714. For the duration of the existence of the right of building, the owner of the land cannot prevent the holder of the right of building from demolishing the buildings and other structures, or pulling out the plants, and from removing several items, provided that the latter mentioned paid the price thereof during the acquisition of the right of building, or if the buildings, structures and plants erected or constructed by himself, and reserving the right that the land shall be restored to the condition that it was in prior to the building and planting. (Bw. 600v., 1562, 1567)

Article 715. Upon the termination of the right of building, the landowner shall gain possession of the buildings, structures and plantings, provided that the current value thereof shall be paid to the individual who had the right of building and who shall be entitled to retain the right, until full payment has been made. (Bw.600v., 714, 716, 726, 779; Civ.555; S.72-124)

Article 716. If the right of building is established on land on which buildings, works and plantings already exist and of which the value has not been paid by the individual who has acquired the right, then the landowner, upon termination of the right of building, shall retrieve all such objects, and shall not be liable for any compensation in respect thereof. (Bw.600v., 714c.)

Article 717. The ordinances of this title shall only be valid to the extent that there is no deviation therefrom in agreements between the parties. (Bw.735, 1338)

Article 718. The right of building, shall, become void as a result of inter alia the following: 1. by merger; \*215 2. by destruction of the land; 3. by prescription through continuous use of thirty years; 4. following the lapse of the period, which was agreed upon or stipulated at the time of establishment of the right. (Bw.703v., 719, 736, 754, 807, 1436, 1444, 1946).

Article 719. In the event that no specific conditions or stipulations are made regarding the termination of the right of building, the landowner may terminate such right, but not until thirty years have elapsed, provided that he has notified, by proper writ, the individual who holds the right of building, at least one year in advance. (Bw.718, 736)

## **Chapter VIII**

### **Concerning right of tenure by long lease**

Article 720. Right of tenure by long lease is a property right to have full enjoyment of property which belongs to another individual, subject to the obligation to pay an annual rent in the form of money or products of the land to the owner in consideration for the use of his property. The basis upon which the right of tenure was acquired shall be made public in the manner stipulated in article 620. (Ov.26; Bw.508-4, 528, 616, 696, 712, 1548v., 1963)

Article 721. The tenant shall exercise all rights which are attached to having possession of the land, provided that he shall not commit any act that might devalue the property. (Amended by S.04-233) He also shall not dig stones, peat, clay or other similar species of the earth belonging to the land, unless his right was established after the commencement of the development of the land. (Bw.587v.,594, 596, 727, 774, 776v.; civ.598)

Article 722. The trees which die during the term of the lease or have been felled by accident, shall be the responsibility of the tenant who must replace them with other trees. He shall also be entitled to fully dispose of all plants, placed in the ground by him. (Bw.600v., 714v., 766v.; Civ.594)

Article 723. The owner shall not be liable for any repairs. The tenant shall be required to maintain and carry out regular repairs to the property which he holds under the lease. He may improve the land by erecting buildings, or by developing or planting the land. (Bw. 731, 733v., 793v., 828, 1583)

Article 724. He shall be entitled to dispose of his interest, encumber it with a mortgage, and impose a servitude on the land given to him under the lease, for the period of his enjoyment. (Bw.695, 730v., 1164-3; Rv.493-3)

Article 725. He may remove all buildings constructed or plants placed in the ground, which construction or planting he was not obligated to do pursuant to his agreement, upon the termination of his right; he shall however, be required to compensate for any damage to the land caused by such removal. The owner is entitled to retain those objects on his land, until the tenant has satisfied the entire debt. (Bw.600v., \*218 714v., 722v., 1567)

Article 726. The tenant shall not be entitled to demand that the landowner shall pay the value of the buildings, structures, carpentry and plants, which the tenant has erected, and which upon the termination of the lease are situated on the land. (Bw.600v., 714v., 722)

Article 727. He shall be liable for all special or regular taxes, which are imposed on the lands, whether paid annually or once only. (Bw.721, 796v., 828; Civ.608)

Article 728. Obligations under the lease are not divisible and shall apply to every piece of land included in the lease. (Bw. 730, 1296v.)

Article 729. The tenant shall not claim any exemption of payment of rent, resulting from either his enjoyment being diminished or discontinued. If, however, the tenant has been deprived of full enjoyment during five successive years, then he shall be compensated for that time lost. (Bw.1592)

Article 730. No extraordinary payment shall be required with respect to each transfer of the right of tenure by long lease or division of community property. (Bw.724, 735)

Article 731. Upon terminating the right of tenure by long lease, the owner shall file a personal legal claim against the tenant for compensation in the form of costs, damages and interest, arising from negligence and failure to maintain the lands, and as a result of the expiration of the rights due to the fault of the tenant. (Bw.723, 733; Civ.614; Rv.102).

Article 732. If the lease is terminated due to the lapse of time, the lease cannot be renewed by implication but may continue in effect until its termination. (Bw.718-4, 736, 1573)

Article 733. The tenant's interest may be declared invalid, as a result of visible damage being caused to the property, or due to the severe misuse thereof, without prejudice to the legal claim for compensation in the form of costs, damages and interests. The invalidity may also be declared in the event of failure to pay rent during five successive years, and after the tenant has been reminded without success of the payment by proper writ, at least six weeks prior to the filing of the legal claim. (Bw.723, 729, 731, 734, 1365)

Article 734. The tenant may impede the declaration of invalidity in the event of damage being caused to the property or misuse of enjoyment of the property, if he restores the property to its previous condition, and provides sufficient security for the future. (Bw.816)

Article 735. All ordinances stipulated in this chapter shall only apply, to the extent there has not been any \*219 deviations therefrom in agreements between the parties. (Bw. 717, 1338)

Article 736. The lease shall also be deemed to be void in the manner stipulated in article 718 and 719 with regard to the right of building.

## **Chapter IX**

### **Concerning ground rents and one tenth**

Article 737. Ground rent shall be interpreted as an obligation to pay a debt, either in monetary form, or in the form of products, which obligation is attached by the owner to immovable property, and which he reserves for his benefit or the benefit of a third party upon the disposal or devolution of the property. The basis on which the interest was established shall be made public, in the manner stipulated in article 620. (Ov.26; Bw.508-5, 528, 616, 696, 713, 720, 739, 750v., 1164-4, 1963; Rv.493-4; Civ.530)

Article 738. A previous owner of a property in respect of which ground rent is payable and in respect of which he is owed rent shall not be entitled to reclaim that property on the basis of failure to pay rent. (Bw.750, 1266)

Article 739. The obligation to pay ground rent shall be attached exclusively to the property itself, and in the event of division, the entire rent shall be due in respect of each part, and it shall not affect other property belonging to the owner. The above stipulation shall not apply to the obligation to pay rent in respect of a certain proportionate share of the fruit, which shall be dealt within the following articles. (Bw. 728, 737, 740v., 750, 1770)

Article 740. The obligation to pay rent in respect of one tenth, or of any other portion of fruit, shall be settled with regard to each collection of fruit subject to the requirement to settle debts. (Bw.508-6, 528, 737, 742, 744, 750v., 1164-5, 1963; Rv.493-5)

Article 741. If at the time of establishment or proviso of one tenth, no express stipulations are made, either with respect to the kinds of fruit subject thereto, or with regard to the proportionate amount thereof, the rent shall be interpreted as one tenth of such fruit, which according to local customs, are subject to the one tenth requirement, or such monetary payment, in substitution for one tenth of fruit, which, according to such custom, with regard to some fruit, shall be settled in kind. (AB.15; Bw.749, 1875)

Article 742. Nothing shall be due if the land lies fallow or remains uncultivated, or is used for the cultivation of fruit which are not subject to the obligation to pay rent.

Article 743. Nothing shall be due in respect of grain which has been cut prematurely.

Article 744. Individuals who are obliged to pay rent as \*222 described in article 740 and thereafter, shall be required, at the time of collecting the fruit, to place them in rows, in heaps or sheaves of the same size. The heaps or sheaves shall be placed without prior selection, after the fruit are collected. (Bw.747v.)

Article 745. They must leave the heaps or sheaves on their field for twenty four hours, after notifying in advance the recipient of the one tenth share, according to local customs. (AB.15)

Article 746. During that period, the individual to whom payment is due, may indicate the heaps or sheaves which are due to him; he may choose firstly, but shall thereafter, accept the order in which the heaps or sheaves have been placed. (Bw.747, 749)

Article 747. If the individual, to whom the payment is due, fails to indicate his share, the individual obliged to pay rent shall be entitled to indicate his share, and to leave the heaps or sheaves at the disposal of the party entitled.

Article 748. The individual obliged to pay rent who has removed the fruit without fulfilling his obligation, must pay twice the value of the payment that he was required to make. (Bw.739, 741v.)

Article 749. If the obligation to pay rent is related to the young of animals or swarms of bees, the individual obliged to pay rent shall deliver his share to the rightful party, or furnish the value thereof in the form of money, calculated at the highest price, during the period of six weeks following the claim for the payment. The obligation to pay rent described in this article, shall never be included in the general denomination of one tenth, but must be established or provided for. The one tenth share shall be settled at random, without the recipient of the one tenth share being able to select the best, or the provider of the one tenth share being entitled to submit the worst. (Bw.737, 741, 746, 969)

Article 750. The past and un-fulfilled obligations to pay rent, which are described in article 740 and thereafter, shall expire after one year, effective as of the date on which the payments could have been claimed. The other ground rents shall expire after a period of five years. (Bw.737, 1968, 1972, 1974v.)

Article 751. The ground rents including the one tenth and other debt liabilities consisting of a certain proportionate amount of fruit, shall always be redeemable, even if expressly stipulated otherwise. (Bw.755) The parties shall be, permitted to stipulate the conditions of the redemption, and to negotiate that the rent cannot be redeemed before a specific period of time, provided that it does not exceed a period of thirty years. (AB.23; Bw.752, 754, 755; Civ.530)

Article 752. If the redemption price of the ground rents, one tenth and other proportionate debt liabilities \*223 are not stipulated in the agreement, but are agreed between the parties at the time of redemption this shall be regulated in the following manner; With regard to ground rents paid in cash, the debtor shall comply by imposing a charge of twenty times the amount. If the debt is not due in cash but in the form of other objects, the redemption value shall also be twenty times the yearly proceeds, and the value thereof shall be regulated according to the local market prices of the last ten years, which shall be calculated by them, and failing this, it shall be stipulated by experts appointed by the parties or the judge. The actual proceeds of the last fifteen years shall be regarded as an average of the amount of the annual proceeds with regard to one tenth and other proportionate and annual payments, after deducting the two most profitable and the two most unsuccessful years. The lease in respect of the last fifteen years, after deduction as mentioned above, shall provide proof of such proceeds, and only in the absence of such lease shall they follow the customary and above-mentioned rules. (Bw.472, 754-2)

Article 753. If the property, during the last fifteen years, has not produced any fruit which are subject to the one tenth and other proportionate and annual payments, the amount of the redemption shall be regulated by the judge, following the hearing of experts. (Bw.742v., 752)

Article 754. The rights related to ground rents and all other debt liabilities, which are described in this chapter shall be lost as a result of the following:

1. due to merger, if the rents or debt liabilities and title of the land shall become the property of one and the same person;
2. by mutual agreement;
3. by redemption, in the manner as described above;
4. by prescription, if thirty years have lapsed during which the individual, to whom, the ground rents or debt liabilities were due, has not exercised his right;
5. by destruction of the land. Floods, digging or the removal of the soil shall not result in the loss of right, if the land shall dry out again due to natural causes or labor. (Bw.594, 703v., 718v., 736, 751v., 807, 1436, 1444, 1967)

Article 755. The stipulations in this chapter shall apply only to ground rents, one tenth and other debt liabilities, which shall be established or provided for after the implementation of this Civil Code. The stipulations shall not re-instate the one tenth or other debt liabilities which were revoked in previous laws and customs, nor shall they regulate amend or invalidate the prevailing stipulations.(Ov.54) Ground rents and one tenth, which are to be paid to the State, shall not be redeemable without the express consent of the government.

## **Chapter X**

### **Concerning use of proceeds**

#### **Section 1**

##### **Concerning the nature of the use of proceeds and the manner of acquisition**

Article 756. Use of proceeds is an individual's property right to the proceeds from the property of another, as if the individual is the owner thereof, provided that the property itself is maintained in good condition. (Bw. 508-1, 511-1,528, 757, 760, 765, 772, 779, 784, 806; Rv.493-2; Civ. 587)

Article 757. If, however, the use of proceeds is understood to include use of consumable products, then it shall suffice if the user of the proceeds, upon termination of the period of use of proceeds, returns the same amount, kind and value of products, or pays the price at which the products were appraised at the commencement of the use of proceeds, or pays the value appraised at that particular time. (Bw.756,761,782,784,786,804v.,822,1273,1755;Civ.587)

Article 758. Use of proceeds may be established for the benefit of one or more specific individuals, for the purpose of having the enjoyment thereof, whether together or in succession. In the event of enjoyment in succession, the use of proceeds shall only be enjoyed by the individuals who are alive at the time that the right of the first user of proceeds commences. (Bw.2, 808, 899, 1679)

Article 759. The use of proceeds shall be acquired by law, or at the will of the owners. (Bw.311v.,474,883,918,957,970; Civ.579)

Article 760. The right of the use of proceeds of an immovable asset shall be made public, in the manner stipulated in article 620. If the right relates to a movable asset, title to the goods shall arise upon delivery. (Ov.26; Bw.612,616,696,713,720,737)

#### **Section 2**

##### **Concerning the rights of the user of proceeds (usufructuary)**

Article 761. The user of proceeds shall be entitled to enjoy proceeds of all varieties from assets of which he has the use, regardless of whether the proceeds are from natural fruit, whether they are proceeds of industry or civil proceeds. (Bw.500-502,766,777,786; Civ.582)

Article 762. The natural fruit and the proceeds of industry, which at the commencement of the use of proceeds are still attached to trees or roots, belong to the user of the proceeds. Those which are in the

same condition at the time that the use of proceeds is terminated, shall belong to the owner, without payment of any compensation, from one party or the other for the costs incurred in the work on and sowing of the land, excluding that part of the fruit, which was due to a participating tenant farmer either at the commencement or the termination of the use of proceeds. (Bw.500,502,571,1594; Civ.585)

Article 763. Civil proceeds shall be deemed to accrue from day to day, and shall belong to the user of the proceeds for the duration of his use of proceeds, which can also be the exact time at which these are payable. (Bw.501v.,764; Civ.586)

Article 764. The use of proceeds from a life annuity shall also entitle the user of the proceeds, for the duration of the use of proceeds, to receive the continuing interest. If the payment of the life annuity shall take place in advance, the user of the proceeds shall be entitled to all the payments, which would otherwise have been made during the period of his right to use the proceeds. An individual, who has the use of proceeds from a life annuity shall never be obligated to any return. (Bw.501,761,763,1775v.,1785;Civ.588)

Article 765. If the proceeds used are from assets, which do not perish immediately but which are depleted by use, such as clothes, linen, house hold furnishings and the like, the user of proceeds shall be entitled to use the assets for purpose for which they were designated, provided that at the termination of the use of proceeds, he shall not be obligated to return the assets in a condition which is different to that which they were in at the commencement of the use of proceeds provided that they shall not have deteriorated due to the fault or bad faith of the user of the proceeds. (Bw. 757,761,782,787,806; Civ.589)

Article 766. If the proceeds used come from chopped wood, \*228 the user of the proceeds shall have the enjoyment thereof, provided that he observes the order and amount of the chopping, in accordance with the customs of the owners, and the user of the proceeds or his heirs shall not be entitled to claim redress in the event that the customary chopping of wood, branches or tall trees, is neglected by the owner during the period of the use of proceeds. (AB.15; Bw.761; Civ.590).

Article 767. The user of the proceeds shall, provided that he has regard to the fixed time periods, and the customs of the previous owners, also be entitled to enjoyment of that which the previous owners have enjoyed, such as the wood from the trees which are regularly felled, whether this felling takes place at fixed periods over a certain area of land, or whether it consists of a certain number of trees, taken, randomly, from the entire area of land. (AB.15; Bw.769; Civ.591)

Article 768. In all other cases, the user of the proceeds shall not be entitled to appropriate timber trees which grow tall. He may, however, utilize wood from trees which have been uprooted accidentally or damaged, to carry out repairs for which he is responsible. He may also, if deemed necessary, for the purpose of repairs, have the trees felled, provided that he shall prove the necessity of the repairs to the owner. (Bw.793; Civ.592)

Article 769. The user of the proceeds may remove stakes from the woods for use in the vineyards, and if deemed necessary to support the fruit trees and to maintain and plant the gardens. He shall not be entitled to fell trees for firewood, but shall be entitled to the enjoyment, which, on an annual basis or at fixed times is derived from the trees; provided that he shall have regard to the customs of the local community, or the owners. (AB.15; Bw.767v.; Civ.593)

Article 770. Proceeds from trees, which can be removed from a nursery without causing any damage, can also be used, provided the user of the proceeds has regard to the local custom and the customs of the owners with respect to the replacement of the trees. (AB.15; Bw.761; Civ.590)

Article 771. Dead fruit trees, including those which have been accidentally uprooted or damaged, shall belong to the user of proceeds, provided that he replaces them with other trees. (Bw.772; Civ. 594)

Article 772. The user of the proceeds may personally exercise his right to the use of the proceeds or shall hire out the property or grant a long term lease thereof, or sell or encumber the use of the proceeds, or dispose of it without charge. He shall, however, whether in the course of his own enjoyment, or hiring, or long term lease, or disposal, observe the local custom and the custom of the owners, and shall not change the use of the property to one which shall be detrimental to the owners. During the term of the hire or long term lease, he shall \*229 also, having regard to the different nature and the purpose of the assets, observe the local customs and the customs of the owners. In the absence of such customs or habits, houses may not be leased for longer than four years, and land may



not be leased for longer than seven years. (AB.15; Bw.756, 817, 823, 1164-2, 1169, 1457v., 1547v.; Civ.595)

Article 773. All hires or long term leases of immovable property in respect of which there is a use of proceeds, which were entered into for more than two years prior to the commencement of the hire or the long term lease, may, at the request of the owner, be terminated, if the right of the user of the proceeds ceases within that period of time. (Bw.772,817; Civ.1430)

Article 774. The user of the proceeds shall have the enjoyment of addition to the assets, of which he has the use, which have resulted from alluvial deposit. He shall have, in the same manner as the owner, the enjoyment of servitudes, and of all other rights which the owner is entitled to exercise. He shall also be entitled to exercise hunting and fishing rights. (Bw.586,596, 674v., 721, 776, 781; Civ. 596v.)

Article 775. (Amended by S.04-233) He shall also, in the same manner as the owner, be entitled to the enjoyment of quarries and peat bogs, which were in the course of development at the time of commencement of the use of proceeds. (Bw.571, 761; Civ.598)

Article 776. (Amended by S.04-233) The user of the proceeds shall not have any rights whatsoever in respect of quarries and peat bogs which are not in the course of development, and shall, therefore, not exploit any turf or other minerals prior to the commencement of the development or exploration, unless otherwise stipulated. (Bw.721, 761, 775; Civ.598)

Article 776a. (Supplemented by S.04-233) Pursuant to the use of proceeds of a mining concession, the user of the proceeds shall be entitled to enjoyment in the same manner as the holder of the concession.

Article 777. The user of the proceeds shall not be entitled to treasure, which, during the period of use of the proceeds, is found by another individual on the lands of which he is entitled to enjoyment. In the event that he personally finds treasure, he shall be entitled to demand his portion thereof, in accordance with article 587. (Bw.500, 502, 761; Civ.598)

Article 778. The owner must permit the user of the proceeds to enjoy the use thereof, without obstructing his enjoyment. (Bw.728; Civ.599)

Article 779. The user of the proceeds cannot demand any compensation at the termination of the use of the proceeds, for improvements which he claims to have made, notwithstanding that the value of the property has increased as a result thereof. \*230 However, such improvements may be taken into account when assessing the damages resulting from damage to the property. (Bw.575v., 603v., 756, 782, 807, 1630; Civ.599)

Article 780. Mirrors, paintings and other accessories which have been brought in by the user of the proceeds, may be taken back by him or his heirs, provided that the locations of those items shall be restored to their previous condition. (Bw.507-2, 581v.)

Article 781. The user of the proceeds may execute all civil lawsuits which the owner is entitled to execute pursuant to law. (Bw.556, 574, 774; Rv.102).

### **Section 3**

#### **Concerning the obligations of the user of proceeds (usufructuary)**

Article 782. The user of proceeds shall take over the property in the condition that it was in at the commencement of the use of the proceeds. He shall return the property at the termination of the use of proceeds in the condition that it is in at such time, without prejudice to the stipulations of articles 779 and 780 and the compensation which is due to the owner, as a result of damage caused. (Bw.312, 757, 762, 765; Civ.600, 614)

Article 783. The user of the proceeds shall, at his expense, and in the presence of the owner, or if not, having properly summoned him, arrange for a description of the movable and inventory of the immovable assets to be drafted, which assets are subject to the use of proceeds. No individual can be released from this obligation, which shall be stipulated in the deed setting forth the use of the proceeds. The description and the inventory may be drafted in private, if the owner is present. (Bw.312, 315, 757, 819, 1563; Rv.675; Civ.600)

Article 784. The user of the proceeds shall furnish a lawful personal or business guarantee, that he, in the manner of a good head of the household, shall use the assets, the proceeds from which he has use, without causing them to depreciate or neglecting them, provided that the assets shall be returned, or the value thereof shall be returned if the assets in question are those mentioned in article 757. (Bw.472v., 785, 787v., 819, 982, 1162v., 1273, 1820v., 1827, 1830; Rv.611v.; Civ.601).

Article 785. The user of the proceeds may be released from the obligation to furnish a guarantee by provision in the deed stipulating the use of proceeds. Parents, who are legally entitled to enjoyment of the proceeds from their children's assets, such as those who have disposed of their assets by sale or gift subject to maintenance by them of the use of proceeds, shall not be bound by such obligation. The same shall also apply to the user of proceeds of assets which are managed by other individuals, without prejudice to the stipulation in article 789. (Bw.311v., 473v., 819, 1669, 1730v.; Civ. 601)

Article 786. In the event that the user of the proceeds does not furnish any security, the owner shall be entitled to personally manage the assets which are subject to the use of proceeds, provided that he furnishes security. In the absence of this, the immovable assets shall be hired out, \*232 leased under long term lease, or placed under the management of a third party; the amounts of money, constituting the proceeds to be used, shall be invested, and the food and other matters which can only be used by consumption, shall be sold, in order that the proceeds therefrom may also be invested. The interest which may accrue on these amounts of money, including the rent shall belong to the user of the proceeds. (Bw.473,757,761,784,787,790,1730v.; Civ.602)

Article 787. If all or part of the proceeds being used, consist of movable assets, which are depleted by the use thereof, the user of the proceeds shall, in the absence of the provision of security, not lose his entitlement to the enjoyment thereof, provided that he swears under oath that he cannot provide any security, and provided that he promises to redeliver the goods upon termination of the use of proceeds. The owner may demand that the user of the proceeds shall be left only that part of the movable assets, which is necessary for his use, and that the remainder shall be sold and the proceeds thereof invested, as mentioned in the previous article. (Bw.473, 765,784; Civ.603)

Article 788. The user of proceeds, to which he was entitled from the time of commencement of the use of proceeds, shall not be deprived of the proceeds because of a delay in providing security. (Bw.760, 784, 959; Civ.604)

Article 789. Those individuals, appointed to manage the assets subject to the use of proceeds, are required to provide a legally valid personal or business guarantee, prior to acceptance of their management. (Bw.472v., 784v., 792, 803, 816, 1019)

Article 790. Each year, managers must account for their actions, to the user of the proceeds, which shall include the submission of the balance of their accounts. Upon termination of their management, they shall account for their actions to the owner as well as the user of the proceeds. The owner, who, pursuant to the first paragraph in article 786, manages the assets, must in the same manner, account for his actions to the user of the proceeds. (Bw.465v., 791; Rv.764)

Article 791. Managers may be discharged for the same reasons as conservators; such as negligence in the fulfillment of the obligation imposed on them as mentioned in the first paragraph of article 790. (Bw.373, 379v., 790, 1022)

Article 792. If, for any reason, the management ceases, the user of the proceeds shall regain all former rights. (Bw.307, 786, 791, 816, 979, 1020)

Article 793. The user of the proceeds shall be obligated only to carry out repairs for the purpose of maintenance. Major repairs shall remain the responsibility of the owner, unless these have resulted from negligence in regular \*233 maintenance since the commencement of the use of proceeds; in which case the user of the proceeds shall also be responsible therefor. (Bw.578, 723, 768, 782, 794v., 815, 828, 984; Civ.605)

Article 794. Major repairs include the following: repairs to big walls and arched roofs; repairs to beams and entire roofs; the total repair of dikes, wharf's, plastered waterworks, including supporting and boundary walls. All other repairs shall be regarded as regular maintenance. (Bw.1583; Civ.606)

Article 795. Neither the owner, nor the user of the proceeds, shall be required to rebuild that which has been damaged due to the passage of time or accident. (Civ.607)

Article 796. The user of the proceeds, shall be required, during the period of his enjoyment, to be responsible for all annual and regular charges imposed on the property, such as ground rent, taxes and other such charges, which are usually regarded as charges incurred in the process of enjoying the proceeds. (Bw.727; Civ.608)

Article 797. The owner shall be personally liable for special charges, which might be imposed on the property, during the use of the proceeds, although the user of the proceeds is required to compensate him for the interest charged during the use of the proceeds. In the event that the user of the proceeds has paid the charges in advance, he may, upon termination of the use of the proceeds, demand to be reimbursed for the charges but excluding any interest that might have accrued during the use of the proceeds. (Bw.727; Civ. 609)

Article 798. An individual who has a general use of proceeds or a use of proceeds based on a general title, shall with and in addition to the owner settle the debts in the following manner: The value of the property, which is subject to the use of proceeds shall be estimated; the amount of debts to be settled shall then be determined, based on the value of the property. In the event that the user of the proceeds wishes to advance a loan to the value of the property, then the principal sum shall be returned to him at the termination of the use of proceeds, exclusive of interest. If the user of the proceeds is unwilling to advance such a loan, then the owner may either pay this amount himself, in which case the user of the proceeds shall owe him the interest charged during the use of the proceeds, or, may encumber or sell part of the assets subject to the use of proceeds, for a sum up to the amount required to settle the debts. (Bw. 799v., 876, 954, 957, 1100; Civ.612)

Article 799. An individual, who has the use of proceeds based on a special title, shall not be required to settle the debts, in respect of which the property subject to the use of proceeds, has been secured. In the event that he settles this debt in order to prevent \*234 eviction from the property, he may claim reimbursement therefor from the owner. (Bw.957, 965, 1100, 1105; Civ.611)

Article 800. A life-annuity, or annual allowance for support, which has been provided by a testator, shall devolve in its entirety upon the individual to whom the entire use of proceeds has been bequeathed, and in proportion to the enjoyment of the individual who has been bequeathed part only of the use of proceeds, subject to neither individual being permitted to file a claim. (Bw.764, 798, 960-2, 1775v.; Civ.610)

Article 801. The user of the proceeds shall be liable only for the payment of the costs incurred in lawsuits concerning his use of proceeds, and the payment of all other penalties arising from such lawsuits. If the dispute concerns the owner and the user of the proceeds simultaneously, and they are both parties in the suit, they shall contribute to the costs, in proportion to their mutual interests, to be determined by the judge. (Bw.803; Rv.58; Civ.613)

Article 802. If, during the use of the proceeds, a third party commits an unlawful act on the property, or attempts to curtail the rights of the owner, the user of the proceeds shall be required to notify the owner thereof; failure to do so shall render him liable for any damage resulting from the unlawful act, in the same manner as he is required to compensate for damage caused by him or those for whom he is responsible. (Bw.1366v., 1591; Civ. 614)

Article 803. If the assets are managed by a third party, the managers must protect the rights of the owner and the user of the proceeds; failure to do so shall render them liable for costs, damages and interest. They may not act on behalf of the owner or the user of the proceeds in court, whether plaintiff or defendant, without having been authorized to do so by the party involved in the case. (Bw.786, 789, 801, 1792v.)

Article 804. In the event that the use of proceeds from a herd of animals is granted, which herd of animals is totally destroyed by accident or illness due to no fault of the user of the proceeds, he shall only be required to account to the owner for the skins or the value thereof. If the herd is only partially destroyed, the user of the proceeds shall be required to replace the dead animals with the young. (Bw. 761, 807-6, 811, 824; Civ.616)

Article 805. If the use of the proceeds only relates to one or more animals and not to the whole herd and those animals die due to no fault of the user of proceeds, he shall not be required to replace those animals or reimburse the value thereof but shall only be required to return the skins or the value thereof. (Bw.761, 807-6, 824; Civ.615)

Article 806. The user of the proceeds of a ship must insure it in the event of overseas travel. Failure to do so shall render him liable to the owner for any damage caused. \*235 (Bw.813; K.592v.,784)

#### **Section 4**

##### **Termination of the use of proceeds**

Article 807. The use of proceeds shall terminate as follows: 1. due to the demise of the user of the proceeds; (Bw.772, 808, 1318) 2. if the time period or the requirements in respect of use of proceeds has expired or has been complied with; (Bw.809v.) 3. by merger, resulting in the property and the use of proceeds being held by one individual; (Bw.756, 1436v.) 4. by relinquishment of the use of proceeds by the user for the benefit of the owner; (Bw.772, 1341) 5. by prescription, if the user of the proceeds has not made use of his rights for a period of thirty years; (Bw.1946v.) 6. by the destruction of the property subject to the use of proceeds. (Bw.314, 703v., 718v., 736, 754, 811, 815, 1169, 1444v.; Civ.617)

Article 808. The use of proceeds granted in the interest of several individuals jointly, shall terminate upon the demise of the last surviving individual. The use of proceeds granted in the interest of an entity shall terminate as a result of the liquidation of such entity. (Bw.810, 1002, 1653)

Article 809. The use of proceeds which has been granted until a third individual has reached a certain age, shall continue until that time, notwithstanding that the person may pass away before reaching the stipulated age without prejudice to the stipulations in the fourteenth chapter of the first book of this Civil Code regarding the legal enjoyment of the parents. (Bw.311, 314; Civ.620)

Article 810. The use of proceeds may not be granted to an entity for longer than thirty years. (Bw.808, 1653; Civ.619)

Article 811. If part only of the property subject to the use of proceeds has been destroyed, the use of proceeds shall continue to be valid in respect of the remainder thereof. Floods shall not result in termination of the use of proceeds, to the extent that the user of the proceeds is able to exercise his right in accordance with the nature of the circumstances. The use of the proceeds shall be fully reinstated, after the property has dried up either as a result of nature or manual labor; without prejudice to the stipulation in article 594. (Bw.545, 593, 598, 804; Civ.623).

Article 812. In the event that the use of proceeds relates only to a building, which is destroyed by fire or some other accident or due to old age, the user of the proceeds shall not have any right of enjoyment with regard to the property \*237 or to the building materials. If the use of proceeds covers a plot of land, of which the building is part, the user of the proceeds shall have the enjoyment of the land, and may use the building materials, either to re-build that which was destroyed, or to repair other buildings which comprise part of the property. (Bw. 807-6; Civ.624)

Article 813. The use of proceeds of a vessel shall be deemed void, in the event that the vehicle is irreparable. The user of the proceeds shall not be entitled to the wreck or remains thereof. (Bw.761, 806, 807-6)

Article 814. The use of proceeds of any interest, loan or agreement shall not cease as a result of the settlement of the principal sum. The user of the proceeds shall be entitled to demand the re-investment thereof for his benefit. (Bw. 764)

Article 815. The use of proceeds may also terminate as a result of abuse by the user of the proceeds of enjoyment, whether by damaging the assets, or by allowing such assets to deteriorate by failing to carry out appropriate repair and maintenance thereof. (Bw.782, 793, 802; Civ.618)

Article 816. The judge may, in those circumstance, either order total destruction of those assets in respect of which the use of proceeds has been granted, or place the assets under the management of a third party, or return the assets to the owner, with the provision that he must pay a certain sum to the user of the proceeds on an annual basis, until such time that the use of proceeds would have terminated. If, however, the user of the proceeds or his creditors offer to repair the damage caused by the abuse committed, and to provide sufficient security thereafter, the judge shall re-instate the user of the proceeds in the position of enjoyment of his rights. (Bw.734, 789v., 802, 1131v.; Civ.618)

Article 817. The nullification of the use of proceeds shall not terminate the lease agreements concluded pursuant to article 772. (Bw.773; Civ.595)

## **Chapter XI**

### **Concerning use and occupation**

Article 818. The right of use and that of occupation are property rights which are obtained and revoked in the same manner as the use of proceeds. (Bw.759, 807; Civ.625)

Article 819. The obligations imposed on the user of the proceeds to provide security, to draft an inventory and description of the property, to enjoy the property as a proper head of the household and to return the property, shall also apply to the individual who has the right of use and occupation. (Bw.782v.; Civ.626v.)

Article 820. The right of use and occupation shall be regulated in accordance with the chapter which deals with these; in the event that no provisions regarding the extent of those rights have been made, these rights shall be regulated in accordance with the following articles. (Bw.717, 735, 826; Civ. 628v.)

Article 821. An individual, who has the right to use a plot of land, shall only take such proceeds as are necessary for himself and his family. (Bw.825; Civ.630)

Article 822. Assets which are consumable, cannot be the subject matter of the right of use; in the event that such right is permitted in respect of similar assets, it shall be regarded as use of proceeds. (Bw.757)

Article 823. The user cannot relinquish or assign his right to another person . (Bw.772, 821; Civ.631)

Article 824. The user may use animals for work purposes, and may take their milk to meet his and his family's requirements; he may also make use of the manure, but he shall not have the enjoyment of the wool or the animal's young. (Bw.804v.)

Article 825. The right of use in respect of a plot of land, shall not include the right to hunt or fish, however, the user shall be entitled to enjoy the benefits of servitude's. (Bw.821)

Article 826. There shall be no distinction between the right of use and that of occupation, of a house. An individual, who has the right of occupation in respect of a house, may occupy such with his family, even if he was unmarried at the time that the right was granted to him. Such right shall stipulate whatever is required for the occupation by the user and his family. (Bw.827v.; Civ.632v.)

Article 827. The right of occupation shall not be \*240 relinquished or assigned. (Bw. 772, 823; Civ.634)

Article 828. If the user enjoys all the proceeds of the plot of land, or occupies the entire house, he shall, in the same manner as the user of the proceeds, be responsible for the costs incurred for the rebuilding and the maintenance repairs, including taxes and other charges involved. If he only enjoys part of the proceeds, or occupies only part of the house, he shall contribute to the costs and charges in proportion to his enjoyment. (Bw. 793v., 796v.; Civ.635)

Article 829. The use of forest and plants, granted to a specific person, shall entitle the user only to make use of the dead wood and to take fire wood to the extent required for him and his family. (Bw.766v.; Civ.636)

## **Chapter XII**

### **Concerning succession by demise**

#### **Section 1**

#### **General provisions**

Article 830. Succession shall only result from demise. (Bw.3, 472; Civ. 718v.)

Article 831. In the event that several persons, who are related to one another by inheritance, should all die in the same accident, or on the same day, and if there is no evidence of the priority of their time of death, they shall be presumed to have died at the same instant, and no transfer of inheritance shall take place from one to the other. (Bw.836, 894, 1916; Civ.720v.)

Article 832. (Amended by S.35-486) The lawful heirs to the property comprising the inheritance shall be the lawful and blood relatives and the surviving spouse, in accordance with the following regulations. In the absence of blood relatives and a surviving spouse, the assets shall devolve upon the State, with the provision that the debts of the estate shall be settled, to the extent that the value of the assets is sufficient. (Bw.141, 520, 852v., 862v., 873, 1059, 1126v.; S.1850-3; Bw.1128; Civ.723)

Article 833. The heirs shall by law assume possession of the assets, rights and lawsuits of the deceased. In the event of a dispute over who shall be heir, and who shall be authorized to hold title to the property, the judge may order that the assets shall be held in the court's safekeeping. The judge shall order that the State shall hold the property, and shall be obligated to seal the estate, and have an estate description drafted, in the form of an acceptance of inheritances stipulated pursuant to the privilege of estate description; failure to do so shall render the State liable for compensation of costs, damages and interest. (Bw.257v., 270v., 528, 541, 584, 852v., 866, 874v., 955v., 1023v., 1044v., 1051, 1126v., 1299, 1318, 1528, 1717, 1730v., 1743, 1819, 1826; Rv.7, 248v.; Civ.724)

Article 834. The heir is legally entitled to claim the inheritance against all those, who, either under such title or having no title, are in the possession of the whole or part of the inheritance, including those, who due to deceit, have lost their entitlement to the inheritance. (Bw.564) He may file this legal claim in respect of the entire inheritance, if he is the sole heir, or in respect of his share, if there are other heirs. Such legal claim shall extend to anything included in the inheritance under any title, including the proceeds, income and compensation, which are stipulated in relation to \*243 claiming possession, in the rules in the third title. (Bw.574v., 955, 1334, 1537; Rv.102)

Article 835. The legal claim shall expire after a period of thirty years has elapsed, which period shall commence as of the day that the inheritance becomes available. (Bw.269v., 955, 1967)

Article 836. An individual may become an heir if he exists at the time that the inheritance becomes available, subject to the rule stipulated in article 2 of this Civil Code. (Bw.489v., 831, 899; Civ.725)

Article 837. Pursuant to S.72-11 see also 15-299, 642 (effective January 1, 1916) article 837 has been revoked and replaced by the following: In the event that an inheritance, which includes assets inside and outside Indonesia, is divided among foreigners, non-residents and Dutch citizens, the latter-mentioned shall take an advance, in proportion to their share in the inheritance and the value of the assets, which they would otherwise have been precluded from pursuant to foreign laws or customs. The value advanced shall be taken from the assets in the inheritance which are not subject to this exclusion. (AB.5; Civ.726)

Article 838. (Amended by S.17-497) The following individuals shall be regarded as unqualified to be an heir and as such shall be excluded from an inheritance: 1. individuals who have been convicted of killing or attempting to kill the deceased; (Sw.53, 338, 340) 2. individuals who by legal judgment have been found guilty of slandering the testator by accusing him of committing a crime punishable by a prison term of five years or more; (Bw.1372v.; Sv.7v.; IR.44; Sw.311, 317) 3. individuals who under duress or physically have prevented the deceased from drafting or revoking his last will; (Bw.875, 992v.) 4. individuals who have obscured, destroyed or forged the last will of the deceased. (Bw.833, 839, 912; Civ.727)

Article 839. An heir who is regarded as being unqualified and as such is excluded from the inheritance, must return all proceeds and income, which he has enjoyed since the inheritance became available. (Bw.579; Civ.729)

Article 840. Children of an unqualified individual, who have become heirs, shall not be excluded due to the fault of their parents; the parents, however, shall under no circumstances be authorized to claim the use of proceeds of the assets of inheritance, which the law grants to the parents in respect of those assets received by their children by inheritance. (Bw.308, 311, 847, 852, 1060; Civ.730)

Article 841. Representation grants a person the right to take the place, be at the level and assume the rights of the individual represented. (Bw.866, 914, 1060, 1089; Civ.739)

Article 842. Representation in the legal descending line \*244 shall be perpetual. Such representation shall be admitted in circumstances where all children of the deceased claim the inheritance together with the descendants of a previously deceased child, or where all children of the deceased have predeceased him, and their descendants in varying degrees and levels of descent. (Bw.280, 860, 872; Civ.740)

Article 843. There shall be no representation of relatives in the ascending line. The closest relationship in each of the lines shall at all times exclude those who are a further level apart. (Bw.853; Civ.741)

Article 844. Representation of those related by collateral line shall be permitted for the benefit of the children and descendants of the deceased brothers and sisters, whether they claim the inheritance together with their uncles or aunts, or whether, following the death of the brothers and sisters of the deceased, the inheritance shall pass to the descendants of the brothers and sisters, related to one another in varying degrees. (Bw.845, 855v.; Civ.742)

Article 845. (Amended by S.35-486) Representation shall also be permitted in the case of the succession of nieces and nephews, if in addition to the testator's next of kin, there are also children or descendants of previously deceased brothers and sisters of the testator. (Bw.844, 858)

Article 846. In all circumstances, in which representation shall be permitted, the distribution shall take place at branches of the main stock; if the same branch has produced several branches, then the subdivision at each branch shall again take place at branches of the main stock, and the division among the individuals in the same branch shall be per capita. (Bw.852; Civ.743)

Article 847. No individual can represent a living person. (Bw.489v., 840, 1060; Civ.744)

Article 848. A child shall not be granted the right by his parents to represent them, but an individual may represent someone whose estate he has refused to accept. (Bw.1060, 1089; Civ.744)

Article 849. The law shall not consider the nature nor the origin of the assets, in order to regulate succession. (Bw.852; Civ.732)

Article 850. Any inheritance, which shall, in part or in full, devolve upon blood relatives in the ascending or collateral lines, shall be divided into equal parts, one to be transmitted to the descendants on the father's side, and the other to the descendants on the mother's side, without prejudice to the stipulations in article 854, 855 and 859. An inheritance can never be transmitted from one side to the other, unless no kin can be found in the ascending or collateral line on either side. (Bw.853, 856v., 861; Civ.733)

Article 851. Apart from the first division between those persons who are descended from the father and the mother, \*245 there shall be no further divisions among the various branches; provided that, one half, passed to either side, shall belong to the heir or heirs, who are most closely related to the deceased, without prejudice to the provisions in respect of representation. (Bw.841, 846; Civ.734)

## **Section 2**

### **Concerning the succession of legal blood relatives and of the surviving spouse**

Article 852. The children or their descendants shall inherit from their parents, grandparents, or further blood relatives in the ascending line, without distinction between those of different sex or age, not with standing that they may have been conceived from several marriages. They shall each inherit equal shares, if they all are from the same level and are summoned on their own behalf; they shall inherit by branches of the main stock, if all or part of them present themselves by substitution. (Bw.141, 277v.,840v.,846, 1060; Civ.745)

Article 852a. (Supplemented by S.35-486) In relation to the inheritance of the deceased spouse, the surviving spouse shall be regarded as the same as the legal child of the deceased spouse for the purposes of the application of the provisions of this title, provided that in the event that in a second or further marriage, there are children or descendants from a previous marriage, the new spouse shall not inherit more than the minimum share which one of the children, or upon his or her death, his or her descendants, shall enjoy pursuant to succession, and further provided that in all circumstances, the inheritance shall not exceed one quarter of the assets of the testators. (Bw.841v.) In the event that a stipulation by last will has been set forth to the benefit of a spouse of a second or further marriage, and if

the total sum obtained upon demise and last will exceeds the limits of the amount stipulated in the first paragraph, the total amount of the inheritance shall be reduced to an amount which shall remain within those limits. If the arrangements provided for in the last will, consist entirely or partly of the use of proceeds, then the value of the use of proceeds shall be appraised and the total amount, mentioned in the previous paragraph, shall be computed in accordance with the estimated value. (Bw.918) That which the next spouse enjoys in accordance with this article, shall be reduced in the computation of that which is due or agreed to in accordance with the eighth chapter of the first book. (Bw.852,902)

Article 852b. (Supplemented by S.35-486) If the surviving spouse receives an inheritance together with individuals other than children or further descendants of a previous marriage, he shall be authorized to take the entire or part of the estate. (Bw.512, 514, 1079, 1121) In the event that this estate forms part of the estate of a testator, the value thereof shall be deducted from the inheritance of his or her spouse. (Bw.1077) \*247 If the value thereof exceeds the share in the inheritance, the co-heirs shall be compensated for the difference.

Article 853. (Amended by S.35-486) If the deceased has not left any descendants, spouse or siblings, the inheritance shall be divided in two equal shares between the blood relatives from the father's side and the blood relatives of the mother in the ascending line, without prejudice to the stipulation in article 859. The closest in degree in the ascending line shall be due half of the property due to his line to the exclusion of all others. Blood relatives in the ascending line, of the same degree, shall inherit per capita. (Bw.141, 843, 850, 870; Civ.746)

Article 854. (Amended by S.35-486) If the father and mother of an individual, who dies without having left any descendants or spouse, survive him, they shall each be entitled to one third of the inheritance, if the deceased is succeeded by one brother or one sister, who is entitled to the other one third. The father and the mother shall each inherit one quarter, in the event that the deceased has left several brothers or sisters, and the latter mentioned shall inherit the two other quarters of the inheritance. (Bw.850; Civ.748)

Article 855. (Amended by S.35-486) If the father or the mother of an individual who dies without leaving any descendants or spouse, predeceases him or her, the survivor shall be entitled to:- one half of the inheritance, if the deceased only leaves one brother or one sister; one third, if he leaves two; and one quarter, if there are more brothers and sisters. The remaining share shall be granted to the brothers and sisters. (Bw.850; Civ.749, 751)

Article 856. (Amended by S.35-486) If the father and mother of an individual, who has died without leaving any descendants or spouse, have predeceased him, the brothers and sisters shall inherit the entire estate. (Bw.871; Civ.750)

Article 857. The division of that which the brothers and sisters are entitled to in accordance with the above articles, shall be in equal parts, if they are all children of the same marriage; however, if they are from different marriages, that which they shall inherit shall be divided in two equal parts between the relatives of the father of the deceased and the relatives of the mother of the deceased; the full brothers and sisters shall receive their shares from both lines, and half-siblings shall receive their shares only from the line that they belong to. If there are only half brothers or half sisters remaining on one side, they shall be entitled to the entire inheritance, to the exclusion of all other blood relatives in the other line. (Bw.850; civ.733, 752)

Article 858. In the absence of brothers and sisters, and other surviving kin in one of the ascending lines, one half of the estate shall be inherited by the surviving blood relatives in the ascending line, and the other half shall be inherited by relatives in the collateral line, with the \*248 exception of the circumstances mentioned in the following article. In the absence of brothers and sisters and of any surviving kin in both ascending lines, the closest blood relatives in each of the collateral lines shall be summoned in respect of one half of the inheritance. In the event that in the same collateral line there are blood relatives of the same degree, then the inheritance shall be divided per capita, without prejudice to the stipulations in article 845. (Bw.850; Civ.753)

Article 859. (Amended by S.35-486) The surviving father or mother shall only inherit the entire inheritance of the child in the event that he has died having left no descendants, spouse, brothers or sisters. (Bw.850, 853, 870; civ.753v.)

Article 860. The definition of brothers and sisters in this section, shall include their respective legal descendants. (Bw.844, 853, 914)



Article 861. (Amended by S.35-486) Blood relatives, who are related to the deceased in the sixth degree in the collateral line, shall not receive any inheritance. If no blood relatives of the degree who can inherit, are found in one line, the blood relatives in the other line shall be entitled to the entire inheritance. (Bw.290v., 833, 850; Civ.755)

### **Section 3**

#### **Concerning succession of natural children**

Article 862. In the event that the deceased has left legally acknowledged natural children, the inheritance shall be implemented in the manner as in the following three (read: four) articles is stipulated. (Bw.280v., 832; Civ.756v.)

Article 863. (Amended by S.35-486) If the deceased has left any legal descendants or a spouse, the natural children shall inherit one third of the share, which they would be entitled to if they were legal; they shall inherit one half of the estate, if the deceased does not have any descendants, or spouse, but has blood relatives in the ascending line, or brothers and sisters or their descendants; and three quarters if the only remaining family is related in a more distant degree. If the legal heirs of the deceased are related in unequal degrees, the closest relative in one line shall stipulate the amount of the share to which the natural child shall be entitled, even with respect to those who are in the other line. (Bw.908, 916; Civ.757)

Article 864. (Amended by S.35-486) In all the circumstances mentioned in the previous article, the remainder of the inheritance shall be divided among the legal heirs in the manner stipulated in the second section of this title. (Bw.832,852v.)

Article 865. (Amended by S.35-486) If the deceased has not left any legal heirs, then the natural children shall be entitled to the entire inheritance. (Bw. 832, 838, 861, 1057v.; Civ.758)

Article 866. In the event that a natural child predeceases the testator, his legal children and descendants shall be authorized to claim the privileges granted to them by article 863 and 865. (Bw.841; Civ.759)

Article 867. The aforementioned stipulations are not applicable to children conceived through adultery or incest. The law shall only grant those children the required living support. (Bw.272v., 283, 329; Civ. 762)

Article 868. Such support shall be regulated in accordance with the capacity of the father or the mother, and according to the number and the status of the legal heirs. (Bw.324; Civ.763)

Article 869. If the father or the mother, while alive, has guaranteed a certain living allowance to a child conceived \*250 through adultery or incest, that same child shall have no further claim to the inheritance of such father or mother. (Civ.764)

Article 870. (Amended by S.35-468) The inheritance of a natural child, who has died without leaving any descendants or spouse, shall be the entitlement of the father or the mother, who has acknowledged such child, or shall be divided equally between them if they both have acknowledged the child. (Bw.853v., 859, 863; Civ.765)

Article 871. (Amended by S.35-486) In the event that the natural child, who has left neither descendants nor spouse, dies after the death of both parents, the assets inherited from the parents, if they still exist in the estate in their original condition, shall be returned to the legal descendants of his or her father or mother; the same shall apply with respect to acts of redress, if such exist, and the consideration for the assets, if they have been disposed of and the consideration remains outstanding. All other remaining assets shall devolve upon the natural brothers or sisters, or upon their legal descendants. (Bw.856; Civ.766)

Article 872. The law shall not grant any rights to a natural child in respect of the assets of the blood relatives of his or her parents, with the exception of that which is stipulated in the following article. (Bw.280,290; Civ.756)

Article 873. In the event that one of the blood relatives dies, without leaving any relatives who qualify as heirs, or a surviving spouse, the acknowledged natural child shall be entitled to claim the inheritance upon the State's rights being waived. (Amended by S.35-486) In addition, if the natural child dies without

leaving any descendants, surviving spouse, parents, or natural brothers or sisters of his descendants, upon waiver of the State's rights, the entire inheritance shall devolve upon the closest blood relatives of the father or mother who has acknowledged him; and in the event that he has been acknowledged by both, half of his inheritance shall devolve upon the relatives on his father's side and the other half shall devolve upon the relatives on his mother's side. The division in both lines shall take place in accordance with the rules, as stipulated with regard to normal succession. (Bw.280v., 290, 832, 858, 861, 877).

## **Chapter XIII**

### **Concerning last wills**

#### **Section 1**

##### **General provisions**

Article 874. The assets which an individual leaves upon his demise, shall belong to his legal heirs, to the extent that he has not legally disposed of same by will. (Ov.42,57; Bw.173, 178, 832v.)

Article 875. A testament or last will is a deed, containing a statement of an individual's wishes and intents to take effect following his death, and which deed can be revoked. (Bw.992v.; Civ.895)

Article 876. Provisions of assets by last wills regarding property are in general, dealt with under general title, or by special title. Each one of these wills, whether drawn up under the title of testamentary disposition or legacy, or under any other title, shall be valid, in accordance with the rules stipulated in this title. (Bw. 954v., 957; Civ.967, 1002)

Article 877. Any provision in a last will for the benefit of the next of kin, or the next of kin of the testator, without any further indication, shall be regarded as having been made for the benefit of the heirs summoned by law. (Bw. 290v., 832, 873)

Article 878. A last will made for the benefit of the poor, without any further specification, shall be considered to have been made to benefit all the underprivileged, without distinguishing between religions professed by the charitable institutions in the location where the inheritance becomes available.

Article 879. The testamentary disposition through hands or substitution of fidei-commissarius is prohibited. (S.1838-45; 1852-74) Subsequently, with regard to the nominated heir or legatee, each provision to the effect that the inheritance or the legacy shall be kept, and that the entire or part of the inheritance shall be transferred to a third party shall be void. (Ov.76; Bw.881v., 1675; Civ.896)

Article 880. Matters granted in the seventh and eighth section of this chapter are excluded from the prohibited testamentary dispositions through hands mentioned in the previous article. (Bw. 881, 973v., 989v., 1675; Civ.897)

Article 881. A stipulation that a third party, or upon his death, his legal children already born or to be born at a future date, shall be entitled to the entire or part of the \*253 estate which remains the property of the devisee or legatee at their deaths, shall not be regarded as a prohibited testamentary disposition through hands. The testator shall not harm his heirs who are entitled to part of the inheritance, through such testamentary disposition or legacy (Bw.899v.,913,977,989v.,1675; civ.896)

Article 882. The provision, in which a third party is entitled to an inheritance or a legacy, shall be valid, in the event that the summoned heir or legatee does not have the enjoyment of such. (Bw. 899, 912, 1001, 1057v., 1675; Civ. 898)

Article 883. The same shall apply to a stipulation in a last will in which the use of proceeds is granted to one party and the property is granted to another. (Bw.756,758,899,970,1669;Civ.899)

Article 884. The stipulation in which the inheritance or the legacy, or part of such, has been declared untransferable, shall be regarded as void. (AB.23; Bw.879,989,1066,1675)

Article 885. In the event that the terms of a last will are clear, clarification cannot deviate therefrom. (Bw.1342; SA.26-253 under Bw.956)

Article 886. If the terms of a last will can be interpreted in several ways, the intent of the testator must be determined rather than interpreting the text literally. (Bw.1343; Civ.1156)

Article 887. In such circumstances, the terms shall also be interpreted in the sense which corresponds most with the nature and subject matter of the stipulation, and preferably in a manner that by virtue of which the stipulation shall be effective or conclusive. (Bw.1344; Civ.1157v.)

Article 888. In all last wills, conditions which are unintelligible or impossible, or which violate the laws and good morals, shall be regarded as void. (AB.23; Bw.1254; Civ.900)

Article 889. A condition shall be deemed to be fulfilled, if the individual who would benefit from non-fulfillment, has prevented fulfillment. (Bw.1260; Civ.1178)

Article 890. A false statement shall be regarded as void, unless it is apparent from the last will that the testator at the time of making the statement, was not aware that it was false. (Bw.1335)

Article 891. The statement of a reason, either true or false, which, however, violates the laws or good morals, shall invalidate the testamentary disposition or the legacy. (Ab.23; Bw.1335v.)

Article 892. In the event that an indivisible charge is imposed on several heirs or legatees, and one or more forfeit the inheritance or legacy, or are incompetent to receive such, the individual who wishes to forfeit the entire charge, \*254 may claim his share of the inheritance, and may claim compensation for the amount which he has paid for the others. (Bw.955, 958, 1296v.)

Article 893. Last wills which are made as a result of duress, deceit or cunning shall be invalid. (Bw.1321v.; Civ.1109)

Article 894. If as a result of the same accident, or on the same day, the testator and the heir or the legatee, or an individual, who, by permitted testamentary disposition could have been the substitute for the latter mentioned, die, and it is not known who died first, they shall be presumed to have died simultaneously, and no transfer of rights shall take place as a result of the last will. (Bw. 831, 836, 1675, 1916)

## **Section 2**

### **Concerning competency to make provisions in a last will or benefit therefrom**

Article 895. In order to make or revoke a last will, an individual shall have mental capacity. (Bw.433, 446, 448, 875, 898, 992; Civ.901)

Article 896. Any individual may make a last will and benefit therefrom, with the exception of those who, pursuant to the stipulations of this section, have been declared incompetent. (Bw.2, 118, 173, 433, 446, 448, 836, 897, 1676; Civ.902)

Article 897. Minors, who have not reached the full age of eighteen years, are not allowed to make wills. (Bw.151, 169, 330, 904v.,1677; Civ.903v.)

Article 898. The competence of the testator shall be judged based on the condition that he was in at the time that the last will was made. (Bw.895, 904v.)

Article 899. In order to benefit from something disposed of in a last will, an individual must have existed at the time of the demise of the testator, having regard to the rule stipulated in article 2 of this Civil Code. This stipulation is not applicable to individuals, who are entitled to benefits from institutions. (Bw.472, 489v.,836,881,894,973v.,976,1001v.;Civ.906)

Article 900. (Amended by S.37-572) Bequests made in last wills for the benefit of public foundations, religious institutions, churches or charitable institutions, shall have no effect, if the Governor General or the authorities designated by the Governor General, do not grant the right to the managers of the institutions to accept such bequests. (Bw.1046, 1680; Civ.910; Bb.406)

Article 901. A spouse cannot benefit from the last will of the other spouse, if the marriage was entered into without proper consent, and if the testator died at a time that the validity of the marriage was being disputed in court. (Bw.28,35v.,87,91,911)

Article 902. (Amended by S.35-486) A husband or wife who enters into a second marriage and who has children or descendants from a previous marriage, shall not grant more property to the current spouse than that which the children or descendants from the previous marriage are entitled to pursuant to the twelfth chapter of this book. If, he or she only bequeaths the use of proceeds to the current spouse in the last will, and does not leave any \*256 property, this use of proceeds can be in respect of one half of the property or even more, without the estimated value exceeding the limits stipulated in the previous paragraph of this article, without prejudice to the stipulations in article 918. If, in the last will, the testator disposes of both property and use of proceeds, the value of the use of proceeds shall be calculated; and in the event that the total value of the property and the use of proceeds disposed of, exceeds the limits of the amount stipulated in the first paragraph, the current spouse may choose whether to reduce the inheritance or the use of proceeds so that the total value shall be within those limits. If, in this regard, the legal share shall be jeopardized, the stipulation in article 918 shall also be applicable in this instance. That which the current spouse enjoys pursuant to this article shall be reduced by the sum of that which he or she is entitled to pursuant to the eighth chapter of the first book. (Bw.181v., 852a,911)

Article 902a. (Amended by S.23-31) The previous article shall not apply to spouses who have remarried one another, or to children or descendants from their previous marriage to one another.

Article 903. Spouses, with respect to the community property, shall not dispose of more than their respective share in the community property. If, however, any property from the community property has been disposed of by will, the beneficiary cannot claim his share of the property in its original condition, if the heirs of the testator are not entitled to that property. In such circumstances, the beneficiary shall be compensated from the share in the community property to which the heirs of the testator are entitled, and if this is insufficient, from the personal property belonging to the heirs. (Bw.128v.,134v.,138,966,1032,1067; Civ.1423)

Article 904. A minor, notwithstanding that he has reached the age of eighteen years, cannot make any provisions to benefit his guardian in the last will. An adult cannot name his former guardian as a beneficiary under his last will, until after the guardianship account has been finalized and closed. The two aforementioned provisions shall not apply to blood relatives of the minor in the ascending line, who are or have been his guardians. (Bw.330,410,412,897v.,905,911,1681;Civ.907)

Article 905. Minors cannot make provision in their last will to benefit their educators, governors or governesses, who live with them, nor their teachers (male or female), with whom the minors have lodged. This provision shall not apply to provisions for compensation for services rendered, in the form of a legacy, provided that regard shall be had to the benevolence of the testator and to the services rendered to him. (Bw.879v., 904, 911)

Article 906. Doctors, healers, pharmacists and other \*257 individuals in the medical profession, who have served an individual during the illness which caused his demise, as well as the clergy who have supported him during such illness, cannot benefit under the last will made by such individual in the course of his illness. This shall not apply to the following:

1. provision for compensation for services rendered in the form of a legacy as mentioned in the previous article;
2. provisions in favor of the spouse of the testator;
3. provisions, including those that are general, made for the benefit of blood relatives up to and including the fourth degree, if the deceased has not left any heirs in a direct line; unless the individual, for whose benefit the provisions are made, is also one of heirs. (Bw.911,1681; Civ.909)

Article 907. The notary, who has drawn up the last will as a public deed, and the witnesses who were present, cannot enjoy a disposition made in their favor made in the last will. (Bw.911,938v.,944,953,1681; Not.21)

Article 908. If parents leave legal and natural and legitimized children, the latter mentioned cannot benefit from the last will of their parents more than the extent to which they are entitled to pursuant to the twelfth chapter of this book. (Bw.280v., 862v.,911,916,1681; Civ.608)

Article 909. Male and female adulterers and their accomplices cannot benefit from each party's last will, unless the adultery, prior to the demise of the testator has been proven by a court's judgment. (Bw.911,1681;Rv.83,334,402)

Article 910. Revoked by S.72-11 see also 15-299,642 (cf.Bw.837)

Article 911. A last will, made in favor of an individual who is incompetent to inherit, shall be void, even in circumstances where the arrangement is made in the name of a middle person. Middle persons shall include, the father and the mother, the children and descendants, and the spouses of those who are incompetent to inherit. (Bw.183v., 1681,1921;F.44;Civ.911)

Article 912. An individual who has been convicted of killing the testator; an individual who has stolen, destroyed or forged the last will of the testator, or who has prevented the testator by force or physical deed from revoking or amending his last will, shall, together with his spouse and children not benefit from the last will. (Bw.838,1688-2)

### **Section 3**

#### **Concerning the legitimate portion or the legal share of the inheritance and the curtailment of gifts which would reduce the portion**

Article 913. The legitimate portion or the legal share of the inheritance is that portion of the estate which the lawful heirs in a direct line are entitled to and which the testator is not entitled to dispose of as a gift during his lifetime or by last will. (Bw.168,176,181,307,385,842v.,875,881,902,1019,1686v.)

Article 914. In relation to the descending line, if the testator leaves only one legal child, the legal share of the inheritance shall consist of half of the property which the child would be entitled to inherit upon death. In the event that there are two children, the legal share of the inheritance for each child shall be two thirds of whatever they would be entitled to inherit upon death. In the event that the deceased has left three or more children, then the legal share of the inheritance shall be three fourths of whatever each child should have inherited upon death. Children shall include the descendants, in any kind of degree; they shall, however only be regarded as substitutes for the child whom they represent in the inheritance of the testator. (Bw.842,852v.902v.,920;Civ.913v.)

Article 915. In the ascending line, the legal share of inheritance shall always consist of one half of that which is by law due, upon death, to each blood relative in that line. (Bw.280, 285,862v.,908;Civ.761,908)

Article 916a. (Supplemented by S.35-486) For the purpose of calculating the legal share, regard shall be had to those individuals who upon the death of an individual have become heirs to his estate but who have not been named as legatees under his will, and in the event that individuals other than the aforementioned heirs have been granted a share in excess of their legal share by deed during the lifetime of the deceased or by last will, provided that the aforementioned heirs were not present, the devises and gifts may be reduced upon a claim and in favor of the legatees and heirs or those entitled.(Bw.832) Articles 920-929 shall be applicable in this regard.

Article 917. In the absence of blood relatives in the ascending and descending line, and of natural, legally acknowledged children, gifts by inter vivos deed or by last will, shall be deemed to be of the entire estate. (Bw.861; Civ.916)

\*259 Article 918. If the provision, by inter vivos deed or by last will, consists of a use of proceeds or a life annuity, which jeopardizes the inheritance, the heirs to whom that gift has been granted, have the option to either put such provision into effect or to surrender the property of the allotted portion to the donees or legatees. (Bw.959; Civ.917)

Article 919. The portion, which one may dispose of, shall either in full or in part, by inter vivos deed or by last will, be granted to strangers, and children or other individuals who are entitled to the inheritance, without prejudice to the circumstances in which the latter mentioned pursuant to the seventeenth chapter of this book shall be required to contribute. (Bw.168,176,917,954,957,1086v.,1666v.;Civ.919)

Article 920. Gifts or donations, whether inter vivos, or pursuant to a last will, which could reduce the legal inheritance share, may be reduced at the time the inheritance becomes available, however, only upon the claim of the donees and heirs or those entitled. The donees, however, cannot benefit from the

reduction if it disadvantages the creditors of the deceased. (Bw.168,181,913v.,954,957,1666v.;Civ.920v.)

Article 921. To determine the value of the legal share of the inheritance, one shall list all the assets, which were present at the time of the death of the donor or testator; one shall also include the number of assets disposed of as inter vivos gifts in the condition that they were in at the time that the gift was made, and their value at the time of the donor's death; one shall calculate the value of all the assets, after deduction of debts, one shall also calculate the amount that an individual is entitled to claim, in relation to the donees, and one shall deduct from that, by waiving the contribution, that one has received from the deceased. (Bw.1086v.,1093,1095v.; Civ.922)

Article 922. Any disposal of property, either under charge of life annuity interest, or by condition of use of proceeds granted to one of the heirs in a direct line, shall be regarded as a gift. (Bw.1086,1669,1775v.,1921; Civ.918)

Article 923. In the event that the property granted prior to the demise of the donor is lost due to no fault of the donee, it shall not be included in the total assets that comprise the legal inheritance. The gift shall be included in the total assets, if it cannot be regained as a result of the insolvency of the donee. (Bw.1099; Civ.855,867)

Article 924. Reduction of inter vivos gifts shall never be permitted, unless all the assets, which by last will were disposed of, shall be regarded as insufficient to constitute the legal share. If, however, a reduction of inter vivos gifts shall take place, the most recent gift shall be first reduced and thereafter reduction shall follow in that order. (Bw.922;Civ.923)

Article 925. Immovable assets to be returned pursuant to the \*260 previous article, shall be returned in their original state notwithstanding any provisions to the contrary. If, however, reduction is to be made to a plot of land, which cannot be properly divided, then the donee shall, notwithstanding that he may be a stranger, have the authority to pay in cash that which is due to the recipient of the legitimate portion. (Bw.929,1093;Civ.859,866)

Article 926. The reduction of the portions disposed of by last will shall take place without making any distinctions between the testamentary dispositions and legacies, unless the testator expressly instructs that this testamentary disposition or that legacy shall have priority; in which case, such testamentary disposition or legacy shall not be reduced, unless the value of the other portions would be insufficient for the legal share of the inheritance. (Bw.876,913v.,954,957;Civ.926v.)

Article 927. The donee shall return the proceeds of the gift which exceed the part that can be disposed of, effective from the day that the donor dies, if the claim for reduction is filed within one year of that date, and otherwise from the date upon which such claim shall be filed. (Bw.548-3,575,959,1098,1169;Civ.928)

Article 928. The immovable assets, which shall be returned to the estate as a result of the reduction, shall thereupon be free of debts or encumbrances, imposed thereon by the donee. (Bw.1004,1093,1169;Civ.929)

Article 929. A lawsuit for reduction or return may be taken by the heirs against third owners of the immovable assets, which are part of the gift and which have been transferred by the donee, in the same manner and in the same order of rank as the donees. This lawsuit shall be filed in accordance with the order of the dates of the transfers, commencing with the most recent transfer. The lawsuit for reduction or return against third owners shall not take place, to the extent that no other assets have remained with the donee, which were included in the gift, and these are insufficient to fulfill the legal share of the inheritance in its entirety, or if the value of the transferred assets cannot be compensated with his personal assets. This lawsuit shall expire after three years from the date on which the legatee accepted the inheritance. (Bw.920,924; Civ.930)

#### **Section 4**

##### **Concerning the format of last wills**

Article 930. A last will cannot be made by two or more individuals in one deed, whether it is in favor of a third party, mutual or reciprocal arrangement. (Ov.73; Bw.953;Civ.968)

Article 931. A last will can only be made either by holographic or personally written deed, or by official deed, or by confidential or closed arrangements. (Bw.932v.,938v.,940v.,945v.,951;Civ.969)

Article 932. A holographic last will shall be entirely written by hand of the testator and shall be signed by him. The testator shall leave the will with the notary. The notary, in the presence of two witnesses, shall immediately draw up a deed of safekeeping, signed by the testator and the witnesses, either at the bottom of the last will, if that has been made available to him, or separately, if the document was offered to him sealed; in the latter-mentioned case, the testator, in the presence of the notary and the witnesses, shall note on the cover and confirm with his signature that such sealed envelope contains his last will. In the event that the testator, due to an impediment, which has arisen following the execution of the last will or the cover, cannot sign the cover or the deed of safekeeping, or both of them, the notary, shall make note thereof as well as of the cause of the impediment. (Ov.75;Bw.633,937,943v.,953;Rv.656v.; Civ.970)

Article 933. Such holographic last will, pursuant to the previous article, kept by the notary, shall have the same validity as a last will made by official deed, and shall be deemed to have been made on the same date as that of the deed of safekeeping, without having regard to the noted date on the last will. (Bw.231,932,938) (Supplemented by S.93-232) The holographic last will kept by the notary as a deed, shall, unless otherwise stipulated, be presumed to be entirely written and signed by the testator's hand.

Article 934. The testator may, at all times, reclaim his holographic testament, provided that he accounts for the reclaim to the notary in an authentic deed. The reclaim of the holographic testament shall be regarded as revocation. (Bw.992)

Article 935. By virtue of a single private fully written document, dated and signed by the testator, arrangements may, without any further formalities, be made following his \*262 demise, provided that they shall be only and exclusively for the appointment of executors, with respect to ordering funeral arrangements, legacies of clothing, personal belongings, personal ornaments and specific furniture. The revocation of such document can take place privately in the same manner . (Ov.75;Bw.515,936,945,951v.,992,1005;Rv.656;Civ.970)

Article 936. If such document, as mentioned in the previous article, is found after the demise of the testator, then this document shall be submitted to the orphans' chamber in the jurisdiction in which the inheritance is available; the orphans' chamber, shall open the document if it is sealed, and shall in all circumstances, prepare minutes of the submission of the document which shall include details of the condition that this is in; finally, the board shall submit the document to a notary, to be kept with the minutes. (Ov.41;Bw.23,937,942;Rv.656;Civ.1007)

Article 937. A holographic will, which has been submitted to the notary in a sealed envelope, shall, following the death of the testator, be submitted to the orphans' chamber, which shall then act in accordance with the provisions of article 942 in relation to sealed last wills. (Ov.41;Bw.936,943;Rv.657;Civ.1007;Not.37;Weesk.62)

Article 938. A last will by official deed shall be executed in front of a notary and in the presence of two witnesses. (Bw.943v.,953,Civ.971;Not.22)

Article 939. The notary, shall write or shall arrange to have the will of the testator written in clear terms as conveyed by the testator. If the witnesses were not present at the time that the information was provided and the draft has been prepared by the notary, the testator, shall, prior to the reading of the will, submit the information again in the presence of witnesses. Thereafter, the notary shall, in the presence of witnesses, read the will, and ask the testator whether the document that has been read by him, contains his last will. If the instructions as to the terms of the last will have been submitted in the presence of the witnesses, and if the last will is immediately put into writing, then the reading of the will and question to the testator shall take place simultaneously in the presence of witnesses. The deed, shall, following this, be signed by the testator, the notary and the witnesses. If the testator declares that he is unable to sign, or that he is impeded, then the statement and the cause of the impediment shall be mentioned in the deed. The compliance with all these formalities shall be expressly stated in the deed of the last will. (Bw.944,953;Civ.972v.)

Article 940. If the testator intends to make a private or confidential testament, he is required to put his signature beside each of his stipulations, either those that he has personally written, or those that were written by somebody else; the paper containing his stipulations, or the paper which serves as a cover, if a cover is used, shall be closed \*263 and sealed. The testator shall also submit such document closed and sealed to the notary, in the presence of four witnesses, or he shall, in their presence have the

document closed and sealed, and shall declare that the aforementioned document contains his last will, and that such last will, was either personally written and signed by him or written by somebody else but signed by him. The notary shall draw up a deed of clarification in respect thereof, which shall be written on that paper, or on the paper which serves as a cover; this deed shall be signed by the testator, the notary, and the witnesses, and in the event that the testator, due to some impediment which arose following the signing of the last will, is unable to execute the deed of clarification, then a note shall be made of the cause of the impediment. All formalities that have been carried out in the presence of the notary and the witnesses must be complied with, without executing another deed in the interim. The private or confidential last will shall be kept with the minutes of the notary, who has received such document. (Bw.942v., 953;Rv.657;Civ.976)

Article 941. In the event that the testator is unable to speak, but is capable of writing, then he may draft a last will, provided that this document is written, dated and signed by his own hand, submitted to the notary and the witnesses, and that at the top of this document he shall write and sign in their presence, as a deed of superscription, that the document submitted to them is his last will; following which, the notary shall draft the deed of superscription stating therein that the testator has written such statement in the presence of the notary and the witnesses; that which has been stipulated in the aforementioned article shall also be taken into consideration. (Bw.953;Civ.979) (Supplemented by S.93-232, with retrospective effect) The last wills, referred to in the previous article and in this article, shall unless otherwise stipulated, be presumed to be signed by the testator; the said last wills should, however, be entirely written and dated by the testator's own hand.

Article 942. Following the demise of the testator, the private or confidential last will shall be submitted to the orphans' chamber, within whose jurisdiction the inheritance is available; this board shall open the last will and draft minutes of the submission and the opening of the last will, and shall include details therein of the condition that it is in; it shall, thereafter be returned to the notary who has filed such document. (Ov.42;Bw.23,936v.,940;Rv.658;Civ.1007;Not.37;Weesk.62)

Article 943. The notary, who has kept a last will of any description with his minutes, shall, following the demise of the testator, notify the relevant parties thereof. (Ov.41;Bw.472,932,938,940,992;S.20-305)

Article 944. (Amended by S.32-42) Witnesses present at the time that last wills are made, shall be of age, and shall be resident in Indonesia. They shall understand the language in \*264 which the last will was drafted, or the language of the deed of superscription or deed of safekeeping. (Amended by S.17-497) No heirs, legatees, nor their blood relatives or relatives by marriage up to and including the fourth degree, nor their children or grandchildren, nor blood relatives in the same degree, nor the servants of the notary before whom the last will was drawn up shall be permitted to be witnesses of a last will, made in the form of an official deed. (Bw.290v.,330,452,907,932,938,940,953,1909v.,1913;BS.13;Civ.975,980)

Article 945. (Amended by S.1915-299,642) A Dutch citizen, who is in a foreign country, cannot make a last will in any manner other than by authentic deed and by having regard to the customary formalities in the country in which the deed is drawn up. He shall, however, be authorized to avail himself of a private document pursuant to and in the manner stipulated in article 935. (AB.16,18;Bw.936,938,953;S.10-296 pg.183; Civ.999v.)

Article 946. In time of war, the soldiers and other individuals serving in the army, who are in the field and in a besieged area, can make their last wills before an officer, who holds at least the rank of a lieutenant, or in the absence of an officer, before an individual, who in that location exercises the highest military authority, in the presence of two witnesses. (Bw.938,944,949v.,953;Civ.981)

Article 947. The last will of individuals who during the course of travel are at sea, may be executed before the captain or the navigator of the vessel, or in the absence of those, before their substitutes, in the presence of two witnesses. (BS.46,76;Bw.938,944,949v.,953;K.341,341d;Civ.988)

Article 948. (Amended by S.99-312) Individuals, who are in places, with which all relations have been prohibited due to plagues or other contagious diseases, can make their last wills in front of any public European official, in the presence of two witnesses. (Bw.938,944,949v.,953; Civ.985v.) (Supplemented by s.99-312) Equal authority shall be extended to those, whose lives, due to sudden illness or accident, riot, earthquake or other forces of nature, may be in danger, if, within six poles of their location, there is no individual who is able to carry out notarial services, and if the ministry authorized thereto cannot summon the individuals due to traffic problems or due to their absence. All the circumstances, which have resulted in the last will being made shall be stated in the deed.



Article 949. The last wills mentioned in the three previous articles, shall be signed by the testators, the individual before whom the will was executed and at least one of the witnesses. If the testator or one of the witnesses declares that he is unable to write or has been prevented from signing, then such declaration including the cause of the impediment shall be expressly referred to in the deed. (Bw.944,953;Civ.998)

Article 950. (Amended by S.99-312) The last wills, referred \*265 to in articles 946, 947 and 948, first paragraph, shall be invalid, if the testator dies six months after the circumstances which resulted in the wills being drawn up in such a format no longer exist. (Civ.984,987,996) The last will, mentioned in article 948, second paragraph, shall be invalid, in the event that the testator dies six months after the date of the deed.

Article 951. (Amended by S.99-312) In the instances described in articles 946, 947 and 948, first paragraph, the individuals mentioned therein may make arrangements by private document, provided it is written in its entirety by the hand of the testator and is also dated and signed by him. (Bw.932,935,952; Civ.999; see note 2 previous page)

Article 952. Such last will shall be invalid, if the testator dies three months after the circumstances, stipulated in aforementioned three paragraphs, no longer exist, unless such document has been submitted to a notary for safekeeping, in the manner as stipulated in article 932. (Bw.950;Civ.996)

Article 953. The formalities, to which several last wills, according to the stipulations of this section are subject, shall be observed; failure to do so shall render them invalid. (Bw.933; Civ.1001)

## **Section 5**

### **Concerning testamentary dispositions (CF.S.26-253 under BW.956)**

Article 954. A testamentary disposition is a last will, by which the testator leaves his estate in the event of his death to one or more individuals, either in its entirety or partially, such as one half or one third. (Bw.876,957;Civ.1000,1003)

Article 955. Upon the death of the testator, legal title to the assets shall devolve upon the beneficiaries named in the last will as well as the individuals to whom the law grants part of the inheritance. Articles 834 and 835 shall apply to such persons (Bw.913v.,959,1007,1528;Civ.1004v.,1011v.)

Article 956. In the event of a dispute with respect to an heir who is also authorized to hold title, the judge may instruct that the assets shall be kept in the custody of the court. (Bw.833,1730v.)

S.26-253 announces the Royal Decision of April 23, 1926 No.17 for review in the general interest of stipulations made in the testamentary dispositions or legacy pursuant to the law of May 1, 1925 (Dutch S.No.174)

Art.1. Following the lapse of forty years after the demise of the testator or following the day on which there is legal presumption of his death, a stipulation with regard to a testamentary disposition or legacy, may, at the request of the person who should comply with such stipulation, be reviewed or revoked by the Indonesian Supreme Court, in the general interest, insofar as possible according to the intent of the testator, if it concerns the following: the location where and the manner in which objects of art or objects of a historical or scientific nature, including documentation thereof, shall be kept in a collection which is accessible to the public; the extent to which and the requirements subject to which the public shall be granted the opportunity to view and use the objects as intended; the objective of the funds which should be awarded in the interest of the arts or sciences.

Art.2. The petition shall be submitted to the Supreme Court with the letter of request containing the reasons attached thereto. If it seeks a review of a stipulation, the letter of request shall state this wish. With regard to the request, the legal descendants and the spouse of the testator shall be heard, having been summoned \*267 by the Supreme Court in the stipulated manner. The Supreme Court shall hear, if deemed necessary, witnesses and experts. All hearings shall take place in public. The petitioner shall be given the opportunity, to comment upon the statements put forward by the individuals heard, and to verbally clarify the petition. The Supreme Court is authorized, by virtue of its official function, to review a stipulation of which revocation which has been requested, and also to review a stipulation in a manner other than that which is requested.

Art.3. The decree of the Supreme Court, in which a stipulation is regulated (read: reviewed) or revoked, shall not be valid until after approval of the Governor General has been obtained.

Art.4. The provisions in the previous three articles shall apply to a reviewed stipulation, provided a period of ten years has passed, after the decree of the Supreme Court, in which the stipulation is reviewed, has become valid.

Art.5. The revocation of a testamentary disposition or a legacy may be requested based upon the fact that a revised stipulation, which has replaced a previous stipulation, pursuant to which the testamentary disposition or the legacy is drawn up, has not been complied with. The provisions of the second and third paragraphs of article 1004 of the Civil Code shall be applicable in this regard.

Art.6. This decision shall become effective as of the thirtieth day following the promulgation in the Indonesian State Gazette (promulgated July 9, 1926)

## **Section 7**

### **Concerning the permitted testamentary dispositions through hands for the benefit of the grandchildren and descendants of brothers and sisters (CF. note BW.879)**

Article 973. The assets, over which parents have the right of disposal, may be given entirely or partly in a last will to one or more of their children, with the provision that the assets shall also be given to their other children who are already born or who shall be born. In the event that a child predeceases its parents, the same arrangement may be made for the benefit of one or more grandchildren, with the provision that such assets shall be given to their children who are already born or who shall be born. (Bw.880,899,913v.,975v.,1019,1675;Civ.1048)

Article 974. This arrangement in the last will may also be made for the benefit of one or more brothers or sisters of the testator, with regard to the entire or part of the assets which, are not excluded by law from the arrangement, with the instruction to give the assets to the children of his aforementioned brothers and sisters, who are already born or those who shall be born. The same arrangement may be made for the benefit of one or more children of deceased brothers and sisters, with the instruction to give those assets, to their children who are already born as well as those who are not yet born. (Bw.880,899,913v.,976,1019,1675;Civ.1049)

Article 975. If the encumbered heir should pass away, leaving children in the first degree, and descendants of a child who has previously died, then the latter mentioned shall, by substitution be entitled to the share of the deceased child. The same shall take place, in the event that all children in the first degree are deceased, and the individual who is charged with the delivery of the assets only leaves grandchildren. (Bw.841v.,858;Civ.1051)

Article 976. The arrangements, permitted in articles 973 and 974, shall only apply to the extent that the testamentary disposition through hands has only been made in one degree, and for the benefit of all children of the debtor who are already born, and shall be born, without any exception, and without priority of age or sex. (Civ.1050)

Article 977. The rights of the nominated heirs under testamentary dispositions through hands shall commence at the time that the enjoyment of the charged asset ceases. The voluntary relinquishment of enjoyment, for the benefit of the expectant heirs, shall not jeopardize the creditors \*272 of the debtor whose debt claims pre-date the relinquishment, neither shall it disadvantage the children who shall be born after the relinquishment. (Bw.833,1131,1341;Civ.1053)

Article 978. The individual, who, pursuant to the previous articles, makes arrangements which are permitted, may by last will, or by a later notarial deed, place the asset itself, under the management of one or more managers while subject to the charge. In this regard, the stipulations of article 789, first and second paragraph of article 790 and article 791 shall apply to the managers. They may request a fee for their services in the instances and in the manner stipulated in the subsequent chapter with respect to executors of last wills. (Bw.979,982,988,1017,1021;Civ.1055)

Article 979. Upon death, or in the absence of the designated manager, the judge shall, at the request of the debtor or other interested parties, or also upon claim of the prosecution counsel, appoint another individual in place of the absent manager. (Bw.982,1016;Civ.1056v.)

Article 980. Within a month after the death of the individual who pursuant to the settlement, has had access to the assets, a description of the estate shall be made containing all the assets which constitute the inheritance at the request of the designated manager, interested parties, or prosecution counsel. If the inheritance constitutes a legacy only, then a specific list shall be made of all the objects included therein. This estate description or list shall contain the estimated value of the assets. (Bw.981;Rv.672v.;Civ.1058)

Article 981. The estate description or list shall be drawn up in the presence of the designated manager and other interested parties, on the assumption that they have been properly summoned. If the aforementioned parties are present at the estate description, this may be effected by private deed, in which case the document should be submitted or forwarded to the court clerk at the court of justice for safekeeping, within a period of fourteen days following the completion of the estate description. The charges incurred in this regard shall be paid out of the assets covered in the will. (Bw.783;Rv.672v.;Civ.1059v.)

Article 982. If the testator has not nominated a manager, the assets shall be managed by the encumbered heir, and he shall be required to guarantee the storage, the proper usage and the re-delivery of the assets, unless the testator has expressly released him from any obligation to do so. (Bw.335,978,984v.,988)

Article 983. The encumbered heir, who, in the circumstances of the previous article, cannot put up any security, shall permit the assets at the request of interested parties, or upon the claim of the prosecution counsel, to be placed under the management of a manager to be nominated by the court of justice, who shall be subject to all rights and \*273 obligations stipulated in relation to guardians and minors. The final stipulation of article 978 shall also apply to the managers. (Bw.385v.,786;Civ.1056)

Article 984. The encumbered heir, who has been appointed manager, shall use the charged assets in the manner of a good head of the household, and shall, therefore, also be regarded as a user of the proceeds in respect of liability for costs and charges and carrying out repairs. (Bw.784,793v.,982)

Article 985. The immovable assets, including the interests and debt claims, shall not be transferred or charged unless so permitted by the court of justice, after having heard the future heir and the prosecution counsel. Such permission shall only be granted, in case of absolute necessity, or of apparent benefit, either with regard to the future heir as well as the encumbered heirs, and in the event of alienation, such permission shall be granted against the security or re-investment under "fidei commissum", if the encumbered party himself manages the assets. If the assets are placed under management, then the managers are required to invest the proceeds pursuant to the provisions regarding guardians. (Bw.391v., 1168v.)

Article 986. The testamentary dispositions through hands, which are permitted in this section, cannot be effective against third parties even by minors, if they have not been made public as follows: with regard to the immovable assets, by publication in the manner as stipulated in article 620, and to the extent that it concerns claims in respect of mortgaged debts, by registering the assets which are related to the debts, or by making notes next to the existing registrations. (Ov.28;Bw.988;Civ.1069)

Article 987. The heirs, whether legal or summoned pursuant to the last will of those who have drawn up the testamentary dispositions through hands, shall, under no circumstances, file an objection to the prospective heirs in respect of the absence of publication, registration or notification, stipulated in the previous article. (Ov.98;Bw.986;Civ.1070,1072)

Article 988. The managers shall be responsible for the publication, registration or notification, stipulated in article 986, and failure to comply with this shall render them liable for compensation in the form of costs, damage and interest. All interested parties shall be entitled to demand that the aforementioned requirements shall be complied with.

## **Section 8**

### **Concerning the testamentary dispositions through hands in which the heir or legatee shall leave the inheritance untransferred and unused (CF. Note BW.879)**

Article 989. In the event of a testamentary disposition, or of a legacy, pursuant to the provisions of article 881, the encumbered heir or legatee shall be authorized to transfer or use the property disposed of by

will to him, and even dispose of it as an inter vivos gift, unless the latter mentioned is either fully or partly prohibited, by the testator. (Bw.880,978,1675)

Article 990. The requirement for the preparation of an estate description or list, following the death of the testator, and before the filing of the documents with the court clerk at the court of justice, stipulated in article 980 and 981, which is dealt with in this section shall also apply to the encumbered heir or legatee, however, he shall not be obliged to provide any security. (Bw. 978, 982;Rv.672v.)

Article 991. Following the death of the encumbered heir or legatee, the future heir shall be entitled to demand immediate delivery of that which remains of the inheritance or the legacy in its original state. The cash or the proceeds of the objects sold shall be evident from notes of the encumbered heir or legatee, from household documents or other pieces of evidence, or from the extent to which there is anything remaining of the inheritance or legacy. (Bw.389,978,1881)

## **Section 9**

### **Concerning the revocation and expiration of last wills**

Article 992. A last will cannot, either in its entirety or partly, be revoked in any manner other than by a subsequent last will, or by a specific notarial deed, in which the testator declares the full or partial revocation of his earlier last will, without prejudice to the stipulation in article 934. (Bw.875,935,955;Civ.1035)

Article 993. If a subsequent last will which contains the express revocation of the previous will, does not comply with the formalities which are required for a valid last will, but complies with the formalities necessary for a valid notarial deed, then the provisions of the previous last will, which might have been repeated in the later deed, shall not be considered to be revoked. (Bw.953,994)

Article 994. A subsequent last will, in which the previous last will is not expressly revoked, shall invalidate only those provisions in the previous last will, which are not consistent with or which contradict the provisions of the subsequent last will. The provisions of this article shall not apply, if the subsequent last will is void, due to defective format, notwithstanding that such document is valid as a notarial deed. (Bw.953,992v.;Civ.1036)

Article 995. The revocation, either express, or implied, in a subsequent last will, shall be fully enforceable, notwithstanding that the subsequent deed is rendered invalid due to the incompetence of the nominated heir or legatee, or by their refusal to accept the inheritance. (Bw.893,895v.,1057v.;Civ.1037)

Article 996. All transfers, whether by sale, with the option of re-purchase, or by exchange, which the testator disposing of the assets, in full or in part, has made, shall result in the revocation of the legacy, to the extent of that which was transferred or exchanged; unless the transferred assets have been returned to the ownership of the testator. (Bw.958,963,1519v.,1541;Civ.1038)

Article 997. All legacies in a last will which are conditional upon an uncertain event, and which shall take effect according to the occurrence or non-occurrence of an uncertain event, shall be revoked if the nominated heir or legatee dies prior to the fulfillment of such condition. (Bw.899,958,1261;Civ.1040)

Article 998. If the testator intended that the condition \*276 would merely delay the legacy taking effect, this shall not prevent the heir or legatee from receiving the acquired right which he may further pass on to his heirs. (Bw.882,886,1263,1268;Civ.1041)

Article 999. A legacy shall lapse, if the bequeathed property, has totally deteriorated during the life of the testator. A legacy shall also lapse, if, after the death of the testator and due to no fault of the heir or other individuals required to deliver the legacy, the property is totally destroyed, notwithstanding that they failed to deliver the property on time, the legacy shall also lapse if it is destroyed while in the possession of the legatee. (Bw.958,1237,1444v.;Civ.1042)

Article 1000. Payments made towards interest owed, loans and other debts and loans during the lifetime of the testator shall be set off against legacies of those loans other debts and interest owing. (Bw.999)

Article 1001. A provision in a last will, shall lapse, if the nominated heir or legatee rejects the inheritance or legacy, or has been declared incompetent to enjoy such. If, it is provided that benefits to third parties shall be extended, they shall not lapse in this regard, and the individual to whom the inheritance or the legacy is given shall continue to be in control, without prejudice to his entitlement to absolutely and unconditionally relinquish the inheritance or the legacy, for the benefit of those for whom the benefits were intended. (Bw.895v.,967,1057v.;Civ.1043)

Article 1002. The share of the designated heir or legatee shall be increased, in the event that the inheritance nomination or the legacy is given to several individuals jointly, and the legacy to one of the co-heirs or co-legatees cannot take effect. The inheritance nomination or the legacy shall be considered to be joint, if it accrues under the same provision, and if the testator has not given a specific share for example, one half, one third, in the property to each of the co-heirs or co-legatees. The expression in equal shares or parts shall not be considered to be a reference with regard to a specific share, as mentioned in this article. (Bw.135,808,1052,1059;Civ.1044)

Article 1003. The testator shall be further deemed to have disposed of property simultaneously to several individuals by the same deed in the event that the property he has bequeathed to them cannot be divided without causing damage thereto, notwithstanding that this is done on a separate basis. (Bw.1296;Civ.1045)

Article 1004. The declaration of expiration of last wills, may be requested, after the death of the testators, in the event of non-fulfillment of the requirements. In this regard, the individuals, for whose benefit the declaration of expiration has been made, may retrieve the assets, free of all encumbrances and mortgages which the \*277 former nominated heir or legatee may have imposed on them. They may further exercise the same rights in respect of third holders of immovable assets, as against the nominated heir or legatee. (Bw.928v.,1257,1265;Civ.1046;S.26-253 under Bw.956)

## **Chapter XIV**

### **Concerning executors of last wills and managers**

Article 1005. A testator, may, by last will, or by private deed as referred to in article 935, or by specific notarial deed appoint one or more executors of his last will. He may also nominate several individuals, to succeed one another in the event of unavailability. (Bw. 959,1015v., 1021,1127;Rv.99;Civ.1025)

Article 1006. Married women, minors notwithstanding that they have reached the age of consent, individuals under conservatorship, and any individual who is incompetent to conclude agreements, shall not be executors of last wills. (Bw.108,330,426v.,433,1329v.,1798;Civ.1028v.)

Article 1007. The testator may grant the executors of last wills possession of all or part of the assets in the inheritance. In the first instance, possession shall extend to the immovable as well as movable assets. The possession shall not by law continue for a period of more than one year, effective as of the date on which the executors took possession of the assets. (Ov.43;Bw.833,955,1013;Civ.1026)

Article 1008. If all the heirs are in agreement, they may cease possession, provided that they allow the executors of the last wills to settle payment or deliver the absolute and unconditional legacies, or that they seek evidence from them that the legacies have already been fulfilled. (Bw.1012;Civ.1027)

Article 1009. The executors of a last will shall seal the inheritance, in the event that the heirs are minors under conservatorship, who, at the death of the testator have not been provided with guardians or conservators, or in the event that such heirs are not represented or are not present in person. (Ov.42,100v.;Bw.463v., 1073v.;Rv.652v.;Civ.1031)

Article 1010. They shall prepare an estate description of the assets in the inheritance, in the presence of the heirs following the proper summons of those who reside within Indonesia. (Bw.1018;Rv.672v.;Civ.1031)

Article 1011. They shall ensure that the last will of the deceased shall be implemented, and in the event of dispute, they can appear in court to maintain the validity of the last will. (Bw.959,1013;Civ.1031)

Article 1012. In the event that the required funds are not available for the vesting of the legacies, the executors shall be authorized to dispose of the movable assets of the \*280 estate, and if necessary, in

addition, one or more of the immovable assets, subject to the fact that the latter mentioned requires the approval of the heirs, or in the absence of this, the approval of the judge, given in public and in accordance with the local customs; provided that the heirs agree to this course of action in order to vest the pecuniary legacy. The sale may also be conducted privately, if all the heirs agree to such, without prejudice to the provisions regarding minors and individuals under conservatorship. (Ov.44;Bw.389,393v.,452,1008,1014,1034;Civ.1031)

Article 1013. The executors who have possession of the estate shall be authorized to, notwithstanding that it may be in court, claim the debts, which during their possession have matured and are collectible. (Bw.1007,1011)

Article 1014. They shall not be authorized to sell the assets comprising the inheritance, to divide or distribute them, but they must, upon termination of their management, account for their actions to the interested parties, and deliver all assets and stocks which form part of the estate and a final account, to be divided and distributed among the heirs. They shall assist the heirs in relation to the division, if the heirs so require. (Bw.1012,1018;Rv.99;Civ.1031)

Article 1015. The power of the executor of a last will shall not devolve upon to his heirs. (Bw.1005,1819;Civ.1032)

Article 1016. If there are several executors of a last will, who have accepted this role, each executor can act in the absence of the others, and they are separately liable for the entire management, unless the testator has divided their functions in which case each executor shall be responsible for the task assigned to him. (Bw.1005,1019,1021,1280,1806;Civ.1033)

Article 1017. The expenses incurred by the executor of a last will for the sealing, estate description, balance sheet, and all other matters related to his role, shall be charged to the estate. (Bw.410,1011,1013,1041;Civ.1034;Succ.39;Bb.1458)

Article 1018. Any stipulation by the testator that releases the executor of the last will from the requirement to draft an estate description, or the preparation of a balance sheet, shall be void by law. (AB.23;Bw.1010,1014)

Article 1019. Without prejudice to previous stipulations regarding use of proceeds, testamentary dispositions through hands, and minors and individuals under conservatorship, the testator, may, by last will or by specific notarial deed, appoint one or more managers to manage the assets left to his heirs or legatees, during their lives or for a specific period of time, provided that it shall not interfere with the unobstructed vesting of the legal share of the heirs. The stipulations of article 1016 are applicable in this regard. (Bw.307,385v.,441v.,464v.,785v.,913,978,1020).

\*281 Article 1020. In the event that the testator has not appointed any individuals to replace absent managers, the court of justice, having heard the prosecution counsel, shall be responsible for same. (Bw.307,792,979)

Article 1021. No one shall be obligated to accept the position of executor of a last will or of manager of an inheritance or legacy; however, once he has accepted such task he must complete it. (Amended by S.28-210) If the testator has not provided for specific compensation for the executor's tasks, or has not given a specific legacy to him, then the executor shall be authorized on his own behalf or, if there is more than one executor, they shall be authorized on behalf of all of them to claim the same amount of compensation as that which is extended to guardians in accordance with article 411. (Ov.80;Bw.1005,1800)

Article 1022. The executors of last wills, including the managers, referred to in article 1019, may be discharged for the same reasons applicable to discharge of guardians. (Bw.373,380v.)

## **Chapter XV**

### **Concerning the right of deliberation and the**

#### **privilege of estate description**

Article 1023. All individuals, to whom an inheritance has been left, and who choose to inspect the condition of the inheritance in order to determine whether it is of benefit to them to accept such inheritance whether absolutely or due to the privilege of estate description, or to reject such inheritance, shall be entitled to deliberate thereon, and shall submit a statement thereof to the court clerk at the court of justice, within whose jurisdiction the inheritance has become available; the statement shall be recorded in the register designated thereto. (S.46-135 art.5) (Amended by S.25-497) In locations which have been separated by the sea from direct contact with the seat of the court of justice, this statement may be submitted to the residential judge, or in the absence or unavailability of such person, the head of the local government, which official shall then record this and forward such information to the court of justice, who shall then carry out the registration. (Ov.14,45v.; Bw.23, 132v., 138, 153, 401, 452, 477, 833,1028,1043,1044,1046,1051;Rv.694;Civ.793v.;Bb.379;T.XIII-335)

Article 1024. The heir shall be granted a period of four months, effective from the date the statement was made, within which to have the estate described and to deliberate. The court of justice shall be authorized to extend the above stipulated term, if the heir is being prosecuted due to urgent reasons. (Bw.134,1029,1030,1042,1048;Rv.672v.,694v.;Civ.795.798)

Article 1025. During the period stipulated for deliberation, the heir shall not be obliged to accept the status of heir. They cannot be convicted by a court, and the enforcement of judgments, which were passed in respect of the deceased, shall be postponed. He shall be obliged, as a proper head of the household, to be responsible for the assets of the inheritance. (Bw.833,1235,1992; Rv.135,648;Civ.797)

Article 1026. During the course of his deliberation, the heir shall be authorized to request permission from the judge, to sell several objects which are not required or which cannot be kept, also to commit acts which cannot be postponed. The manner of sale shall be determined by court approval. (Bw.1028,1034,1049;Rv.694v.;Civ.796)

Article 1027. The judge may, at the request of the \*284 interested parties, stipulate such measures which he deems necessary for the maintenance of the assets comprising the inheritance as well as the interests of third parties. (Bw. 1023)

Article 1028. The head of the local government shall have the same authority in the locations referred to at the end of article 1023, as that which has been granted to the judge in the previous article, and the approval referred to in article 1026 may be requested from that official. (Bb.379)

Article 1029. After the expiration of the term stipulated in article 1024, the heir may be forced to reject the inheritance, or accept it, either absolutely or based on the privilege of estate description. In the latter mentioned instance, a statement shall be made in respect thereof in the same manner as stipulated in article 1023. (Bw.484,1030,1042,1044;Civ.793v.,798)

Article 1030. Even after the expiration of the term, the heir shall have the option to have the estate described, and to accept such based on the privilege of estate description, unless he has acted as an absolute heir. (Bw.1046,1048v.,1055;Civ.800)

Article 1031. The heir shall lose the privilege of estate description, and shall be regarded as an absolute heir as follows: 1. if he, to his knowledge and in bad faith, has not included several assets belonging to the inheritance, in the estate description; 2. if he has been guilty of embezzling assets belonging to the inheritance. (Bw.137,1042.1064;Civ.801)

Article 1032. The privilege of estate description shall have the following consequences:

1. the heir shall no longer be obliged to settle the debts and encumbrances of the inheritance, other than to the extent of the value of the assets covered by the inheritance, and he may in addition be released from the obligation to make any payments, by leaving all assets, belonging to the inheritance, at the disposal of the creditors and legatees;

2. that the personal assets of the heir shall not be mixed with the inheritance, and that he shall reserve the right to set off his personal loans against the inheritance. (Bw.1086,1100v.,1402,1436,1991;Rv.697;Civ.802)

Article 1033. The heir who has accepted the inheritance under the privilege of estate description, shall be obliged to manage the assets belonging thereto as a proper head of the household, and to

administer the estate if possible; he shall be responsible to the creditors and legatees. (Bw.1034v.,1048,1235;Rv.764;civ.804)

Article 1034. He shall not dispose of the movable and the immovable assets of the inheritance in any manner other \*285 than in public, and in accordance with the local customs or through brokers or agents in the event that there are any commercial goods in the estate. He shall be obliged to settle with the creditors in respect of any mortgaged assets in the event of sale of immovable assets which are encumbered, by means of authorizing the creditors to collect the amount owed from the buyer. (AB.15;Bw.389,393,1026,1037,1210v.,1417;Rv.695;Civ.805v.)

Article 1035. He shall be obligated, if the creditors or other interested parties so claim, to provide sufficient security to the value of the movable assets included in the estate description, and to the value of that part of the immovable assets which has not been granted to the creditors. In the event that he fails to put up the security, the movable assets shall be sold, and the proceeds therefrom as well as the part of the immovable assets that has not been assigned shall be placed with a party to be nominated by the judge, to settle the debts and encumbrances of the inheritance to the extent that they do not exceed the value of the estate. (Bw.509v.,1034,1162v.,1736v.,1827;Rv.696;Civ.807)

Article 1036. Within a period of three months, effective as of the expiration of the term stipulated in article 1024, the heir shall be required, by means of a publication in a official newspaper, to summon the unknown creditors, for the purpose of immediately submitting an account of his management to those creditors which are known and unknown, and to legatees, and to settle their debts and legacies, to the extent that they do not exceed the value of the estate. (Bw.1030,1033v.,1039,1130;Rv.177v.;Weesk.67)

Article 1037. Following the settlement of the account, the heirs shall settle the claims of the creditors, which are known at that time, either in full, or in proportion to the value of the inheritance. The creditors who appear after the settlement, shall, pursuant to their appearance, only be paid from the unsold assets and the residue. (Bw.1034.1039v.,1130;Civ.803)

Article 1038. In the event that there is any objection, the creditors cannot be paid, in any manner other than in order of priority, regulated by the judge. (Bw.1130;Rv.483v.,547v.;Civ.808)

Article 1039. The legatees cannot demand the settlement of their legacies, until after the expiration of the term stipulated in article 1036, and after the total settlement which is mentioned in article 1037. The creditors who appear after the settlement of the legacies, may only claim compensation from the legatees. Such claim for compensation shall expire after a period of three years, following the date on which payment has been made to the legatee. (Bw.959,1138;Civ.809)

Article 1040. An heir, who has accepted the inheritance \*286 under the privilege of estate description, cannot be personally liable for the testator's debts, unless, having been reminded to submit an account, he has failed to do so. Following the settlement of the account, his personal assets shall be used only to settle the accounts, which derived from the inheritance, and came into his hands. (Bw.1031v.,1036,1100v.;Civ.803)

Article 1041. The expenses incurred in the sealing, estate description, and the drawing up of the account, including all other valid expenses shall be charged to the inheritance. (Ov.100v.;Bw.1017,1024,1130;Rv.652v.;Civ.810)

Article 1042. The stipulations of article 1024, 1031 and thereafter are also applicable to heirs who, without having exercised the right to deliberate, have accepted an inheritance under the privilege of estate description by submitting a statement, as stipulated at the end of article 1029. (Bw.1036; Civ.793)

Article 1043. Any stipulation by the testator prohibiting the exercise of the right to deliberate and the privilege of estate description, shall be null and void.

## **Chapter XVI**

### **Concerning the acceptance and rejection of inheritances**

#### **Section 1**

##### **Concerning the acceptance of inheritances**



Article 1044. An inheritance may be accepted either absolutely or under the privilege of estate description. (Bw.1023,1029;Civ.774)

Article 1045. No individual shall be bound to accept an inheritance granted to him. (Bw.1050,1334;Civ.775)

Article 1046. Inheritances granted to married women, minors and individuals under conservatorship, may not be accepted legally, without having regard to the legal regulations relevant to those individuals. Testamentary dispositions, referred to in article 900, and approved by the Governor General, shall only be accepted under the privilege of estate description. (Bw.108,115v.,120,124,194,330,401,429,452,1069;F.40;Rv.694v.;Civ.776)

Article 1047. The acceptance of an inheritance shall be effective retroactively until the date on which it becomes available. (Bw.541,833,955,1058;Civ.777)

Article 1048. The acceptance of an inheritance shall take place expressly or by implication; it is accepted expressly if an individual, in an authentic or private document, accepts the title or status of an heir; the acceptance shall take place by implication, if the heir commits an act which indicates his intention to accept, and which he would only be authorized to commit in his capacity as heir. (Bw.136v.,959,1030,1064,1382,1537;Civ.778,780)

Article 1049. Anything related to the funeral, or acts for the purpose of maintenance only or supervision or temporary management of the inheritance, shall not be regarded as acts which indicate the implied acceptance of an inheritance. (Bw.136,1026,1979v.;Civ.779)

Article 1050. If the heirs disagree as to whether or not to accept an inheritance, one can accept and the other can reject. If heirs disagree regarding the manner of acceptance of an inheritance, then this shall be accepted under the privilege of estate description. (Bw.135,1029,1045;F.40;Civ.782)

Article 1051. In the event that the party to whom the inheritance was granted, dies, without having rejected or accepted such, his heirs shall be authorized to accept or reject the inheritance in his place, and the stipulation of the previous article shall apply to them. (Bw.134,833,1056;civ.781v.)

\*289 Article 1052. An individual, who has accepted his share in an inheritance, shall not reject the share, which is due to him by virtue of an increase, except in the circumstances referred to in article 1054. (Bw.1002,1059)

Article 1053. Willingness by an adult to accept an inheritance cannot be totally renounced unless such willingness was caused by duress or fraud committed against him. He cannot deny his acceptance, because of being jeopardized by it, unless the inheritance has been reduced by more than one half as a result of the discovery of a provision in the last will that was unknown at the time of acceptance. (Bw.1065,1112,1321,1323,1328,1449v.;civ.783)

Article 1054. The share of an heir, which has been reinstated in its entirety in respect of his acceptance, shall not belong to his co-heirs due to increase, but rather due to their willingness to accept. (Bw.1002,1052v.,1059)

Article 1055. The right to accept an inheritance shall expire after a period of thirty years, effective as of the date on which the inheritance becomes available, provided that, prior to or after such period the inheritance has been accepted by one of those who, by law or pursuant to the last will, are entitled thereto; however, without prejudice to the legal rights of third parties to the inheritance. (Bw.832,874,1056,1062,1976;Civ.789).

Article 1056. An heir, who has rejected the inheritance, may subsequently accept such, provided that the inheritance has not been accepted by those who by law or last will are entitled thereto, without prejudice to the rights of third parties as regulated in the previous article. (Bw.832,874,1055;Civ.790)

## **Section 2**

### **Concerning the rejection of inheritances**

\*290 Indonesian Dutch

Article 1057. The rejection of an inheritance shall take place expressly, in the form of a statement submitted to the court clerk at the court of justice, in whose jurisdiction the inheritance has become available. (Bw.23,133,141,401,452,1046,1062;F.40;Civ.784;S.46-135 art.5) The end of article 1023 shall also apply to this statement.

Article 1058. (Amended by s.35-486) An heir who rejects an inheritance, shall be regarded as if he had never been an heir. (Bw.833,955,1047,1056;Civ.785)

Article 1059. (Amended S.35-486) The share of an individual who has rejected an inheritance, shall devolve upon those, who would have been entitled, in the event that the individual who has rejected the inheritance was not alive at the time of the death of the testator. (Bw.135,832,861,914,1002,1052,1054,1060v.,1126;Civ.786)

Article 1060. An individual, who has rejected an inheritance, may never be represented by proxy; if he is the only heir in that degree, or if all heirs reject the inheritance, then their children, shall inherit equal shares on their behalf. (Bw.840,847,1059;Civ.787)

Article 1061. The creditors of an individual who are disadvantaged by his rejection of the inheritance, may be authorized by a judge to accept the inheritance on the individual's behalf. In this regard, the rejection of the inheritance may only be canceled to the extent that it benefits the creditors and to the extent that it amounts to their debt claims; such rejection shall not be canceled for the benefit of the heir who has rejected the inheritance. (Bw.135,977,1059,1131,1341;F.41;Civ.788)

Article 1062. The right to reject an inheritance shall not expire. (Bw.1055v.,1967;Civ.789)

Article 1063. An individual may not, even by provision in a prenuptial agreement, surrender the inheritance from an individual who is still living, neither may an individual transfer the rights to such inheritance which he is due to acquire after a certain period. (AB.23;Bw.141,1254,1334,1537;Civ.791)

Article 1064. Heirs, who have lost or hidden the assets, belonging to an inheritance, shall lose the right to reject the inheritance; they shall remain absolute heirs, notwithstanding their rejection, and they shall not be \*291 entitled to claim any part of the lost or hidden assets. (Bw.137,1031,1048;Civ.792)

Article 1065. No individual may be reinstated in the position they were in prior to rejection of an inheritance, other than in the event that such rejection resulted from deceit or duress force. (Bw.1053,1321,1323,1328,1449)

## **Chapter XVII**

### **Concerning conservatorship**

#### **Section 1**

#### **Concerning estate division and the consequences thereof**

Article 1066. An undivided estate shall not have to remain undivided. Division of the estate may, notwithstanding any conflicting prohibition, be demanded at any time. It may however, be agreed not to carry out the estate division during a specific period of time. Such agreement shall be binding for five years only, but may be extended upon expiration of each term. (Ab.23;Bw.127,405,408,573,888,1621;Rv.99,102,689;Civ.815)

Article 1067. The creditors of the testator, including the legatees shall be entitled to oppose the estate division. The deed of the estate division, drawn up after such opposition and prior to compliance with that which was due and collectable during the opposition, for the benefit of the creditor or legatee, shall be void with regard to such creditor or legatee. (Bw.1341;Civ.882)

Article 1068. With regard to a lawsuit filed against the estate division, expiration may only be invoked by the heir or co-heir, who, separately, during the time claimed for the expiration, has had possession of the assets, belonging to the estate, but not exceeding the value of such assets. (Bw.835,1963,1967;Civ.816)

Article 1069. In the event that the heirs have free use of their assets and are in attendance, the estate division shall take place in such manner and pursuant to such deed as they shall deem appropriate. (Bw.490;Civ.819)

Article 1070. The estate division cannot be demanded on behalf of those who do not have free use of their assets, other than by taking into consideration the requirements stipulated in the legal regulations with regard to such individuals. A husband may, without the cooperation of his wife, demand estate division or arrange such with regard to all the assets which constitute community property. With regard to the assets to which a wife is entitled and which do not form part of the community property, and in the event of a division of property between the spouses, the wife shall be entitled to demand estate division or assist in the implementation thereof, provided that she is assisted therein or authorized thereto by her husband, or by a judge. (Bw.105,108,110,112,114,119,124v.,140,155,164,186,307,309,383,401,405,452,463v.,1019;Civ.817v.,1449)

Article 1071. In the event that one or more of the interested parties refuse or fail to facilitate the \*294 implementation of the estate division, after being instructed thereto by legal judgment, the court of justice (if such has not already taken place upon the judgment) shall order that the orphans' chamber, upon letter of request of the parties with the most interest therein, shall represent the heirs who are guilty of refusal or failure in relation to the estate division, and shall manage their income; this is pursuant to the first section of the eighteenth chapter of the first book of this Civil Code. In this regard, as in the event that there are heirs who do not have free use of their assets, estate division cannot take place, other than in accordance with the stipulations in the following articles and failing such compliance, the estate division shall be rendered invalid, in the event of violation of any of the requirements, set out in articles 1072 and 1074. (Bw.309,406,452,463v.,490,1070;Rv.99;Civ.819,823,838)

Article 1072. (Amended by S.27-31 see also 390,421) The orphans' chamber shall be present at the estate division, pursuant to that which is stipulated in the first paragraph of article 417 of this civil code, together with the supervising guardian and the supervising conservator, in the event that the supervising guardianship or conservatorship has not been assigned to the orphans' chamber. (Bw.310,370,452;Bb.2314)

Article 1073. In the event that no estate description yet exists, it shall be drawn up in advance in a separate deed, or together with the estate division in one and the same deed, in accordance with the legal requirements. If, however, all the heirs, were present at the time of death of the testator, and have had free use of their assets, but have not drawn up an estate description, and subsequent changes in the condition of the estate have rendered it impossible to comply with the legal regulations regarding estate description, then the estate division shall be preceded by an accurate description of the estate as left by the testator, the changes which have occurred, and the present condition. The validity of the information shall be declared under oath before a notary by those who are and shall continue to be in possession of the undivided property. Refusal to take the oath and the reason therefor, shall be mentioned by the notary in his deed. (Bw.653v.,672v.;Civ.821)

Article 1074. The estate division shall be drawn up in a deed, before a notary selected by the parties, or in the event of a dispute, by a notary appointed by the court of justice at the request of the parties with the greatest interest. (Rv.686,690;Civ.834;Bb.2314)

Article 1075. In the event that the orphans' chamber refuses to approve the draft of the deed of estate division, and the heirs and their representatives (to the extent that such representation has not been assigned to the orphans' chamber) are of the opinion that there are no grounds for such refusal, the orphans' chamber shall submit the reasons for their refusal, and this shall be noted by the notary in his \*295 official report. The draft deed of estate division, certified by the orphans' chamber and the notary, shall be submitted, together with a copy of the official report, by the notary to the court clerk at the court of justice, or shall be forwarded in a sealed envelope, in the event that such official resides further than twenty poles from the seat of the court of justice. The official report of the notary and the drafted deed of estate division shall not be liable to stamp duty. The heirs, or those having the most interest, may submit their objections in a letter of request, to be filed with the court of justice. The court shall then, after having heard the interested parties and the orphans' chamber, and the prosecution counsel, pass judgment at the highest instance. (Bw.417;Rv.318) In the event of approval, the estate division shall thereupon be implemented before a notary, in accordance with the draft, which after having been certified by the president and the court clerk, shall be returned to the notary and shall be attached to the official report prepared by him. (Rv.691)

Article 1076. (Amended by S.27-31 see also 390,421) If the heirs, or one or more of them are of the opinion that several or all of the immovable assets of the estate, whether to be used for settlement of debts or to implement proper division in the interest of the estate, must be sold, the court of justice, may, after hearing the other interested parties or after having properly summoned them, order the sale, in accordance with the legal stipulations in the Regulations regarding civil procedures, on condition that, in the event that the sale takes place in public, supervising guardians and conservators must be present or must have been properly summoned. If one of the heirs purchases part of an immovable asset, it shall have the same effect with regard to him, as if he had acquired it through the division. (Bw.393,1070,1083;Rv.683v.;Civ.827)

Article 1077. The appraisal of the assets forming part of the estate at the time of the estate division shall take place as follows: stocks, debts and shares in companies, which are mentioned in the price publications, drawn up and issued upon public authority, shall be appraised according to the price publications; the value of other movable assets, shall be that at which they were appraised in the estate description, unless one or more heirs seeks a further appraisal by an expert; the value of immovable assets shall be that which is agreed by three experts. (Rv.675-3;Civ.824v.)

Article 1078. The experts shall be nominated by the interested parties, or in the event of dispute, at the request of the party having the largest interest, by the court of justice within whose legal jurisdiction the inheritance becomes available, and to the extent of the valuation of the immovable assets, by the court of justice within whose legal jurisdiction the assets are located. \*296 Agents shall carry out the valuation, upon oath sworn at the commencement of their service. Other experts shall, prior to the valuation, be sworn in by the head of the government at the location where the inheritance is available, or to the extent that it concerns the valuation of the immovable assets, by the head of the government at the place where the assets are located. (Bb.379) If the parties, in relation to the immovable assets which are located outside Indonesia, cannot reach an agreement regarding the nomination of the experts, the court of justice shall regulate the manner in which the valuation shall be carried out. (Bw.390;K.62;Rv.216v.)

Article 1079. Following the arrangements regarding collation and that which is owed by the estate to one or more heirs for any reason, the remainder of the estate and the share of each heir or branch of the main stock shall be stipulated. Thereafter, upon the mutual approval of the interested parties, each individual's share in the assets shall be allocated by division and in the event that there are grounds therefor, payment shall be made of a sum equal to the share due. If the interested parties do not approve such allocations, the land shall be divided into the number of parcels which equals the number of heirs or branches of the main stock, and the allocation of the parcels shall be decided by lottery. The sub-division of assets belonging to a branch of a main stock shall take place in the same manner. Any dispute regarding the allotment of parcels and sub-divisions shall, upon request of the parties having the largest interests, be decided by the court of justice, in the manner stipulated in the fourth paragraph of article 1075. (Bw.1086v.,1102;Rv.691;Civ.828v.)

Article 1080. Following the distribution by lot, the heirs shall be authorized to exchange the parcels allocated to them, provided that this shall take place prior to the execution of the deed of division and shall be mentioned therein. This exchange shall have the same consequences as if the exchanged assets had been acquired upon the division. Such an exchange can, in the same manner and with the same consequences, also apply to that part of the assets allocated between heirs who have free use of their assets. (Bw.1069,1071v.,1074v.;Civ.834)

Article 1081. The papers and evidence of title, of the assigned assets, shall be submitted to the individual to whom the assets have been assigned. If the documents relate to assets assigned to one or more heirs, they shall be kept by the individual, to whom the most significant portion of the assets has been assigned, who shall then be obligated to make them available for inspection by the co-heirs, and if any one of them so requires, to issue copies or summaries, at their own cost. (Bw.1082;Civ.842)

Article 1082. All of the estate documents shall be kept by the individual nominated by the majority of heirs, or in the \*297 event of a dispute, by the court of justice, at the request of the parties having the largest interests, who shall be required to display the document and to issue copies and summaries, pursuant to the stipulations in the previous article. (Bw.1885;K.35;Civ.842)

Article 1083. Each heir shall be deemed to immediately succeed the testator in title to the assets resulting from allocation or purchase pursuant to article 1076. None of the heirs shall be considered to have held title at any stage to the other assets of the inheritance. (Bw.568,832v.874,955,1079,1166,1183;Civ.883)

Article 1084. The co-heirs shall be required, in proportion to their share, to indemnify one another against all disturbances and claims, arising from causes which existed prior to the division, including indemnification in respect of the solvency of individuals who owe interest or other debts. The indemnification shall not take place, if it has been specifically excluded, by a special and express stipulation in the deed of estate division. It shall cease, if a charge has been filed against a co-heir due to his own fault. The indemnity in respect of the solvency of individuals who owe interest or other debts on the estate shall be due only if the debt claim against one of the heirs has been filed for the full amount, and if it has been proven by such heir, that the debtor was insolvent at the time of preparation of the deed of estate division. The claim for an indemnity, mentioned in the previous paragraph, cannot be filed after the expiration of three years from the estate division. (Bw.1183,1492v.,1537,1967;Rv.70v.;Civ.884,886)

Article 1085. In the event that one or more heirs are incapable of providing their share due in respect of compensation, pursuant to the indemnity given to their co-heirs, then their liability in respect of the share due, shall be transferred in proportion to their share in the inheritance to those who are secured and the co-heirs who are capable of paying. (Bw.1101,1104,1183,1293;Civ.885)

## **Section 2**

### **Concerning collation**

Article 1086. Without prejudice to the obligation of all heirs in respect of payment to or settlement with their co-heirs of any amount that they owe to the estate, any inter vivos gifts, which they have received from the testator, shall be returned by the following: 1. by the heirs in the descending line, legal or natural, whether they have accepted the inheritance absolutely or under to the privilege of estate description; whether they have been summoned for the legal inheritance share or more than that; unless the gifts have been made with an express guarantee of collation, or the beneficiary by an authentic deed, or by last will, has been released from the obligation of collation; 2. by all other heirs, either upon death, or by last will, but only in the event that the testator or donor has expressly instructed or stipulated the collation. (Bw.914,922,1087v.,1096v.,1099,1666v.,1682;Civ.843v.)

Article 1087. An heir, who rejects an inheritance shall not be obliged to return that which was granted to him, other than for the purpose of supplementing such portion which would reduce the legal inheritance share of his co-heir. (Bw.914v.,1057,1088;Civ.845)

Article 1088. If the collation exceeds the inheritance share, the excess shall not be required to be returned, without prejudice to the stipulation in the previous article (Civ.845)

Article 1089. Parents shall not be obliged to return the inter vivos gifts granted to their child by the grandparents. Also, a child who inherits directly from his grandparents shall not be obliged to return the gift which has been granted to his parents by his grandparents. However, a child, who receives such inheritance by substitution, shall return the gifts which have been granted to his parents, even if the child has rejected the inheritance from his parents. In the event of such rejection, the child shall, not be liable for his parents' debts with respect to his co-heirs in the inheritance from his grandparents. (Bw.840v.,1058,1060,1086,1100,1132 see also 912;Civ.847v.)

Article 1090. Gifts granted to a spouse by one of the parents of the other spouse, shall not be subject to even half of the collation, even though the objects form part of the community property. If the gifts were granted to both spouses by the father or the mother of one of them, then one half of the gift shall be included in the collation. \*299 If the gift to the spouse has been given by his own father or mother, the entire gift shall be included in the collation. (Bw.120,176v.,1086;Civ.849)

Article 1091. The collation shall only take place in the inheritance of the donors; this collation is only owed by one heir for the benefit of the other. No collation shall be required for the benefit of legatees, or creditors of the estate. (Bw.920;Civ.850,857)

Article 1092. Collation shall take place, either by returning that which was enjoyed to the estate in its original condition, or by receiving that amount less than the other heirs. (Bw.1093-1095;Civ.858)

Article 1093. The collation of immovable assets may take place at the option of the persons effecting collation, either by returning these in the original condition that they were in at the time of the collation, or by contributing the value thereof, as at the time the gift was granted. At the first instance the person effecting collation shall be responsible for the depreciation of the assets which occurred due to his fault,

and shall be obligated to release them from the encumbrances and the mortgages imposed by him. All necessary expenses incurred for the maintenance of the property, and the maintenance charges shall, equally be reimbursed to the person effecting collation, in accordance with the rules in the chapter relating to use of proceeds. (Bw.575v.,793v.,925,928,1210v.;Civ.859-865)

Article 1094. The collation of cash shall occur at the option of the person effecting collation by payment of such amount, or by deducting such amount from the inheritance share to which he is entitled. (Bw.1092;Civ.869)

Article 1095. The collation of movable assets shall take place, at the option of the persons effecting collation, by returning an amount to the value thereof at the time of the gift, or by returning the assets in their original state. (Bw.1093;Civ.868)

Article 1096. In addition to the gifts in article 1086 which are subject to collation, that which has been granted to the heir for the purpose of providing him with status, a profession or business, or for settlement of his debts, and that which has been given into the marriage shall be returned. (Bw.124,320,1451;Civ.851)

Article 1097. The following shall not be subject to collation: expenses incurred in maintenance and education; allowances for necessary cost of living; expenses incurred for the studying of an area of commerce, art, handicraft or business; expenses incurred in studying; expenses incurred in substitution or exchange of numbers in the State's armed forces; expenses incurred in relation to the wedding, clothes and jewelry bestowed as part of a wedding trousseau. (Bw.104,129,193,230,298,312,320v.,1086,1096;Civ.852)

\*300 Article 1098. The interest and proceeds of anything subject to collation shall be due from the date that the inheritance becomes available. (Bw.927,1250;Civ.856)

Article 1099. Anything that is lost by accident and due to no fault of the beneficiary, shall not be required to be returned. (Bw.923,1093,1275v.,1444;Civ.855)

### **Section 3**

#### **Concerning the settlement of debts**

Article 1100. The heirs, who have accepted an inheritance, shall in the settlement of debts, legacies and other encumbrances, be responsible therefor proportionately to that which they have received from the inheritance. (Bw.798,800,959,1032,1040,1089,1104,1299v.,1310v.;Rv.99;Civ.870)

Article 1101. They shall be personally responsible for such payment, each in proportion to the amount of his share in the inheritance, without prejudice to the rights of the creditors to the entire inheritance, to the extent that this is still undivided, including the rights of the mortgage creditors. (Bw.1067,1084,1100,1105,1107,1163,1198,1300;F.198v.;Rv.7;Civ.873)

Article 1102. If the immovable assets belonging to the estate are encumbered by mortgages, each of the co-heirs shall have the right to claim that such encumbrances shall be settled from the estate, and that the assets shall be released from such encumbrance, prior to their division into parcels. If the heirs divide the inheritance in its present condition, the encumbered immovable assets shall be estimated in the same manner as the other immovable assets; thereafter, the principal sum in respect of the encumbrance shall be deducted from the total value of the assets, and the heir, to whom the immovable asset is due, shall then be singly charged with the settlement of the debts and shall indemnify the other heirs against any lawsuit in respect of such debts. If the encumbrance is imposed on the immovable asset only and does not relate to any person, none of the co-heirs may claim that the encumbrance shall be settled, as a result of which the immovable asset shall be included in the division, after deducting the principal sum in respect of such encumbrance. (Bw.737v.,1162,1297,1300,1302;Civ.872)

Article 1103. An heir, who pursuant to a mortgage, has paid more than that which he is liable for in respect of a joint debt, may claim back from each of his co-heirs that which each of them should have personally contributed to the debt. (Bw.1100,1300,1402-3;Civ.873,875)

Article 1104. In the event that one of the co-heirs becomes insolvent, his liability under the mortgage debt shall be imposed on the others, in proportion of the respective inheritance shares. (Bw.1085,1100,1293;Civ.876)

Article 1105. A legatee shall not be subject to debts and encumbrances of the inheritance, regardless of the right of \*302 the mortgage creditor to claim the devised immovable asset. (Bw.965,1039,1101,1163,1198;Civ.871,1024)

Article 1106. In the event that the legatee settles the debt which was secured by the devised immovable asset, he shall by law assume the rights of the creditor, in relation to the heirs. (Bw.965,1101,1202,1208,1402;Civ.874)

Article 1107. The creditors and the legatees of the deceased may claim from the creditors of the heir that the estate of the deceased shall be separated from that of the heir. (Bw.1032,1100v.,1131v.;F.199;Rv.653-2;Civ.878)

Article 1108. If the creditors or legatees have filed their legal claim for separation within a time period of six months after the inheritance becomes available, they shall be entitled to record their claim in the public registers designated thereto, beside each piece of immovable asset, belonging to the inheritance, with the result that, following registration, the heir shall be prohibited from transferring or encumbering such asset, thereby jeopardizing the rights of the creditors of the inheritance. (Ov.29;Bw.1188;Civ.2111)

Article 1109. Such right, however, cannot be exercised, in the event of a renewal of an outstanding debt claim against the deceased in which the heir shall be regarded as the debtor. (Bw.1413v.; Civ.879)

Article 1110. The same right shall expire after a period of three years has elapsed. (Bw.1084,1116,1124;Civ.880)

Article 1111. The creditors of the heir shall not be entitled to claim separation of the estate against the creditors of the inheritance. (Bw.1107,1341;Civ.880)

#### **Section 4**

##### **Concerning the nullification of estate division**

Article 1112. Estate divisions may be nullified as follows: 1. due to force; 2. due to deceit, by one or more participants; 3. due to damage to more than one quarter of the inheritance. The omission from division of one or more objects, belonging to the estate, shall result in the grant of the right to claim a further division. (Bw.1053,1076,1085,1115,1120,1122,1168v.,1321v.,1325,1328,1449;Rv.99;Civ.887)

Article 1113. To determine whether damage has occurred, the assets shall be evaluated at their value at the time of the division. (Civ.890)

Article 1114. The individual against whom a claim for nullification has been filed on the grounds of damage having occurred, may prevent re-division by providing the claimant with either cash, or the property in its original state to the value of that which is missing from the claimant's share.. (Bw.1112-3,1117;Civ.891)

Article 1115. The co-heir, who has disposed of the entire allotment or part thereof, shall not request nullification of the estate division, pursuant to force or deceit, if the disposal took place after the force ceased to have effect or after the discovery of the deceit. (Bw.1112-2,1327;Civ.892)

Article 1116. The legal claim for nullification shall expire after a period of three years has lapsed, effective as of the date of the estate division. (Bw.1084, 1110, 1124)

Article 1117. The legal claim for nullification shall be made with respect to each deed the purpose of which is to divide the estate among the co-heirs, regardless of whether the deed is drafted as a deed of sale, purchase, exchange, or agreement and similar such deeds. However, if the estate division, or a similar deed, has been concluded, no nullification may be requested of an agreement which is made to eliminate the objections mentioned in the first deed. (Bw.1457,1541,1851,1858;Civ.888)

Article 1118. The legal claim for nullification of estate division shall not be admitted in respect of the sale of a succession right, without any deceit to one or more of the co-heirs for their benefit or to their disadvantage by the co-heir or done by one of them. (Bw.1321,1327,1449,1537;Civ.889)

Article 1119. No re-division, implemented after the \*304 nullification of the estate division, may jeopardize rights previously legally acquired by third parties.

Article 1120. Any renunciation of the right to request nullification of a division shall be invalid. (AB.23)

## **Section 5**

### **Concerning estate division implemented by blood relatives in the ascending line among their descendants or between these and the surviving spouse**

Article 1121. (Amended by S.35-486) The blood relatives in the ascending line shall by last will, or by notarial deed, among their descendants or between their descendants and the surviving spouse, determine the division and separation of their assets. (Bw.852,852a,875v.,893;Civ.1075v.)

Article 1122. If all the assets left upon the death of the blood relative in the ascending line, are not included in the division, then the undivided assets shall be distributed in accordance with the law. (Bw.1066v.,1112;Civ.1077)

Article 1123. If the division is not among all the children who were alive at the time of the testator's death, and his descendants, the division shall be deemed to be invalid. A new division in a legal format may be claimed, either by the children or descendants who did not receive their shares, and by the individuals among whom the division was made. (Bw.1066;Civ.1078)

Article 1124. (Amended by S.35-486) A division made in accordance with article 1121 may be disputed if the losses amount to more than one quarter. It may also be disputed, if the division, and any advance made with exemption from collation, shall reduce the legal inheritance share of one or more descendants. The legal claim in accordance with this article, shall expire after three years, effective from the date on which the testator dies. (Bw.913v.,920v.,1084,1086v.,1110,1112,1114v.;Civ.1079)

Article 1125. (Amended by S.35-486) The heirs, who, for one of the reasons expressed in the previous article, dispute the division, shall provide the costs required for the appraisal of the assets, and those costs shall be charged to them if their claim should prove to be unfounded. (Rv.58;Civ.1080)

## **Chapter XVIII**

### **Concerning ungoverned inheritances**

*Cf. S.72-203 see also 74-147,79-219,98-341,14-188,19-820,31-53 art. III, pg.365, 31-168 art.1 sub G.1, regulations regarding temporary government of military inheritance in Indonesia; 86-131 see also 31-55 art.III, government of inheritance of passengers deceased during ocean voyage, survivors or missing boat crew and passengers; 05-347, regulation related to the inheritance governed by the orphans' chamber, also of officers, junior officers and members of the army in Indonesia; 1919-298 sub V art.4, government of inheritance of Indonesian boat crew at the Royal Marine; 1910-68, inheritance of Indonesian boat crew Government Marine (art.24) Bb.5048, inheritance of minors or individuals under conservatorship, whose property is governed by the orphans' chamber upon their death. Bb.10117, provision of inheritance of foreign nationals to relevant consulate official in accordance with the stipulation in S.1900-201. With respect to Indonesian estates on Java and Madura see S.31-53 articles 34v., pg.159 and IR.235,Bb.3946)*

Article 1126. In the event that an inheritance becomes available, and no one claims it, or if the known heirs reject it, the inheritance shall be regarded as ungoverned. (Bw.520,832v.,1059,1128,1991;Civ.811)

Article 1127. The orphans' chamber shall by law be responsible for the government of each ungoverned inheritance, which has become available in their jurisdiction, regardless of whether the estate is solvent or insolvent. They shall be obligated to inform the prosecution counsel or the court of justice in writing of the acceptance of such government. (S.72-208 art.6) In the event of a dispute regarding whether the inheritance is ungoverned, the court shall, at the request of the interested parties or upon the



recommendation of the prosecution counsel, decide thereupon in the absence of a lawsuit, after having consulted the orphans' chamber. (Bw.417v.,1052v.,1130;Civ.812;Wsk.64,73)

Article 1128. The orphans' chamber shall be obligated to prepare an estate description, following the sealing, if it is deemed necessary, and to govern the estate and administer it. (Wsk.40,64;Rv.654) They shall be obligated to locate the heirs by summoning them in public newspapers or by other appropriate means. (Wsk.67;s.1856-73 art.11) They shall appear in court in relation to the legal claims which have been filed against the inheritance, and they shall exercise and continue all rights belonging to the \*308 deceased, and shall give an account of their government to the rightful party. (Bw.1010,1130;Rv.652v.,672,675, 678v.,684,698,777;Wsk.66,68,73; Civ.813)

Article 1129. In the event that no heir appears, within a period of three years following the date on which the inheritance became available, the final account shall be presented to the State, which shall be authorized to initially take possession of the inherited assets. (Bw.520,832v.,835,1059,1967;Wsk.73v.;Civ.770v.)

Article 1130. (Amended by S.28-210) The stipulations mentioned in article 1036, 1037, 1038, 1039 and 1041 shall apply to the government of ungoverned inheritances. (Bw.1128;Civ.814;Wsk.67;Bb.1540)

## **Chapter XIX**

### **Concerning priority of debts**

#### **Section 1**

##### **Concerning priority of debts in general**

Article 1131. All movable and immovable assets of the debtor, either present or future, shall be regarded as securities for the debtor's personal agreements. (Rv.435v.,451v.,580v.,749v.;F.19v.;Civ.2092)

Article 1132. The assets shall serve as joint guarantees for his creditors; the proceeds thereof shall be divided among the creditor in proportion to their loan, unless there exists a legal order of priority among the creditors. (Bw.1133;Rv.482v.,547v.;Civ.2093)

Article 1133. The priority among creditors shall be based upon privilege, pledge and mortgage. (Oogtsv.) Pledge and mortgage shall be regulated in the twentieth and twenty first chapter of this book. (Bw. 1134v.,1150v.,1162v.;K.314,316,317,318,683;Civ.2094)

Article 1134. Privilege is a right acknowledged by the law applicable to one creditor over the other, based upon the nature of the debt. Pledge and mortgage are superior to privilege, with the exception of the circumstances in which the law expressly stipulates otherwise. (Bw.1132,1139,1149v.;Civ.2095)

Article 1135. The order of priority between creditors shall be regulated in accordance with the different nature of the priorities. (Bw.1138,1147,1149,1181;K.316,317,318;Civ.2096)

Article 1136. Creditors having the same priority, shall be paid equally. (Bw.1149-2 and 3; Civ.2097)

Article 1137. The priority of the State's treasury, the auction offices and other public institutions stipulated by high authority, the order in which they shall be implemented, and the time of the duration, shall be regulated by the relevant special legal ordinances. Associations or entities, which would have been authorized to or shall be further authorized to impose charges, shall be regulated by the ordinances already existing or to be further regulated. (Civ.2098)

Article 1138. The subject of the priorities may be specific assets or all movable and immovable assets in general. The specific assets shall have priority over the latter mentioned. (Bw.1139v.,1149v.; Civ.2099v.,2103v.)

#### **Section 2**

##### **Concerning priorities attached to certain specific assets**

Article 1139. The priority of debts in respect of certain specific assets shall be as follows: (Bw.1134,1138;K.80v.,316,317,318,683;F.230;Overg.bel.art.19;Venn.39;Verp.33;Verm .49;Loonb.25;S.33-516 art.18) 1. court charges which specifically result from the disposal of a movable or immovable asset. These shall be paid from the proceeds of the sale of the assets over all other priority debts, and even over a pledge or mortgage; (Bw.1134,1149-1;K.80;S.04-175;Rv.524) 2. the rent from immovable assets, the costs incurred in the repairs for which the lessee is responsible, including anything related to the compliance with the provisions of the lease agreement; (Bw.1140v.,1583;Oogstv.15) 3. unpaid consideration for the sale of movable assets; (Bw.1141,1144,1146,1478) 4. the costs incurred in the maintenance of the property; (Bw.575v.,1147v.,1150,1157,1364,1728,1752;K.371) 5. the wages owing to laborers for the work carried out to the property; (Bw.575v.,1147,1601v.,1608,1616,1752,1812,1968) 6. anything delivered to a traveler by an innkeeper; (Bw.1147,1709,1968) 7. freight costs and additional charges; (Bw.1147;K.91v.,491,493) 8. any amount due to bricklayers, carpenters and other workmen as a result of the renovation, addition to and repairs of immovable assets, including a debt which is in existence for not more than three years, and the title to a plot which has been held by the debtor; (Bw.1147,1608,1614v.,1971) 9. the compensation and payment for which public officials are responsible, due to negligence, error, violations and misdemeanor, which were committed during the course of their service. (Bw.1147,1225;civ.2102v.)

Article 1140. The lessor may apply his privilege to the fruit which are still attached to the branches of the trees, or by roots to the ground; furthermore, he shall also have priority in respect of the harvested fruit and fruit due to be harvested which are still on the ground, and anything on the ground, either to furnish the leased house or the orchard, for the planting or use of the land, such as cattle, the farming equipment and the like; regardless of whether or not the objects mentioned above belong to the lessee. (Oogstv.15) If the lessee has legally sub-leased part of the leased property to another individual, the lessor can no longer apply his privilege to objects which are found in or on such part only which comprises the part which has been \*312 sub-leased, and only insofar as the sub-lessee can prove compliance with the rent obligations in accordance with the lease agreement. (Bw.500,506v.,512,517,1139-2, 1559, 1581v., 1589v.; Rv.752;Civ.1753,2102-1)

Article 1141. The sale price still due in respect of purchased seeds and the costs incurred in respect of the harvest of the current year, shall be paid from the proceeds of the harvest, and the unpaid purchase price for equipment from the proceeds of such equipment and payment of such shall have priority over the outstanding rent to the lessor. (Bw.1144v.;Civ.2102-1)

Article 1142. The lessor may seize the movable assets to which he is privileged in article 1140, if such have been moved without his consent; and he shall retain this privilege, notwithstanding that these assets may be tied to a third party, by pledge or in any other manner, provided that he has legally claimed the objects within a period of forty days following the moving of the movable assets belonging to the orchard, and within fourteen days if the assets were used for the furnishing of the house. (Bw.1134,1150;Rv.751v.;Oogstv.15;Civ.2102-1)

Article 1143. The privilege of the lessor shall extend to the amount of rent due under a lease, for the duration of the last three years inclusive of the current one. (Civ.2102-1)

Article 1144. The seller of the movable and unpaid assets may apply his priority to the sale price of the assets, if they are still in the possession of the debtor, without distinguishing between whether he has sold the assets in time or without any time limits. (Bw.509v.,513,1141,1146,1478v.,1517;Civ.2102-4)

Article 1145. (Amended by S.38-276) If the sale was not subject to any time limits, the seller shall have the authority to re-claim the assets, to the extent they are still in the possession of the buyer, and to prevent the re-sale thereof, provided the reclamation occurs within thirty days after the delivery. (Bw.574; K.244; F.230; Civ.2102-1) (Supplemented by S.38-276) Articles 231, 233, 234, 236 and 237 of the Commercial Code shall also apply in this regard.

Article 1146. The seller, however, can only exercise his right after the right of the lessor of the house or the farm, unless it is proven that the lessor was aware that the furniture and other assets, to be used for the house or the orchard, have not been paid for by the lessee. (Bw.1141,1144;Civ.2102-4)

Article 1146a. (Supplemented by S.38-276) The right of the buyer shall lapse, if the assets, after having been in the possession of the original buyer or his representative, are purchased by a third party in good faith and delivered to him. If, however, the consideration for the sale has not been paid by such third party, then the original seller may claim the money in the amount of his sale price, provided that the

claim shall take place within a period of sixty days \*313 following the original delivery. (Bw.1144v., 1341; K. 230v.)

Article 1147. The priorities mentioned in articles 1139, No.4, 5, 6, 7, 8 and 9 shall be implemented as follows: No.4, in relation to the asset for which maintenance costs are incurred; No.5, in relation to the asset on which works have been carried out; No.6, in relation to the assets which have been carried to the inn by the traveler; No.7, in relation to the transported asset; No.8, in relation to the proceeds of the renovated, extended or repaired parcel plot of land; No.9, in relation to the amount of the security put up by the officials, and the interest accrued thereon. (Bw.1148,1830;Civ,2102-3-7;Bb.316)

Article 1148. If several priority creditors, mentioned in this section, appear together at the same time, then the costs incurred in the maintenance of the assets, shall have priority, in the event that they have been incurred after the time at which the other priority debts came into existence.

### **Section 3**

#### **Concerning the priorities in respect of all movable and immovable assets in general**

Article 1149. The priority loans in regard to the movable and immovable assets in general shall be as follows and shall be claimed in the following order: (Bw.1138v.) 1. the legal charges, exclusively caused by sale and saving of the estate; these shall have priority over pledges and mortgages; (Bw.1139-1;F.175;Rv.524,913;S.08-13 art.39;Venn.39;Verp.33;Vendu-regl.24;Overg.bel.art.19;Verm.49;Loonb.25;S.33-516 art.18) 2. the funeral charges, if they are excessive, without prejudice to the authority of the judges; (Bw.1136) 3. all costs incurred in relation to the last illness; (Bw.906,1136,1969) 4. (Amended by S.26-335 see also 458,565,27-108;27-31 see also 390,421;32-496;38-380,622;39-256,292,545;40-447 see also 556) laborers' wages during the last year and that which is due for the current year, including the amount of any raise of such wage pursuant to article 1602q; the amount of expenses incurred by a laborers for the employer; the amount owed by the employer to a laborer pursuant to article 1602v., par.4 of this Civil Code as well as article 7, paragraph 3 of the "Supplementary Planters Regulation", the amount owed by the employer to a laborer at the termination of his service pursuant to article 16038 or 16038 bis; the amount due by the employer to a laborer's family upon the worker's death, pursuant to article 13 paragraph 4 of the "Supplementary Planters Regulation"; whatever the employer, pursuant to the "1939 Accident Regulation" or the Ship Crew Accident Regulation 1949 is due to a laborer or ship crew or surviving relations including the debt claim pursuant to the 1939 Returned Laborers Regulations; (Bw.1969) 5. the debt claim against delivery of food to the debtor and his family, during the last six months; (Bw.821,1971) 6. the debt claims of boarding schools for the most recent year; (Bw.1969) 7. (Amended by S.27-31 see also 390,421;38-622) the debt claims of minors or individuals under conservatorship filed against their guardians and conservators, in respect of their management, to the extent that this cannot be compensated for by the mortgages or other security, which were put up pursuant to the fifteenth chapter of the first book of this civil code, including the payments due by the parents pursuant to the first book for the support and education of their minor legally acknowledged children. (Bw.335,413,452;F.230;Civ,2101,2104)

The following is stipulated pursuant to the ordinance of October 12, 1871, S.71-150:

\*315 Art.1. The debt claims of the State, resulting from advances made pursuant to article 49 (now:42) of the Law of April 23, 1864 (I.S.106) (Ind.Cometabiliteitswet law) shall be priority loans with regard to all movable and immovable assets in general. They shall immediately follow in order the priority loans mentioned in article 1149 of the Civil Code. Art.2. The supply of material from the State's storage facilities and warehouses shall be regarded as an advance. Art.3. The stipulation in article 1 shall not affect the priority extended to the State by the special legal ordinances in respect of the amount of security provided by officials. Pursuant to S.32-496 article II the following is stipulated: The State shall, in respect of all its claims against the employer pursuant to article 23 paragraph (6) of the Koelie-ord.1931 (S.No.94) as well as pursuant to article 3 paragraph 3 of the stipulation in "The Second" of the ordinance of October 3,1911 (S.No.540), have priority over all movable and immovable assets of the employer, taking rank after the priority debts mentioned in article 1149 of the Civil Code.

### **Chapter XX**

#### **Concerning pledges**

Article 1150. A pledge is a right which is obtained by a creditor in a movable asset, which has been provided to him by the debtor or his representative, to secure a debt, and which entitles the creditor

priority over the other creditors with regard to the settlement of the debt; with the exception of the costs incurred in the sale of the asset and the costs incurred, after the pledge, for the maintenance of the asset, which shall have priority. (Bw.528,1133v.,1139-1 and 4,1147,1149-1,1157,1830;K.314,365,371;F.56v.,230-1;Sw.509;Civ.2071,2073;S.03-402 see also 28-64,82;21-28,148,420;08-13; Verp.33; Octr.40; Venn.39; Overg.bel.art.19;Verm.49; Loonb.25; S.33-516 art.18) Pursuant to S.75-258, articles 1151-1156 are replaced by the following stipulations:

Article 1151. A pledge agreement shall be proven by the same means as those used for proving a principal agreement. (Bw.1866v.; Civ.2074)

Article 1152. A pledge right in respect of tangible movable assets and debts payable to bearer shall be established by placing the pledge in the power of the creditor or a third party, who has been mutually agreed upon by the parties. It shall not apply to assets, which are left in the power of the debtor or the pledgor, or which shall be returned if the creditor so desires. (Amended by S.17-497) It shall become void, if the pledge is no longer controlled by the pledgee. In the event that this occurs as a result of loss or transfer, he shall have the right to reclaim pursuant to article 1977, paragraph 2, and upon the return of the assets pledged, the pledge right shall be considered to have never been lost. The absence of authority of the pledgee to dispose of the assets cannot be denied by the creditor who has taken such assets in pledge, without prejudice to the right to reclaim by the individual who has lost the asset or from whom it was taken. (Bw.852, 613,1441,1474; Civ.2076)

Article 1152 bis. In addition to the endorsement, the delivery of the paper shall also be required to establish the pledge right on bearer paper. (K.110v.,176,191v.,457,508,531v.)

Article 1153. Pledge right to intangible movable assets, with the exception of those evidenced on bearer paper, shall be established by notification of the pledge to the individual, against whom the pledged right shall be exercised. He may claim written proof of the notification and the consent of the pledgees. (Bw.613; Civ.2075; Octr.Regl.18,20f, \*318 h; etc.)

Article 1154. The creditor shall not appropriate the pledge, if the debtor or the pledgor has not complied with his obligations. Any stipulations otherwise regulated shall be deemed to be invalid. (AB.23; Bw.1155v.,1178; Civ.2078)

Article 1155. Unless the parties otherwise stipulate, in the event that the debtor or the pledgor does not comply with his obligations, the creditor shall be authorized, following the lapse of a specific term or in the event that no specific term was stipulated, after a summons in respect of compliance, to sell the pledge in public pursuant to local customs and in accordance with the usual requirements, to settle the debt which shall include the interest and costs incurred from the proceeds of the sale. (Octr.42) In the event that the pledge is of commercial items sold at the market or securities traded on the stock market, then the sale can also take place in such locations, provided that two agents involved in such business shall act as intermediaries. (Bw.1156,1178; K.62v.)

Article 1156. In the event that the debtor or the pledgor fails to fulfill his obligations, the creditor may demand in court that the pledge shall be sold to satisfy the debt including the interest and costs, in the manner to be determined by the judge, or the judge shall admit the creditor's request that the pledge shall be retained by him, until an amount has been determined in the judgment to pay off the debt and the interest and costs. With regard to the transfer of the pledge in the events mentioned herein and in the previous article, the creditor is required to notify the pledgor by not later than the following day if there is a daily postal service or telegram communication, or else by the first departing mail. Notification by telegram or registered letter shall be regarded as proper notification. (Bw.1150,1153,1155,1238; Octr.42;Civ.2078)

Article 1157. The creditor shall be responsible for the loss or the depreciation of the property pledged, to the extent that this is caused by his negligence. However, the debtor shall be required to compensate the creditor for the necessary expenses, which the latter-mentioned has incurred in the maintenance of the land. (Bw.1139-4,1147,1150,1159,1235v.,1243v.,1391,1441,1444v.;Civ.2080)

Article 1158. If a loan is pledged, and interest accrues on this loan, the creditor shall set off the interest against the amount which is due to him. If no interest accrues on the debt secured by the pledged loan, then the interest received by the pledgee shall be deducted from the principal sum. (Bw.1152v.,1155v.,1718,1767; Civ.2081)

Article 1159. The debtor is not authorized to claim the return of the pledged assets unless the pledgee misuses these, prior to settling the full amount which shall \*319 comprise the principal sum as well as the interest and charges incurred upon the debt which has been secured by the pledge, including the charges incurred in respect of the maintenance of the pledge. In the event that a second debt arises between the same debtor and the same creditor, following the pledge, and collectible prior to the payment, or on the date of the payment of the first debt, the creditor shall not be obliged to dispose of the property pledged, prior to full settlement of both debts, even though no stipulations have been made to secure the pledge for payment of the second debt. (Bw.1150,1396,1967; F.57; Civ.2082)

Article 1160. The pledge cannot be divided, notwithstanding that the debt among the heirs of the debtor or of the creditor can be divided. The heir of the debtor who has paid his share of the debt, cannot claim the return of his share in the pledge until the debt has been fully settled. At the same time the heir of a creditor who has received his share in the debt, cannot return the pledge thereby jeopardizing the co-heirs who have not been paid yet. (Bw.1286v.,1402-3; Civ.273)

Article 1161. Revoked: S.38-276.

## **Chapter XXI**

### **Concerning mortgages**

#### **Section 1**

##### **General provisions**

Article 1162. A mortgage is a property right over immovable assets, created for the purpose of providing security for the compliance with an agreement. (Bw.528,1133v.,1139-1,1149-1,1163v.,1167,1198,1209-1; Oogstv.16; Civ.2114)

Article 1163. That right is by its nature indivisible and is attached to all secured immovable assets in their entirety, to each of the assets and to each part thereof. These assets shall remain encumbered, regardless of whom they are transferred to. (Bw.965,1101v.,1105v.,1198,1201,1296v.; K.297v.; F.230;Civ.2114)

Article 1164. Assets which can be mortgaged are as follows: (K.314) 1. immovable assets which can be traded, including all parts thereof, to the extent that the latter mentioned can be regarded as immovable assets; (Bw.506v.) 2. the use of proceeds of those assets and parts thereof; (Bw.756v.,772) 3. building and planting rights and the right to tenure by long lease ; (Bw.711v.,720v.,724) 4. ground rents due whether in cash or in its original state (Bw.737v.,1174) 5. the one tenth right; (Bw.737v.,1174) 6. the bazaars or markets, acknowledged by the government, together with the privileges attached thereto. (Rv.493; Civ.2118)

Article 1165. Mortgages shall extend to all further renovations of the encumbered asset, including anything which has become part thereof due to planting or additional development. (Bw.161,571,588,596v.,601; Civ.2133)

Article 1166. The undivided share in a joint immovable asset may be encumbered by a mortgage. Following the division of such, the mortgage shall only be attached to the portion that belongs to the debtor who has granted the mortgage, without prejudice to the stipulation in article 1341. (Bw.1083,1102;Rv.494)

Article 1167. Movable assets cannot be mortgaged. (Ov.30; Bw.509v.,1162,1164,1977; Civ.2119)

Article 1168. A mortgage cannot be imposed by any individual other than by the individual who has the authority to dispose of the encumbered asset. (Bw.105,108,124,140,393,430,481,985,1170,1180; Civ.2124)

Article 1169. Individuals, who have such right to an \*322 immovable asset which has been suspended by a condition, or which can be canceled or invalidated in certain cases, cannot permit any mortgages, other than those which are subject to the same requirements, cancellation or invalidation. (Bw.928,985,1093,1263v.,1265v.,1268,1532,1673,1689; Civ.2125)

Article 1170. Assets belonging to minors, individuals under conservatorship, and absentees, to the extent such property is only given temporarily, can only be encumbered by mortgage, for reasons, and in accordance with the formalities, which are stipulated by law. (Bw.309,393,452,481; Rv.507; Civ.2126)

Article 1171. A mortgage shall only be granted by authentic deed, with the exception of those circumstances expressly stipulated by law. (Ov.31) The power of attorney for the grant of a mortgage shall be concluded by authentic deed. Any individual, who pursuant to law or an agreement, is obligated to grant a mortgage, may be required to do so by judgment, which shall have the same effect as if he has consented to the mortgage, and shall specifically indicate the assets which shall be registered. (Ov.36) A married woman, who has obtained a mortgage by virtue of the prenuptial agreement, may, without the assistance of her husband, or the authorization of the judge, implement the mortgage registrations and file the required legal claims thereto. (Bw.108,110,139v.,335,371,452,1175,1796; Civ.2127)

Article 1172. The sale, delivery and allocation of a mortgage debt can only take place by authentic deed. (Ov.31)

Article 1173. No mortgage may be registered on assets located within Indonesia pursuant to an agreement concluded in a foreign country, unless it is otherwise stipulated by treaties. (AB.18; Rv.436,440; Civ.2128)

Article 1174. The deed that contains the mortgage shall contain a description of the mortgaged asset, including the nature and location, insofar as is possible pursuant to the measurements done upon the government's authority. With respect to the one tenth and ground rents, which cannot specifically indicate which parcels they relate to, it shall be sufficient to provide an accurate description and indication in the deed of the area subject to the mortgage. (Bw.1186,1190; civ.2129)

Article 1175. A mortgage may only be imposed on current assets. A mortgage on future assets shall be void. (Oogstv.3) If, however, the wife has agreed to the mortgage, in the prenuptial agreement, or if, in general, a debtor has bound himself to grant a mortgage to the creditor, then the husband or the debtor may be required to fulfill their obligations, by also indicating the assets which he may have acquired after the conclusion of the agreement. (Bw.1171,1186,1667; Civ.2129v.)

Article 1176. A mortgage shall be valid only to the extent that the amount thereof is certain and stipulated in the deed. \*323 If the debt is conditional or the amount thereof is not specified, then the mortgage shall be valid for the estimated value, which the parties are obliged to indicate in the deed. (Bw.335,452,1184,1186; Civ.2132)

Article 1177. The creditor may not, under any circumstances, claim an increase in the mortgage, unless it is otherwise stipulated by the law. (Bw.1184; Civ.2131)

Article 1178. All stipulations, which authorize the creditor to appropriate the mortgaged assets, are deemed void. The first mortgage creditor shall, at the time that the mortgage is being created, be entitled to expressly stipulate that in the event that the principal sum is not fully settled, or that interest due is not fully paid, he shall be irrevocably authorized to sell the mortgaged property in public, for the purpose of repaying the principal sum including the interest and the charges incurred. Such stipulation shall be recorded in the public registers, and the auction shall take place in the manner set forth in article 1211. (Ov.32; Bw.1139-1, 1154v.,1186-5; F.56; Rv.510v.; Oogstv.16; Civ.2088)

## **Section 2**

### **Concerning the registration of mortgages and the format of the registration**

Article 1179. The registration of mortgages shall take place in the registers designated for that purpose. In the absence of the registration, the mortgage shall not have any effect, even with regard to creditors, who do not have any connection with mortgages. (Bw.371,1203,1227; Civ.2134,2146; Overscr.; Tbs.24)

Article 1180. The registration of a mortgage shall be invalid, if it takes place at a time when the title of the asset has been transferred to a third party as a result of which the debtor already has lost his title thereto. (Bw.1168, 1171, 1179, 1182v.; Civ.2146; Pr.838v.)

Article 1181. The priority of the mortgage creditors shall be determined according to the date of their registration, without prejudice to the exceptions mentioned in the following two articles. Mortgages which are registered on the same date, shall bear the same date, without any distinction being made between the times at which the registrations took place, notwithstanding that the time may have been noted by the registrar. (Bw.1133, 1135, 1187, 1225; F.34; civ.2134, 2147)

Article 1182. In the event that, in the sale purchase deed, a mortgage is created over the sold assets, to secure the payments due, and the registration takes place within eight days following the publication of the sale purchase deed in the manner stipulated in article 620, then this mortgage shall have priority over the mortgages which the buyer, within that time period, shall have permitted on the asset. (Bw.1180; Civ.2103-1, 2108)

Article 1183. The same provision shall apply, if in the deed regarding separation of assets a mortgage is created to secure that which is due by one partner to the other, pursuant to a separation, or for protection of the designated assets. Even in this instance, a registration, carried out within eight days after the publication of the separation deed by the partner shall, to the extent that it concerns this provision, have priority over the mortgages which the recipient, within that time period might have permitted on the asset. (Bw.1084; civ.2103-3,2109)

Article 1184. A creditor who is registered in respect of a principal sum upon which interest accrues shall be entitled to, for not more than two years and including the current year, be placed in the same rank of mortgage as his principal sum; without prejudice to his right, with regard to interest other than that which is secured by the first \*325 registration, to effect specific registrations, which shall be effective as of the same date and which shall create a mortgage. (Bw.1176,1204; F.124; Civ.2151)

Article 1185. If the deed, covering the mortgage, contains a specific stipulation which limits the debtor's authority, either to lease out the encumbered asset without the creditor's consent, or with regard to the manner in which, or regarding the time period during which such may be leased, or in relation to the advance payment of the rent, such a stipulation shall not only be binding between the parties, but may also be enforced upon the lessee by the creditor who has registered such stipulation in the public registers. (Oogstv.21) This shall not prejudice the provisions of article 1341, which, in the event that there are grounds therefor, may be invoked by all creditors, regardless of whether or not there are any limitations stipulated in the lease agreement or advance payment. (Bw.1225,1548,1576; Rv.507)

Article 1186. To implement the registration, the creditor, shall, either personally or through a third party, submit to the registrar of mortgages, in the location of the assets, an authentic copy of the mortgage deed, including two docketts, signed by the creditor or a third party, on which a copy of the title issued shall be noted. (Ov.34) The docketts shall consist of the following: 1. a specific description of the creditor and the debtor, and information regarding the domicile, selected by the aforementioned within the scope of the office of the registrar. (Ov.37; Bw.24,1189,1194,1211) The registration of the assets of the deceased may be carried out on his behalf; 2. the date and the nature of the legal title, indicating the official by whom or before whom the deed is drawn up, or the judge who has indicated the encumbered assets, pursuant to the penultimate paragraph of article 1171; 3. the amount of the loan, or the estimate or the temporary and unspecified interests which are required to be secured, including the time at which the debt shall be collectable; (Bw.1176, 1171) 4. the description of the nature and the location of the assets over which the mortgage is created, insofar as is possible pursuant to the measurements done upon the government's authority, without prejudice to the stipulation in the second paragraph of article 1174, with respect to one tenth and ground rents; 5. the stipulations, which, pursuant to the previous article, the second paragraph of article 1178 and the second paragraph of article 1210 could have been agreed between the creditor and the debtor. (Bw.1187,1190,1194,1203,1225,1227; K.297; Civ.2148v.)

Article 1187. The registrar shall keep the docket, noted on the authentic copy of the title, pursuant to which registration is required, for the purpose of registering such on the date of the filing. On the same day, he shall return, to the individual who has requested the registration, the other or second docket, at the bottom of which he shall have noted the date of the filing. If such is demanded, he shall, \*326 not later than within twenty four hours after this further inquiry, include in the other or second docket the number of the register where the registration took place. Both of these statements shall be signed by him. (Ov.34; Bw.1225; Civ.2150) The registrar shall carefully keep the copies of the transfer deeds, establishment of property rights or rights of servitude, and of separation, including the docketts regarding registration, after having recorded or registered such in the respective registers designated thereto. He shall collect the above documents, in the order in which they have been registered in the register for filing documents or daily register; the docketts shall be separately registered. The documents filed for publication shall be bound and kept carefully in one volume, the documents for registration in a second volume, and the deeds for deletion and cancellation in a third volume. These volumes shall furthermore be formatted into separate book volumes, and on their spines the number of the volume and the time

period that it covers shall be recorded, as well as the first and last number of the documents contained therein. The Governor General shall regulate the time periods, pursuant to which the documents, as aforementioned, shall be made into volumes. The date of filing, the volume and number of the register of filing shall be noted on each document filed.

Article 1188. At the registration of a claim, as mentioned in article 1108, the creditors or the legatees must provide the registrar of the mortgages with the following: (Ov.29) 1. an authentic copy of the claim for separation of assets; 2. the death certificate of the deceased, or another valid proof that the lawsuit has been filed within six months after the inheritance became available; 3. two dockets containing, pursuant to the requirement in article 1186 no.4, the description of the nature and the location of the assets, beside the assets in respect of which registration is required; and the provisions in article 1187 shall apply to these dockets. (Bw.1107v.,1190,1225; Civ.2111)

Article 1189. The individual, who has instructed that the registration be effected, and his representatives, or those, who pursuant to an authentic deed have acquired the same right, are permitted to change the selected address in the mortgage register, provided that they choose and indicate another one in the same area, by noting it in the margin of the registration. (Ov.37; Bw.25,613,1186,1194,1211,1400v.; Civ.2152)

Article 1190. The registration shall not be canceled for non-compliance with the above formalities, but shall be canceled in the event that the register does not contain proper descriptions of the creditor, the debtor, the debt, or the encumbered assets. (Bw.1174,1186)

Article 1191. The filing and the recording of a deed of transfer of property and the registration of or related assets located outside the jurisdiction of the registrar of the mortgages, shall be void. \*327 All recordings, which take place on a Sunday, shall be regarded as having taken place the following day.

Article 1192. In the event that upon registration a domicile is not selected within the jurisdiction of the registrar of mortgages, it shall be considered, by law, that the registrar's domicile has been selected. (Ov.37)

Article 1193. The charges incurred in respect of the registration shall be the liability of the debtor, unless otherwise stipulated. (Bw.343,1195; Civ.2155)

Article 1194. Lawsuits against the creditors, resulting from the registration, shall be filed with the authorized judge, by means of subpoena, submitted to the creditor personally, at the most recent address, which has been selected in the register; and this shall apply notwithstanding the death, either of the creditors or of those with whom they are domiciled. (Ov.37,78; Bw.24,1186,1189,1197,1211; Rv.99; Civ.2156)

### **Section 3**

#### **Concerning the crossing out (deletion) of registrations (OV.24)**

Article 1195. Registrations shall be canceled by crossing them out(deletion) in the registers. The deletion shall take place at the expense of the debtor, upon approval of the authorized relevant parties, or pursuant to a judgment, whether passed at the highest instance, or which has acquired legal effect. (Bw.1168, 1186,1197,1203,1209,1218v.,1224,1227,1330v.; Rv.403,557; Ov.24; Overschr.32; Civ.2157)

Article 1196. In both cases, the individual who has requested the deletion shall submit an authentic deed, which authorizes the deletion, or an authentic copy of such deed or of the judgment ordering such deletion. (Bw.1171,1225-3; Rv.557; Civ.2158) Authentic deeds, which have been drawn up pursuant to a private deed of consent shall not be valid with regard to the deletion In the event of a dispute concerning the authority of those, who have approved the deletion, or concerning the validity of the evidence submitted, the court of justice, within whose legal jurisdiction the registration was recorded, shall pass judgment, upon a simple letter of request filed together with the relevant documents. (Rv.763 al.2-1)

Article 1197. If a deletion is not approved, inquiries shall be addressed to the judge, in whose legal jurisdiction the registration took place; in the event that the claim is subject to a dispute, which is before another judge, the demand for deletion shall be referred to the judge with whom the principal dispute is pending. However, any agreement, concluded between the creditor and debtor to file a claim with a



judge stipulated by one of them in the event of a dispute, shall be complied with by them. (Bw.1194, 1338, 1340; Rv.134; Civ.2159; see note Bw.1195)

#### **Section 4**

##### **Concerning the consequences of mortgages with regard to third owners**

Article 1198. A creditor who has a registered mortgage, shall retain his right to the encumbered immovable asset, regardless of who the holder of the title thereto is, and shall be ranked and paid pursuant to the order of registration. (Bw.1163; Rv.495, 547v.; Oogstv.5,11,16; Civ.2166v.)

Article 1199. The creditor shall be entitled to seize and sell the encumbered immovable asset held by the third owner, upon the instruction of the debtor. The formalities with respect to legal sale and rank, contained in the legal regulations regarding civil procedures, shall be taken into account in respect of the above and the rank of the proceeds thereof, among the various creditors. (Bw.1163,1178; Rv.495v.,504v.,547v.; Civ.2169)

Article 1200. The third owner may oppose the sale, if he can indicate that the original debtor still holds title to one or more immovable assets, also mortgaged to secure the same debt, which are obviously of sufficient value to cover the debt. In this regard, he may, by postponing the sale of his property, demand the prior sale of the assets held by the original debtor which are also mortgaged. (Bw.1833; Civ.2170v.)

Article 1201. In the event that a mortgage is created over an immovable asset and one or more parts thereof have been transferred to third owners, the creditor shall have the authority to apply his right in its entirety to the encumbered asset, or to part thereof, as he deems advisable or sufficient, in the manner as if the encumbered asset is still in the possession of the debtor in its undivided state. (Bw.1163)

Article 1202. The third owner, who, either by forced sale, or voluntarily, has settled the debt, is authorized, pursuant to the law, to take over the rights of the creditor, and after deducting his share in proportion to the collective value of the encumbered assets, to apply the subsequent mortgage rights for this loan to other encumbered assets, or parts thereof. (Bw.965,1106,1208,1402; Civ.2178)

Article 1203. In the instances mentioned in the two previous articles, the registration of the mortgage shall only be deleted in respect of the asset or part thereof which has been used to settle the debt, or which the third owner has used to settle the debt, and the mortgage on the other assets shall not be deleted until the third party has settled the debt or the assets have been sold, and according to article \*330 1201, has exercised his rights or has approved the deletion. To secure his right, the subrogated creditor is required to demand registration thereof in the public registers, by displaying an authentic deed evidencing the subrogation. (Ov.39; Bw.1179,1186,1195v.,1225)

Article 1204. The third owner shall always be entitled, until the time of allotment, to prevent the sale of the encumbered assets in his possession, by settling the registered debt, together with interest in accordance with article 1184, and the costs incurred. (Bw.1202, 1402; Civ.2173)

Article 1205. The proceeds of the encumbered assets from forced sale which are in excess of the mortgage and costs incurred, shall be given to the third owner. (K.863)

Article 1206. The rights of servitude and other property rights, whether to the disadvantage of or for the benefit of assets due to the forced sale, which have been canceled by the transfer to a third party, shall be re-instated after the property has been allocated to another party. (Bw.674,701,706,718-1,736,754-1,807-3,818; Civ.2177)

Article 1207. The depreciation to the assets which is due to the fault or negligence of the third owner, and which disadvantages the mortgage creditors, shall render to the mortgage creditors a legal claim for compensation; they cannot reclaim the charges incurred and repairs made, other than the assets' increase in value as a result of the repairs. (Bw.1165,1264,1365v.,1497v.; Civ.2175)

Article 1208. A third owner who has settled the mortgage debt, or whose assets have been subject to a legal forced sale, shall be compensated by the debtor for safeguarding the assets. (Bw.965,1106,1202,1402; Civ.2178)

#### **Section 5**

## Concerning the cancellation of mortgages

Article 1209. Mortgages shall be canceled due to the following: 1. by cancellation of the principal agreement; (Bw.928,1381v.,1673,1689) 2. by the creditors' relinquishment of the mortgage; (Bw.1195v.) 3. by legal priority. (Bw.1212v.; K.279; Rv.547v.; Civ.2180)

Article 1210. The individual who has purchased the encumbered assets, either by legal forced sale, or as a result of a voluntary sale at a stipulated price in cash, may demand that the purchased property shall be released from all mortgages, which exceed the sale price, by taking into consideration the requirements stipulated in the following articles. Such release shall however, not take place by voluntary sale, if the parties at the time of creation of the mortgage expressly agreed to such, and if such stipulation has been registered in the public registers. Such stipulation can only be made by the first mortgage creditor. (Ov.32; Bw.1211v.,1216; Rv.493v.)

Article 1211. In the event of voluntary sale, the claim for release shall not be made, unless the sale has taken place in public, in accordance with local customs, and before a public official; in addition, the registered creditors must be notified thereof, at least thirty days prior to the allotment, by writ, which shall be forwarded to the cities, which were selected by the creditors at the registration. (Ov.78; Bw.1178; F.183; Rv.510v.; Civ. 2181v.)

Article 1212. The buyer who wishes to have the enjoyment of the privilege referred to in article 1210, shall be obliged to, within one month following the transfer, arrange that the legal rank for division of the purchase price be followed, in accordance with the rules stipulated in the legal regulations of Civil procedures. (Rv.547-558; civ.2181v.)

Article 1213. The deletion of the registrations arranged which are not beneficial shall be ordered in order of rank. Such registrations which are only partly beneficial, can be maintained only for that part, until the payment, at which time the creditor may collect immediately regardless of whether the debts are collectable or not. With respect to incoming debts the total amount of which has been arranged beneficially, the registrations shall be maintained, and the buyer shall be subject to the same obligations, and shall enjoy the same time limits and delays as the original debtor. (Bw.1268v.)

\*332 Article 1214. At the assessment of the amount of the mortgage, a life interest shall be calculated according to the principal sum, mentioned in the deed, and in the absence thereof, it shall be twenty times the interest payable thereon; and interest from annuities or lifelong pensions shall be computed and regarded as the principal sum, in accordance with the age of the beneficiary or of the annuitant, or in accordance with the period during which payments are made thereon; all in accordance with the average value of the annuity interest, estimated by experts. (Bw.1770v.,1775v.; F.127)

Article 1215. Registrations of assets of guardians, conservators and husbands for the benefit of minors, persons under conservatorship, or married women, and in general, all registrations of debts resulting from conditional agreements, or of which the value is unspecified, shall continue to be charged to the sold property, to the extent that they are entirely or partly beneficially arranged, until the time at which the guardianship or the conservatorship, or the dissolution of the marriage, or the outcome of the conditional or unspecified agreement, shall be apparent or, to the extent of the purchase moneys to which the mortgage creditors are entitled; the above shall be without prejudice to the stipulation in article 337 to the extent that it relates to the guardianship and conservatorship. (Bw.335, 452,1171,1213,1216v.)

Article 1216. The sale value of the property shall be maintained by the buyer at the sale value of the parcel for which it has been secured pursuant to the previous article; unless otherwise stipulated in the conditions of the auction, he must pay the legal interest on such amount to the seller or other rightful party until the time of the final payment of the purchase price. (Bw.1217)

Article 1217. If, however, the buyer, or his successors, abuse or neglect the parcel in such manner that could result in the reduction or loss of the security of the rightful parties, then they shall be entitled to demand in court that the unpaid purchase price shall immediately be settled and invested, whether in mortgage registrations regarding other immovable assets, or registrations in the main ledger of the national actual debt, or debentures charged to Indonesia, one and another, in the same relation and under the same stipulations, as if the purchase price has been retained by the buyer or his successors; the above shall be without prejudice to any compensation of costs, damages and interest, in the event that there are grounds therefor. In the event that the request for immediate settlement mentioned in the previous paragraph, shall be admitted, the judge shall also nominate a competent individual, who shall be responsible for the receipt of the purchase price and the investment. (Bw.1271)

Article 1218. If, in the case of article 1215, it appears that the individual for whose benefit the registration took place, does not have anything to claim, or his claim is less than the original registered sum, then the agreement shall \*333 be canceled, and the unpaid purchase price shall be paid out, either for the benefit of the mortgage creditors, whose registrations either in their entirety or partly were not beneficially arranged, or other rightful parties. (Bw.409v.)

Article 1219. In the event that further registrations either in their entirety or partly are not beneficially arranged, and shall also be deleted, then the judge shall order in his judgment regarding order of priority that the mortgage registrar, in his official capacity, in addition to the deletion, shall note in the registers that the creditors may retain their right to the remainder of the unpaid purchase price after the final computation. (Bw.1186v.,1225)

Article 1220. In the event of the legal sale of one parcel containing several immovable assets of which one or more are not subject to any encumbrance and others are mortgaged, sold in its entirety for one price, the price of each immovable asset shall, in proportion to the total purchase price, for the benefit of the creditors registered in respect of each asset, be stipulated by the judge after having heard the testimony of experts. (Rv.499; Civ.2192)

## **Section 6**

### **Concerning the officials charged with the custody of mortgage deeds, their responsibilities, and public information concerning the registers**

Article 1221. The officials charged with the keeping of the mortgages shall be the following: a. to the extent that the assets are located in the residencies within which the seat of the courts of justice is established, the court clerks within such court; b. to the extent that the assets are located elsewhere, the secretaries of the residencies, or other such officials, as shall be appointed by the Governor General (Overschr.1, 1a; S.36-153) Each residency has a place of safekeeping, the boundaries of which shall be stipulated by those of the residency and which shall be named "circle of safe keeping". The Governor General shall, however, be authorized, where local customs permit, to bring in more than one residency, either in its entirety or partly, to the same circle of safekeeping. (S.25-497,643)

Article 1222. Without prejudice to the obligations imposed by this title upon the registrars of mortgages, they must also keep the registers and the notations, as stipulated in the legal regulations regarding the publication of deeds of transfer of property, of establishment of property rights and of estate separation. (Ov.24v.; Bw.1231; see Overschr.)

Article 1223. The registrars of the mortgages shall not be permitted to execute their duties other than in place designated by government for such purpose. Registers and other documents belonging to such office of safekeeping may not be removed unless upon the order of a judge.

Article 1224. The registrars of the mortgages must make the registers available for inspection by any individual who wishes to view them, together with the deeds recorded for publication, and must deliver copies of such deeds, including the registrations and notations, as well as a statement in the event that there are none. (Ov.38; B.1210v.,1219,1225,1227; Civ.2196)

Article 1225. They shall be responsible for loss resulting from the following: 1. their negligence connected with keeping the documents submitted and the required timely and accurate recordings and registrations; (Bw.1230) 2. their failure to mention in their statement more than one registration, unless in this last instance, the mishap occurred due to incomplete information, for which they cannot be held responsible; (Bw.1230) \*335 3. deletions, carried out without submission to him of the documents mentioned in article 1196. (Bw.1108,1181,1188,1203,1219,1228v.; Civ.2197)

Article 1226. The immovable asset, in respect of which the registrar in his statement, has failed to mention one or more registered encumbrances, shall not be released from such encumbrances; without prejudice to the responsibility of the registrar towards the individual who requested the statement in which the mistake occurred, and without prejudice to the claim filed by the registrar against the creditors, who have enjoyed payment which was not owed. (Bw.1360,1365v.; Civ.2198)

Article 1227. Without prejudice to the stipulation in article 619, the registrars of the mortgages shall under no circumstances; refuse to register or delay the registration of the deeds regarding the transfer of property, for publication, the mortgage rights, display the documents filed with them and their registers for public inspection, or refuse to issue statements as requested, and non-compliance with the above

shall render him liable for compensation in the form of costs, damages and interest towards the parties; for such purpose, at the request of the individual who so desires, a report may be drawn up of the registrar's refusal or delay by a notary or process server, with two witnesses. (Ov.38; Bw.616, 1179, 1224; Civ.2199)

Article 1228. The registrars of mortgages shall be responsible to the public for their acts in connection with the safekeeping, for the acts of those who substitute them in their normal official services, without prejudice to claim for compensation of their replacements. (Bw.1225, 1366)

Article 1229. The registrars, may at their expense, furnish a guarantee for the public's additional security, the amount of which and the manner in which this shall be established, supplemented and canceled, shall be regulated by the Governor General. (S.07-510)

Article 1230. The period of the responsibility imposed upon the registrars of the mortgages mentioned in article 1225, shall be for ten years, effective as of the occurrence of the failures mentioned in numbers 1 and 3 of the said article, from the date on which the legal formalities have been filed for by the relevant parties, and for those individuals referred to in number 2 of the same article, from the date of the issuance of the statements.

Article 1231. The format of the registers, the manner of bookkeeping, the taxes collected by the State, the salaries of the registrars, the disciplinary punishments, the further obligations which the aforementioned officials are subject to, and in general, anything that is required for the full implementation of the rules of publication of the transfer of property and of mortgages, stipulated by legal regulations, shall be regulated by the Governor General after having consulted the supreme court. (Overschr.)

Article 1232. Supervision of the registrars of the mortgages \*336 shall be assigned to the court of justice, subject to the higher supervision of the supreme court. The manner in which this supervision shall be carried out shall also, after consultation with the supreme court, be regulated by the Governor General. (Overschr.42)

## **BOOK THREE - CONTRACTS**

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## **Chapter I,**

### **Concerning contracts in general**

#### **Section 1**

##### **General provisions**

Article 1233. All contracts arise from an agreement, or by law. (Bw. 1313v., 1352; Rv. 102)

Article 1234. Their purpose is to provide something, to do or not to do something. (Bw. 1235v., 1239v., 1314; Civ. 1101, 1126)

#### **Section 2**

##### **Concerning contracts to provide something**

Article 1235. Contracts to provide something include the obligation to deliver the goods and to maintain such, until the time of the delivery, as they would be maintained if in the care of a good head of the household. The extent of the latter-mentioned obligation more or less depends on specific agreements, the consequences of which shall be referred to in the relevant titles. (Bw.105, 385, 612v., 784, 1033, 1157, 1356, 1444v., 1550-1, 1706v. 1715, 1744, 1801; Civ. 1136v.)

Article 1236. The debtor is required to compensate the creditor for costs, damages and interest, in the event that he is unable to deliver the goods, or in the event that he has not properly maintained them. (Bw.1235, 1243v., 1264, 1275, 1391, 1444, 1480)

Article 1237. With regard to an agreement to provide something, effective as of the conclusion of the agreement, this shall become the creditor's liability. Liability of the debtor for failure by him to deliver the goods shall arise from the time of the default. (Bw.1264, 1275, 1391, 14444, 1460, 1481v., 1545, 1553, 1605, 1648, 1708, 1745v.; Civ. 1138)

Article 1238. The debtor shall be declared to have defaulted, either by an order or other such similar deed, or pursuant to the contract itself, which stipulates that the debtor shall be in default, upon failure to deliver within the stipulated time period. (Bw. 391, 413, 579, 1243, 1362, 1626, 1805, 1979; Rv. 1v.; Civ. 1139)

#### **Section 5**

##### **Conditional Obligations**

Article 1253. An obligation is conditional if it is conditioned upon an event that may occur and is yet to occur, be it by way of deferring the obligation's entry into force or annulling the obligation, depending on whether such event occurs.

Article 1254. All terms that are intended to do something that cannot be done, something that is contrary to morality, or something that is prohibited by the law is void and render agreements conditioned upon them inapplicable.

Article 1255. Terms that are intended to do something that cannot be done do not cause the obligations that are conditioned upon them to be inapplicable

Article 1256. All obligations are void, if their executions solely depend on the willingness of the person bound. However if obligation depends on an act whose execution is within the power of that person, and such act has already occurred then such obligation is valid.

Article 1257. All terms must be fulfilled in the manner intended and meant by the parties concerned.

Article 1258. If an obligation depends on an event that will happen within a certain time, then such term is deemed not to have existed, if such time has passed while such term may be fulfilled at any time, and such term is not deemed not to have existed before it is certain that the event will not happen.

Article 1259. If an obligation is conditioned upon the terms that an event will not take place within certain time, then such term is fulfilled where such time elapses and the event has not taken place. Similarly, if such term is met, if before such time elapses it is certain that the event will not happen, but the time is not fixed, then such term is not met before there is certainty that such event will not happen.

Article 1260. Such terms are deemed fulfilled if the debtor prevents the fulfilment of such terms.

Article 1261. If the conditions are met, then such terms apply retroactively to such time the obligation arises. If the creditor passes before the term is fulfilled, then the rights pass to his successors.

Article 1262. A creditor may take all necessary efforts to prevent losing his rights before such terms are met.

Article 1263. An obligation with terms of delay is an obligation that depends on a future event and is not certain to occur, or depends on an event that has already occurred and is not known to the parties.

In the first case, the obligation is not executable until such time the event occurs; in the second case, the obligation arises when such event arises.

Article 1264. If an obligation depends on deferred terms, then the objects of the obligation remains within the responsibility of the debtor, who is only obliged to deliver the goods when the terms are met. If such goods perish beyond the debtor's fault, then the obligation no longer exists between the parties. If the object depreciates beyond the debtor's faults then the creditor may choose: terminate the obligation or demand delivery of the object in its current state without price reduction.

If the object depreciates due to the fault of the debtor, then the creditor may terminate the obligation or demand the delivery of the object with compensation.

Article 1265. A void condition is a term, which if met would cause the obligation to become void and reconstitute the parties as though the obligation has never existed

This term does not delay the fulfilment of the obligation; it only obliges the creditor to return what he receives, if such event occurs.

Article 1266. A void condition is deemed to have been included in a reciprocal agreement, where a party does not fulfil his obligation. In such case, the agreement is not void by law, but voidance must be requested to the court.

The request must also be done, even though the terms of voidance concerning the non-fulfilment of an obligation is included in the agreement. If the terms of voidance is not included in the agreement, then the judge, considering the situation, upon the defendant's request, has the discretion to fix a timeframe to fulfil such obligations, but such timeframe may not exceed one month.

Article 1267. Party against whom the obligation is not fulfilled; forces the counterparty to fulfil the agreement where such fulfilment is still possible, or demand the termination of such agreement, with compensation of costs, damages and interests.

### **Section 3**

#### **Divisible and indivisible contracts**

Article 1296. A contract is divisible or indivisible if the subject is goods the delivery of which, or a deed the implementation of which is susceptible to division, tangible or intangible. (Bw. 728, 739, 892, 1160, 1299v., 1721; Civ.1217)

Article 1297. A contract is indivisible, notwithstanding that the goods or deed that form the subject matter are, by nature, divisible, if the entirety of the contract itself cannot be partly implemented in part. (Bw. 1160, 1300v.; Civ. 1218)

Article 1298. A contract shall not be deemed to be indivisible on the basis that it is a several liability contract. (Bw. 1283, 1292, 1301v., 1983; Civ. 1219)

Article 1299. A contract which is not divisible shall be executed by the debtor and the creditor, as if such contract is indivisible; divisibility shall only apply to their heirs who cannot claim the debt, or who are not obligated to settle such, but only to the extent of the share which they have inherited or for which they are liable as representatives of the creditor or the debtor. (Bw. 1100v., 1311v., 1390, 1527v., 1721; Civ. 1220)

Article 1300. The provisions set out in the previous article shall be excepted with respect to the heirs of the debtor in the following matters:

1. in the event that the debt relates to a mortgage; (Bw. 1101v., 1105, 1163, 1198)
2. if the debt comprises specific goods; (Bw. 1083, 1391)
3. with respect to a debt comprising alternative goods, to be selected by the creditor, if one of the goods proves to be indivisible; (Bw. 1272v.)
4. if, according to the agreement, only one of the heirs is obliged to perform the contract; (Bw. 800, 959, 965, 967).
5. if, either due to the nature of the contract, or due to the goods which form the subject matter, or due to the intent set out in the contract, it is apparent that it is the parties' intent that the debt shall not be settled in parts. (Bw. 1297) In the first three instances, the heir who is in possession of the goods owed, or of the goods which serve as security for the debt, shall be prosecuted for the entire \*353 debt, or for the encumbered goods, without prejudice to his right to recover from the other heirs. In the fourth instance, only the heir who is liable for the debt may be prosecuted, and in the fifth instance, each heir can also be prosecuted for the entire debt, without prejudice to the right of the latter-mentioned to recover from the other heirs. (Civ. 1221)

Article 1301. Each individual, who jointly is responsible for an indivisible debt, is liable for the entire debt, even though the contract was not concluded subject to several liability. (Bw. 1160, 1163, 1278v., 1297, 1310; Civ. 1222)

Article 1302. The same shall also apply to the heirs of those individuals, who are bound by a similar contract. (Bw. 1102v., 1310, 1721; Civ. 1223)

Article 1303. Each heir of the creditor may demand the implementation of an indivisible contract in its entirety. An individual heir shall not discharge the entire debt, or receive the value thereof, instead of the goods. If only one of the heirs has discharged the debt, or has accepted the value of the goods, the other heirs shall not claim the indivisible goods, unless they shall have regard to the share of the heir who has discharged the debt or has received the value thereof. (Bw. 1278, 1289, 1385, 1438, 1721; Civ. 1224).

## **Section 4**

### **Concerning contracts subject to punishment and penalization**

Article 1304. A stipulation in respect of punishment is a stipulation which ensures the execution of a contract by imposing an obligation on an individual in the event that the contract is not complied with. (Bw. 1243, 1249; Civ. 1226)

Article 1305. The nullification of the principal contract shall also render the stipulation regarding punishment void. However, the nullification of the stipulation regarding punishment shall, in no manner, render the principal contract void. (Bw. 1315, 1317; Civ. 1227)

Article 1306. The creditor, may, instead of invoking the punishment against the debtor who is in breach, demand the fulfillment of the principal contract.(Civ. 1228)

Article 1307. The stipulation regarding punishment shall be invoked in lieu of compensation of costs, damages and interest, for the creditor's loss resulting from failure to comply with the principal contract. However, he shall not seek the principal debt and the punishment simultaneously, unless the latter-mentioned is imposed in the event of delay of the execution of the contract. (Bw. 1243, 1249, 1312; Civ. 1229)

Article 1308. Whether or not the original contract stipulates a specific time period within which the contract must be executed, the punishment shall not be imposed until the individual who is bound to provide something, or to receive something, or to do something, has failed to do so. (Bw. 1235, 1238, 1243, 1245, 1250, 1268; Civ. 1230)

Article 1309. The punishment may be revised by the judge, in the event that the principal contract has been partly complied with. (Bw. 1249; civ. 1231)

Article 1310. If the original contract, containing a provision for punishment, concerns indivisible assets, the punishment shall be imposed as a result of breach by any one of the heirs of the debtor and the entire debt may be claimed either from the individual who is in breach, or the respective shares can be claimed from each heir, without prejudice to their rights to claim compensation from the individual as a result of whom the punishment has been imposed, regardless of the rights of secured creditors. (Bw. 116, 1285, 1301; Civ. 1232)

Article 1311. In the event that the original contract \*355 containing a provision regarding punishment is divisible, the punishment shall be imposed solely upon the heirs of the debtor who have breached this contract, and to the extent only of his share in the principal contract, and no lawsuit shall be filed against the individuals who have complied with the contract. There shall be an exception to this rule if the provision regarding punishment is included with the intent that performance shall not occur in parts, and if one of the heirs has obstructed the entire performance of the contract; in this event, the punishment of the latter-mentioned may be imposed in its entirety, and with respect to the other heirs only in relation to their shares, without prejudice to their right for compensation. (Bw. 1200, 1306; Civ. 1233)

Article 1312. If a divisible principal contract, which contains a stipulation of indivisible punishment, has only been complied with partially, the punishment shall, with regard to the heirs of the debtor, be replaced by compensation of costs, damages and interest. (Bw. 1296, 1299, 1306v.)

## **Chapter II**

### **Commitments arising from contracts or agreements**

#### **Section 1**

##### **General provisions**

Article 1313. An agreement is an act pursuant to which one or more individuals commit themselves to one another. (Bw. 1233v.; Civ. 1101)



Article 1314. An agreement is concluded pro bono, or pursuant to a charge. The pro bono agreement, is an agreement in which one party grants a benefit to the other party without any benefit in return. An agreement pursuant to a charge is an agreement in which each party is obligated to provide something, to do or not to do something. (Bw. 1234, 1666; Civ. 1105v.)

Article 1315. In general, an individual can commit only himself or agree to something on his own behalf. (Bw. 1316, 1340, 1357, 1382v., 1645, 1655, 1792, 1820; Civ. 1119)

Article 1316. Notwithstanding this, an individual may guarantee the fulfillment of a third party's commitments, without prejudice to the claim for compensation of damages against the individual who has guaranteed the third party or has agreed to secure the third party, if such third party refuses to fulfill the contract. (Bw. 1338, 1645, 1823, 1873; Civ. 1120)

Article 1317. An individual may also enter into an agreement on behalf of a third party, if such agreement, which the individual concludes on his own behalf, or gift granted by him to another party, contains a provision in this regard. An individual, who has concluded an agreement, cannot revoke such, if the third party has declared his intent to exercise it. (Bw. 1323, 1338, 1669v., 1688, 1778, 1823; Civ. 1121)

Article 1318. An individual shall be presumed to have entered into an agreement on behalf of himself, and on behalf of his heirs and individuals having rights thereto, unless the contrary is expressly stipulated or is apparent from the nature of the agreement. (Bw. 175, 178, 807-1, 833, 955, 1575, 1612, 1743, 1784, 1813, 1826; Civ. 1122)

Article 1319. All agreements, whether or not known under specific titles, shall be subject to general regulations, which shall be the subject of this and the previous title. (Civ. 1107)

## **Section 2**

### **Concerning the conditions that are required for the validity of agreements**

Article 1320. In order to be valid, an agreement must satisfy the following four conditions:

1. there must be consent of the individuals who are bound thereby; (Bw.28, 1321v.)
2. there must be capacity to conclude an agreement; (Bw. 1329v.)
3. there must be a specific subject; (Bw. 1332v.)
4. there must be an admissible cause. (Bw.1335v.; Civ. 1108)

Article 1321. No agreement is of any value if granted by error, obtained by duress or by fraud. (Bw. 893, 1449, 1452, 1454, 1456, 1859, 1926; Civ. 1109)

Article 1322. An error shall not render an agreement invalid unless such error relates to the substance of the subject matter of the agreement. Error shall not result in invalidity if it relates only to the identity of an intended party to the contract, unless the agreement is solely concluded with regard to this specific individual. (Bw. 1618, 1666, 1851v.; Civ. 1110)

Article 1323. Duress against an individual who has entered into an agreement, shall forms grounds for nullification of the agreement, notwithstanding that it was committed by a third party, who was not party to the said agreement. (Bw. 893, 1053, 1065, 1325; Civ. 1111)

Article 1324. Duress takes place if it is of such nature that it results in a reasonable individual being coerced, and if it frightens him in such a way that he could expose himself or his wealth to considerable and immediate existing disadvantage. In consideration thereof, one shall have regard to the age, sex and the status of the individuals involved. (Civ. 1112)

Article 1325. Duress shall invalidate an agreement not only if it is committed against one of the undertaking parties, but also if it is committed against their spouses or kin in the ascending or descending line. (Bw. 290v., 1323, 1449; Civ. 1113)

Article 1326. The fear caused by deference towards father, \*359 mother or other kin in the ascending line, shall, without additional duress, be insufficient for the nullification of the agreement. (Bw. 298; Civ. 1114)

Article 1327. An individual cannot claim nullification of an agreement based upon duress, if, following the cessation of duress, the agreement is approved, whether expressly or impliedly, or if the individual has allowed the time period stipulated by law for re-instatement of the agreement in its entirety, to lapse. (Bw. 1115, 1449v., 1454, 1456, 1892; Civ. 1115)

Article 1328. Fraud shall form grounds for nullification of an agreement, if the deceit by one of the parties is of such nature that it is apparent that the other party would never have concluded the agreement without such deceit. Fraud shall not be presumed, but must be proven. (Bw. 1053, 1065, 1449, 1865, 1922; Civ. 1116)

Article 1329. Each individual shall be authorized to conclude agreements, unless he has been declared incompetent by law. (Bw. 1330, 1467, 1640; Civ. 1123)

Article 1330. The following individuals shall be incompetent to conclude agreements:

1. minors; (Bw. 330, 419v., 1006, 1446v.)
2. individuals under guardianship; (Bw. 433v., 446v., 452, 1446v.)
3. married women, in the events stipulated by law, and in general, individuals who are prohibited by law from concluding specific agreements. (Bw. 399, 1446v., 1451, 1465v., 1640; F 22; Civ. 1124)

Article 1331. The incompetent individuals mentioned in the previous article may, however, object to the agreement unless such objection is excluded by law. The individuals who are competent to bind themselves cannot invoke the incompetence of the minors, individuals under guardianship, and married women, with whom they have dealt. (Bw. 109, 113, 116v., 151, 1447, 1456, 1701v., 1798, 1892; Civ. 1125)

Article 1332. Only matters that can be traded can be the subject of agreements. (Bw. 519v., 537, 1954; K.599; Civ.1128)

Article 1333. An agreement shall have as a subject a matter which shall be stipulated according to its nature. The quantity of the matter may be uncertain, unless such quantity can be stipulated or determined at a later date. (Bw. 968v., 1272v., 1392, 1461, 1465; Civ. 1129)

Article 1334. Future matters may be the subject of an agreement. An individual may not however, relinquish an inheritance which has not occurred or conclude an agreement regarding such inheritance, notwithstanding that he has obtained the \*360 consent of the testator; without prejudice to the provisions in articles 169, 176 and 178. (Bw. 141, 1063, 1254, 1667, 1774; Oogstverb. 3; Credverb. 3-5; Civ. 1130)

Article 1335. Any agreement without a cause, or concluded pursuant to a fraudulent or implausible cause, shall not be enforceable. (Bw. 890v.; civ. 1131)

Article 1336. In the event that no cause is specified but that there is an existing permissible cause, or if there is a permissible cause other than the one specified, the agreement shall be enforceable. (Bw. 1878; Civ. 1132)

Article 1337. A cause is not permissible if it is prohibited by law, or if it violates good conduct, or public order. (AB. 23; Bw.139, 891, 1254, 1619; Civ. 1133)

### **Section 3**

#### **The effects of agreements**

Article 1338. All legally executed agreements shall bind the individuals who have concluded them by law. They cannot be revoked otherwise than by mutual agreement, or pursuant to reasons which are

legally declared to be sufficient. They shall be executed in good faith. (Bw. 751, 1066, 1243v., 1266v., 1335v., 1363, 1603, 1611, 1646-3, 1688, 1813; Civ. 1134)

Article 1339. Agreements shall bind the parties not only to that which is expressly stipulated, but also to that which, pursuant to the nature of the agreements, shall be imposed by propriety, customs, or the law. (AB.15; Bw. 1347v., 1482, 1492, 1800v., 1817, 1819; civ. 1135)

Article 1340. Agreements shall only be enforceable between the parties involved. They shall not be detrimental to third parties; third parties shall not profit from them, except in the event stipulated in Article 1317. (Bw. 1178, 1523, 1815, 1818, 1857; F.152; Civ. 1165)

Article 1341. (S.06-348) However, each creditor may invalidate any acts which were not compulsory, committed by the debtor, in any name, which are detrimental to the creditors, provided that it is proven that while committing the acts, the debtor as well as the individual with whom he committed the act or on whose behalf he acted, was aware that it would result in detriment to the creditors. Rights, which were obtained by a third party in good faith over the goods which were the subject matter of the invalid action, shall be honored. To nullify the acts committed by the debtor for free, it shall suffice if the creditor displays that the debtor was aware at the time the act was committed that he would jeopardize his creditors, regardless of whether or not the beneficial party shared that knowledge. (Bw. 192, 920, 977, 1061, 1067, 1166, 1185, 1454, 1922, 1952; Credverb. 5; F.30, 41v.; Civ. 1167)

## **Section 4**

### **Interpretation of agreements**

Article 1342. If the wording of an agreement is clear, one shall not deviate from it by way of interpretation. (Bw. 855)

Article 1343. If the wording of an agreement is open to several interpretations, one shall ascertain the intent of the parties involved rather than be bound by the literal sense of the words. (Bw. 886, 1257, 1473, 1855; Civ. 1156)

Article 1344. In the event that a stipulation is open to two interpretations, one shall interpret it in the sense in which it produces some effect, rather than in the sense in which it would be entirely ineffective. (Bw. 887; Civ. 1157)

Article 1345. Wording which is open to two kinds of interpretation shall be interpreted in the sense which corresponds most with the nature of the agreement. (Bw. 887; Civ. 1158)

Article 1346. If the wording is ambiguous, it shall be interpreted in a manner which is customary in the country or in the location where the agreement was entered into. (AB. 15; Civ. 1159)

Article 1347. Customary stipulations shall be deemed to be implied in the agreement, notwithstanding that these have not been expressed. (Bw. 1339, 1492; Civ. 1160)

Article 1348. All stipulations, contained in an agreement, shall be interpreted having regard to their relationship to one another; each shall be interpreted having regard to its relationship to the whole agreement. (Civ. 1161)

Article 1349. In the event of ambiguity, the agreement shall be interpreted against the party who stipulated something, and in favor of the party who has bound himself thereto. (Bw. 1273, 1473, 1509, 1865, 1879; Civ. 1162)

Article 1350. Regardless of the generality of the wording of an agreement, it shall cover the matters regarding which the parties clearly intend to enter into the agreement. (Bw. 1854; Civ. 1163)

Article 1351. If a party has specified something in an agreement for the purpose of clarifying the contract, then he shall not be considered to have restricted and limited the binding validity by law, which is contained in the unexpressed cases. (Civ. 1164)

## **Chapter III**

## **Contracts arising by force of law**

Article 1352. Contracts arising by force of law, shall arise by statute or by law as a result of people's acts. (Bw. 307v., 320v., 383, 385, 452, 625v., 1005, 1233, 1353, 1903-1; K.321; Civ. 1370)

Article 1353. Contracts, which arise by force of law as a result of people's acts, shall be caused by a valid legal or an illegal act. (Bw. 1354v., 1365v.; Civ. 1370)

Article 1354. In the event that an individual, voluntarily, without having been assigned thereto, manages a person's affairs with or without the other person's knowledge, he shall impliedly bind himself to continue and complete the management, until the person whose interests are managed shall be in a position to manage his own affairs. (K.154, 264) He shall similarly involve himself in everything related to such affairs. He shall be subject to all the obligations which he would be obliged to comply with, in the event that he had been empowered by a specific authorization. (Bw. 374, 1645, 1792, 1800v., 1817; Civ. 1372)

Article 1355. He shall be obligated to continue his management, notwithstanding that the person whose interests he has assumed may pass away prior to the completion of the matter, until such time that the heir can take over such management. (Bw. 1800; Civ. 1373)

Article 1356. He shall be obligated, with respect to such management, to fulfill the obligations in the manner of a proper head of a household. However, the judge shall be authorized to reduce the compensation of costs, damages and interest resulting from the error or negligence of the managers, depending upon the circumstances, which have caused him to manage the affairs. (Bw.1235, 1243;Civ. 1374)

Article 1357. The person whose interests have been properly managed, shall be bound to fulfill any contract, which has been concluded by the manager on his behalf, and shall indemnify him in respect of all agreements concluded by him personally, and shall compensate him for all beneficial and necessary expenses. (Bw. 1807v.; Civ. 1375)

Article 1358. An individual, who manages a person's affairs without authorization, shall not be entitled to any remuneration. (Bw. 1794; Civ. 1986)

Article 1359. Each payment presumes a debt; each payment \*366 made which was not pursuant to a debt may be reclaimed. With respect to gratuitous contracts which one has fulfilled voluntarily, there shall be no reclamation. (Bw. 1269, 1382v., 1766, 1791; Civ. 1235)

Article 1360. An individual, who has accidentally or knowingly accepted something that was not owed to him, must return such to the individual from whom he has accepted it. (Bw. 531, 1321, 1364; Civ. 1376)

Article 1361. In the event that an individual, who by accident considers himself to be a debtor, has repaid a debt, he shall be entitled to reclaim the payment from the creditor. However, this right shall lapse, if the creditor, as a result of the payment, has destroyed the acknowledgment of debt, without prejudice to the right of reclamation by the individual who has paid, from the actual debtor. (Bw. 1359, 1382, 1766, 1791; Civ. 1377)

Article 1362. An individual, who has accepted something in bad faith which was not owed to him, shall return such with interest and proceeds, effective as of the day of payment, without deductions being made from the compensation of costs, damages and interest in respect of depreciation in the value of the goods. If the goods are destroyed, notwithstanding that such occurred by accident, he shall be obligated to pay the value thereof together with compensation of costs, damages and interest, unless he can prove that the goods would also have been destroyed had they been in the care of the individual to whom they should have been returned. (Bw.532, 549, 575, 1364, 1444, 1967; Civ. 1378v.)

Article 1363. An individual who has sold goods which were not owed and were received by him in good faith, may remedy the situation by returning the sale price. If he has in good faith handed over the goods gratuitously, he shall not be obligated to repay anything. (Bw. 531, 548, 1384, 1717; Civ. 1380)

Article 1364. The individual, to whom the goods are returned, shall be bound, even to the individual who obtained ownership of the goods in bad faith, to compensate the individual for all necessary expenses

incurred in the maintenance of the goods. The owner shall be entitled to retain possession of the goods until those expenses are reimbursed. (Bw. 548v., 567, 574v., 579, 1139-4, 1148, 1499; Civ. 1381)

Article 1365. A party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor. (Bw. 568, 602, 1246, 1447, 1918v.; Rv. 580-7, 582; Aut. 27; Octr. 43v.; Sw.382 bis; Civ. 1382)

Article 1366. An individual shall be responsible, not only for the damage which he has caused by his act, but also for that which was caused by his negligence or carelessness. (Bw. 654, 802, 1207, 1753; Rv. 582; Civ. 1383)

\*367 Article 1367. An individual shall be responsible for the damage which he has caused by his own act, as well as for that which was caused by the acts of the individuals for whom he is responsible, or caused by matters which are under his supervision. (S.27-31 jis. 390, 421) Parents or guardians shall be responsible for the damage caused by minor children who live with them and over whom they exercise parental authority or guardianship. Employers and those who have been assigned to manage affairs of other individuals shall be responsible for the damage caused by their servants and subordinates in the course of duties assigned to them. Teachers and work supervisor shall be responsible for the damage caused by their students and apprentices, during the period that they are under their supervision. (S.27-31 jis. 390, 421) The above-mentioned responsibility shall cease, if the parents, guardians, school teachers and work supervisor can prove that the act, for which they could be held responsible, could not have been prevented. (Bw. 299, 802, 1368v., 1566, 1613, 1710, 1803; K. 321v., 331v., 358a, 373, 534v.; WVO.28; Civ.1384;Bb.1056, 2803,3146)

Article 1368. An owner of an animal, or an individual who uses one, as long as the animal is available for his use, shall be responsible for any damage caused by the animal, whether the animal is under his supervision and in his care, or whether it is lost or has escaped. (Sw. 490; Civ. 1385)

Article 1369. The owner of a building shall be responsible for the damage caused by an entire or partial collapse of the building, should this occur due to absence of maintenance or as a result of a defect in the construction or interior of the building. (Bw. 654, 1366, 1609; Civ. 1386)

Article 1370. In the event of willful or negligent manslaughter, the remaining spouse, the children or parents of the victim, who have been supported by the victim's earnings, shall be entitled to file a legal claim for compensation based upon the status and the financial condition of the individuals involved, and pursuant to the circumstances. (AB.28v.; Bw. 1365, 1380, 1918v.)

Article 1371. Willful or negligent injury to or mutilation of any part of the body shall entitle the injured party to claim compensation for damage caused by the injury or the mutilation in addition to compensation for expenses incurred in the recovery. This shall also be evaluated based upon the status and the financial condition of the individuals involved, and upon the circumstances. This last stipulation is in general applicable to the consideration of the damage resulting from any misdemeanor committed against any individual. (AB. 28; Bw. 1365v., 1918v.)

Article 1372. (S.17-497) The civil legal claim with \*368 respect to an offense shall extend to compensation of damages and to the reinstatement of good name and honor that were damaged by the offense. The judge shall, in the consideration thereof, have regard to the severity of the offense, also the position, status and financial condition of the parties involved and the circumstances. (AB.28; Bw. 1374v., 1379v., 1853, 1918; Sv.163; Sw. 310v.; ISR.66)

Article 1373. (S.17-497) The offended party may also demand a judgment declaring that the offensive act is slanderous or offensive. (S.17-497) If he demands a declaration that the offensive act is slanderous, then the provisions if Article 314 of the Penal Code with regard to punishment for slander, shall apply. The sentence shall, if the offended party so requests, at the expense of the convicted party, be posted in public in so many copies and in the location as ordered by the judge.

Article 1374. Notwithstanding his obligation to compensate, the defendant can prevent the request referred to in the previous article, by offering and providing a public declaration before the judge, stating that he regrets the act committed; that he therefore apologizes and that he considers the offended party to be a person of honor. (Bw. 1378)

Article 1375. (S.17-497) The legal claims mentioned in the three previous articles, shall also apply to spouses, parents, grandparents and grandchildren, following the death of the spouses, children, grandchildren, parents and grandparents against whom the offensive act was committed.

Article 1376. (S.17-497) A civil legal claim with respect to the offense cannot be admitted, if it does not appear that there existed intent to offend. The intent to offend shall not be considered to have existed if the alleged offender apparently acted in the public's interest or if he did so as an act of necessary defense. (Bw. 1918; Rv. 171; Sv.9v., 131v.)

Article 1377. (S.17-497) A civil legal claim shall also not be admitted, if the offended party has been irrevocably declared guilty of the act which was allegedly committed against him. An individual who continues to insult another individual and who clearly intends to insult notwithstanding that the claim against him has been proven in a legal judgment or in an authentic deed shall be obligated to compensate for the damage suffered by the other party. (Bw. 1918v.; Sw. 312v)

Article 1378. All legal claims, described in the previous six articles, shall lapse due to expressly stipulated or implied releases, if following the offense committed and known to the offended party, the offended party shall provide proof of reconciliation or forgiveness, which cannot be reconciled with the intent to claim compensation \*369 or reinstatement of honor. (AB.30; Bw. 1374, 1853; Sv.10)

Article 1379. The legal claim for compensation, as mentioned in Article 1372, shall not be lost either as a result of the death of the offender, or the death of the offended party. (Bw. 1375; Sv. 163)

Article 1380. (S.17-497; 38-276) The civil legal claim with respect to an offense shall lapse after one year, effective as of the day upon which the act was committed and known to the plaintiff. (Bw. 1372v., 1375).

## **Chapter IV**

### **Concerning the nullification of contracts**

Article 1381. Contracts shall be nullified as a result of the following: By payment; (Bw. 1382v.) By offer of immediate payment, followed by consignment or custody; (Bw. 1404v.) By renewal of the debt; (Bw. 1413v.) By comparison or compensation; (Bw.1425v.) By consolidation of debts; (Bw. 1436v.) By exemption from a debt; (Bw. 1438v.) By the destruction of the goods that were owed; (Bw. 1444v.) By the invalidity or the nullification; (Bw. 1446v.) By the implementation of a dissolving condition, which is described in the first chapter of this book; (Bw. 1265v.) and By prescription, which shall be the subject of a separate title. (Bw. 1265, 1268v., 1338, 1646, 1963, 1967; Civ. 1234)

#### **Section 1**

##### **Concerning payment**

Article 1382. A contract can be fulfilled by any one individual who has an interest therein, such as a co-debtor or a guarantor. A contract may also be fulfilled by a third party who does not have any interest in it, provided that the third party acts on behalf of and for the purpose of releasing the debtor, or, if he acts on his own behalf, he shall not assume the rights of the creditor. (Bw. 109, 1280v., 1315v., 1354v., 1383, 1400v., 1405-2, 1792, 1820v., 1823; K.158v.; Rv.591-2, Civ. 1236)

Article 1383. A contract to do something, may not be performed by a third party if this is contrary to the wishes of the creditor who has an interest in the act being committed by the debtor himself. (Bw.1239, 1612; Civ. 1237)

Article 1384. One is required to be the owner of the goods which have been provided as payment and must be authorized to transfer such goods, for the payment to be valid. The payment of a sum of money or of any other consumable matter cannot be reclaimed from one who has consumed the matter given as payment in good faith, notwithstanding that the payment was made by one who was neither the owner nor authorized to dispose of the matter. (Bw. 505, 1239v., 1363, 1386, 1471; Civ. 1238)

Article 1385. The payment shall be made to the creditor, or to an individual who has received authorization from him, or who has been authorized by a judge or the law to accept on behalf of the creditor. A payment made to the individual who is not authorized to accept on behalf of the creditor shall

be valid to the extent the creditor approves of it or benefits from it. (Bw. 105, 108, 307, 385, 430, 452, 464v., 1005v., 1126v., 1279, 1354, 1387, 1602, 1636, 1655, 1719, 1796, 1892; K.17,20v., 44v., 331; F.22, 226; Rv.744; Civ.1239)

Article 1386. The payment, made in good faith, to the person who owns the debt, shall be valid, notwithstanding that the owner due to satisfaction of the debt has been discharged from such ownership. (Bw. 1361v.; civ. 1240)

Article 1387. The payment made to the creditor shall be invalid if he is incompetent to accept such, unless the debtor can prove that the creditor has really benefited from the payment. (Bw. 108, 116, 452, 1330, 1451, 1702, 1798; Civ. 1241)

Article 1388. The payment, made by a debtor to the \*373 creditor, despite a seizure or opposition, shall be invalid with regard to creditors who have effected the seizure or the opposition; they can also, pursuant to their right, compel the debtor to pay again, excluding in such case their right to claim compensation from the creditor. (Bw. 1434; Rv.729v.; Civ. 1242)

Article 1389. No creditor can be forced to accept payment for a matter, unless it was indebted to him, notwithstanding that the goods offered are of equal or greater value. (Bw. 1740, 1756v.; K.140; Civ. 1243)

Article 1390. No debtor may require a creditor to accept partial payment of a debt, notwithstanding that the debt is divisible. (Bw. 1299; K.138; Civ. 1244)

Article 1391. The debtor of certain and specific goods shall be released by the delivery of such goods which should be in the condition that the goods were in at the time that they were delivered previously, unless the depreciation, which the goods have suffered, was not caused by his actions or negligence nor due to the fault or negligence of certain individuals for whom he is responsible, or unless it became apparent after a late delivery of the goods. (Bw. 782, 963, 1157, 1237, 1301, 1444, 1481, 1715, 1747; Civ. 1745)

Article 1392. If the goods owed, are only determined according to their type, the debtor shall not, in order to release himself from the debt, be obligated to return the goods of the best type, however, delivery of goods of bad quality goods shall not be permitted, to. (Bw. 969; Civ. 1246)

Article 1393. Payment shall be made at the location stipulated in the agreement; if no such location has been stipulated, payment shall take place where the goods, which form the subject matter of the agreement, at the conclusion of the contract, were located. With the exception of these two instances, payment shall take place at the residence of the creditor where he resided at the time the contract was concluded, provided that he shall continue to live in this residence, for the term of the contract, otherwise the payment shall take place at the residence of the debtor. (Bw.24, 1405-6, 1412, 1432, 1477, 1514, 1721, 1764; K. 143a, 176, 218a; Rv.310; Civ.1247)

Article 1394. Hires, long term leases, annual salaries for support, perpetual interest or life-annuities, interest payments on loans, and in general, anything that is payable annually or pursuant to stipulated shorter terms, shall be paid in installments, and the payment of three consecutive installments shall give rise to the presumption that all the previous installments have been paid, unless it is proven otherwise. (Bw.1291, 1769, 1916, 1921)

Article 1395. The costs incurred in the payment, shall be borne by the debtor. (Bw. 1407, 1466, 1476, 1724; Rv. 58; \*374 Civ. 1248)

Article 1396. A person who owes various debts has the right to declare at the time of making the payment, to which one of the debts such payment shall apply. (Bw. 1398, 1628; Civ. 1253)

Article 1397. A person who owes a debt upon which interest accrues, shall not, without the permission of the creditor, apply any payment of interest to settlement of the principal debt. Payments towards the principal sum and towards interest which have not settled the entire loan, shall apply primarily to fulfillment of the interest payments. (Bw. 1769; Civ. 1254)

Article 1398. If an individual who has several debts has accepted a release, in which the creditor declares that that which he has received has satisfied one of the debts, the debtor cannot demand that

the payment shall be regarded as a release of another debt unless there has been fraud or deception on the part of the creditor. (Bw. 1321, 1396; Civ. 1255)

Article 1399. If the release does not stipulate which debt the payment was made in respect of, then the payment shall be considered as having been made in respect of the debt which the debtor, among the equally collectable debts, would most benefit from being satisfied; however, if the debts are not collectable, the payment shall be considered to have been made in satisfaction of the debt which was collectable, in priority to the non-collectable debts, notwithstanding that the first debt might have been less significant than the others. If the debts are of an equal nature, settlement shall be made on the earliest dated one; if, however, they are all equal, the debts shall all be settled proportionately. If none of the debts are collectable, the debts shall be settled as if the debts are collectable. (Bw. 1433; Rv. 580v.; Civ. 1256)

Article 1400. Subrogation, or the substitution of a third party in place of and who succeeds to the rights of the creditor, who himself has paid this creditor, shall take place by agreement or by force of law. (Bw. 1041v.; Civ. 1249)

Article 1401. Substitution shall occur by agreement, as follows:

1. if the creditor, having accepted the payment from a third party, shall transfer the rights, legal claims, privileges and encumbrances, which he was entitled to from the debtor. This subrogation shall occur simultaneously with the payment.

2. if the debtor arranges a loan for the purpose of payment of his debt and the lender shall assume the rights of the creditor, in order to validate this subrogation, \*375 the act of lending as well as the release shall then be documented in an authentic deed, and the loan document shall stipulate that the loan is made for the purpose of making the payment; and the release shall stipulate that the payment was made from the money that was advanced by the new creditor for such purpose. Such subrogation shall be implemented without the participation of the creditor. (Bw. 400, 613, 1382, 1403, 1848; Civ. 1250)

Article 1402. Subrogation shall take place by force of law:

1. on behalf of an individual who is also a creditor and who settles the debt with another creditor who has priority, due to a privileged debt or mortgage; (Bw. 1133, 1382)

2. on behalf of a buyer of any immovable assets who uses the consideration for the sale to repay the creditors who held the goods as collateral. (Bw. 1198v.)

3. on behalf of those who, together with others or on behalf of others, are obliged to settle such debt, and who shall benefit from the payment of such debt; (Bw. 1106, 1202, 1204, 1280v., 1293, 1301v., 1840, 1848; K.146, 148, 162, 284)

4. on behalf of an heir who, having accepted an estate, pursuant to the privilege of estate description, settles the debts of the inheritance with his own money. (Bw. 1032-1; Civ. 1251)

Article 1403. The subrogation stipulated in the previous article, shall take place with respect to guarantors as well as debtors; however, it cannot diminish the rights of the creditor if he has only been partly paid; in this regard, he can exercise his rights in respect of that which remains owing to him, preferably over the other debtors from whom he has not received any partial settlement. (Bw.1401-1, 1840; Civ.1352)

## **Section 2**

### **Concerning offer of immediate payment followed by consignment or custody**

Article 1404. If the creditor refuses to accept payment, the debtor may offer him immediate payment of the debt, and if the creditor refuses again to accept such, may place the money or goods in legal custody. Such offer, followed by placement in custody, shall release the debtor and shall be considered as payment in this regard, provided that it is done in a legal manner; the goods placed in such custody shall be for the account of the creditor. (Bw. 1237, 1408, 1766; Rv.809v.; Civ.1257) According to the law of May 19, 1953, State Gazette 53-40, Bank Indonesia bank notes constitute legal tender for each payment, see article 8 page 392.



Article 1405. In order that such offer shall be valid, the following shall be deemed necessary:

1. it shall be made to a creditor who is authorized to accept it, or to an individual, who is authorized to accept on his behalf; (Bw. 1385, 1387)
2. it shall be made by an individual who is authorized to pay; (Bw. 1382, 1384)
3. it shall be applied to the entire collectable sum and interest accrued thereon, and shall also include the costs which have been settled, and also regarding a sum of money for the costs which have not been settled subject to further settlement; (Bw. 1390, 1406-2)
4. the stipulated time limit has expired, if such has been stipulated for the benefit of the creditor; (Bw. 1270v.; K.139)
5. the condition pursuant to which the debt has been made shall be complied with; (Bw.1263v.)
6. the offer shall be made at the location where the payment, in accordance with the agreement, should have taken place, and in the event that no special agreement exists, either to the creditor personally, either at his actual or selected residence; (Bw. 17, 24v., 1393, 1412; Rv. 443, 809)
7. the offer shall be made by a notary public or by a process server before two witnesses. (Rv. 809v.; Not. 22; Civ. 1258)

Article 1406. In order that a consignment shall be valid, authorization shall not be demanded from the judge; the \*377 following shall be sufficient: (Rv. 810)

1. the consignment shall be preceded by a signed notification submitted to the creditor which stipulates the date, time and location at which the offered goods shall be placed in custody; (Rv.809)
2. the debtor shall have relinquished his rights over the offered goods, by placing them in custody in a consignment to or storage account at the administration of the legal board which shall, in the event of dispute, take this into account, together with the interest payments made up to the day upon which they were placed in custody; (Bw. 1405-3; Rv. 580-3)
3. a notary or process server, shall draw up an official report in the presence of two witnesses, covering the nature of the offered currency, the refusal of the creditor to accept such, or his failure to appear to accept the money, and finally carry out the consignment itself; (Bw.1405-7)
4. notwithstanding that the creditor has failed to appear to accept the money, the official report shall be forwarded to him together with a reminder to collect the goods in custody. (Rv.810; Civ. 1259)

Article 1407. The costs incurred in the offer of immediate payment and consignment shall be payable by the creditor, if such have been carried out in accordance with the law. (Bw. 1395, 1412; Civ. 1260)

Article 1408. The debtor may retrieve stored goods which have not been accepted by the creditor; in this regard, neither debtors nor guarantors shall be released from their debts. (Bw. 1409v., 1845v.; Civ.1261)

Article 1409. If the debtor himself has been given a legally enforceable sentence, and in which his proposed offer has been declared sound and valid, he cannot, even with the creditor's approval, reclaim the stored assets without jeopardizing the other debtors and guarantors. (Bw. 1404; Rv.811; Civ.1262)

Article 1410. The other debtors and guarantors shall also be released, if, following the date of the notification of the consignment, the creditor has allowed one year to lapse, without having disputed the existence of the assets.

Article 1411. A creditor, who has granted approval to a debtor to reclaim his goods placed in custody, after the consignment has been declared valid pursuant to a legally enforceable judgment, can no longer, in recovering his debt, avail of the privileges of mortgages which were attached thereto. (Bw. 1408v., 1413, 1421; Civ. 1263)

Article 1412. In the event that the debt comprises specific goods, which should have been delivered at the location of the goods, the debtor shall, through the intervention of the court, remind the creditor to take the \*378 goods with him as specified in a deed, which shall be notified to the creditor himself or the creditor's residence or to the residence which was selected for the conclusion of the agreement. If, after this reminder has taken place, the creditor has not taken the goods, the debtor may request the judge's permission to store the goods at a different location. (Bw. 24, 1393, 1405-6, 1477, 1738-3; Civ. 1264).

### **Section 3**

#### **Concerning renewal of a debt**

Article 1413. Renewal of a debt arises in the following three circumstances:

1. if a debtor, on behalf of his creditor, executes a new contract of indebtedness, in substitution for the original one, which shall then be nullified;
2. if the previous debtor who has been released from his contract by the creditor is substituted by a new debtor;
3. if, pursuant to a new agreement, a new creditor replaces the previous creditor, in respect of whom the debtor shall be released from his contract. (Bw.1400, 1417, 1421, 1790; K.236; Civ.1271)

Article 1414. Renewal of a debt can only take place between individuals who are competent to conclude contracts. (Bw. 1329v.; Civ. 1272)

Article 1415. Renewal of a debt shall not be presumed; such intention shall be clearly evident from the deed. (Bw. 1417, 1420, 1438; Civ. 1273)

Article 1416. Renewal of debt, in the event of substitution of a new debtor, may take place without the cooperation of the first debtor. (Bw. 1382; Civ. 1274)

Article 1417. Delegation or transfer, in which a debtor provides his creditor with another debtor who shall then be bound to the creditor, shall not create a renewal of debt, if the creditor does not expressly declare that he had intended to release the debtor who has executed the transfer, from the agreement. (Bw. 1400v., 1415, 1418, 1420, 1431; Civ. 1275)

Article 1418. The creditor of the debtor, who has effected the transfer, and as a result of which has been released from his obligations, shall not be entitled to prosecute his substitute if he has become bankrupt or insolvent, unless this has been expressly stated in the agreement, or if the substitute debtor at the time of transfer had been clearly bankrupt, or if his business had been in a state of decline. (Bw. 1417, 1536; F.1v; Civ.1276)

Article 1419. The debtor, who, pursuant to the transfer, has bound himself to a new creditor, and as a result thereof has been released from all obligations with respect to his previous creditor, may not raise objections to the new creditor, which he could have applied to the old creditor, notwithstanding that this restriction has not \*380 been notified to him at the execution of the new contract, however, this shall not remove his right to claim recourse from the original creditor. (Bw. 1417v.)

Article 1420. An appointment by the debtor, of an individual to carry out payment on his behalf, shall not result in a renewal of debt. The same shall apply to a single appointment by the creditor of an individual to accept on his behalf. (Bw. 1415, 1417, 1792v.; Civ. 1277)

Article 1421. The privileges and mortgages, related to the old debt, shall not pass to the substitute, unless such is expressly stipulated by the creditor. (Bw. 1134, 1209-1, 1411, 1435; Civ. 1278)

Article 1422. If the renewal of debt is created by the substitution of a new debtor, the privileges and mortgages, which originally were related to the debt claim, shall not pass to the assets of the new debtor. (Bw. 1421; Civ. 1279)

Article 1423. If the renewal of debt takes place between the creditor and one of the debtors who are severally liable, the privileges and the mortgages may not remain in effect other than in respect of the

assets of the individual who is concluding the new contract of indebtedness. (Bw. 1280v., 1287, 1424; Civ. 1280)

Article 1424. The renewal of debt concluded between the creditor and one of the debtors who are severally liable, shall result in the other debtors being released from their contract. Renewal of debt, created in respect of debtors who are severally liable, shall release the guarantors. If, however, the creditor demands, in the first instance, the participation of the co-debtors, and in the second instance the participation of the guarantors, and the co-debtors or guarantors refuse to participate in the new arrangement, the original contract of indebtedness shall continue in effect. (Bw. 1280v., 1287v., 1430, 1437, 1442v., 1845v., 1938; Civ. 1281)

#### **Section 4**

##### **Concerning compensation or comparison of DEBT**

Article 1425. If two persons are debtors to one another, a comparison of debts shall be made, as a result of which the mutual debts shall be canceled, in the manner and in the instances hereinafter stipulated. (Bw. 971, 1429v., 1602r; civ. 1289; Bb.7115)

Article 1426. Comparison shall take place legally notwithstanding that the debtors are unaware of it, and both debts shall cancel one another, at the time that they exist simultaneously, in respect of the same reciprocal amount. (Civ. 1290; Bb.7115)

Article 1427. Comparison shall only take place between two debts which both have a specific sum of money as the subject, or a specific number of assets of the same kind, which shall be expended by use, and which are, mutually susceptible to an immediate settlement and collection. (Bb.3732) Delivery of food products, grains and other agricultural products which are not being disputed, and of which the value is stipulated in price lists or other such information customarily used in Indonesia, can be compared against settled and collectable sums of money. (Bw. 505, 1263, 1269, 1271; F.52v.; Civ.1291; Bb.135, 1459, 2707, 7115)

Article 1428. An extension of payment obtained shall not restrict comparison. (Bw. 1266, 1268v., 1760; Civ.1292)

Article 1429. The comparison shall take place for any reason resulting in mutual debts, with the following exceptions:

1. if the return of some assets from which the owner has unlawfully been expropriated, is demanded;
2. if the return of assets, which have been placed in custody or have been lent, is demanded; (Bw. 1694v., 1714v., 1740v.)
3. if the debt results mainly from means of livelihood which have been declared to be prohibited from being seized. (Rv. 749-2 and 3; Civ. 1293)

Article 1430. A guarantor may compare that which the creditor owes the debtors who are severally liable, but the debtors who are severally liable may not compare that which the creditor owes the guarantor. The debtors who are severally liable also shall not \*382 reciprocate with that which is owing from the creditor to one of the other debtors. (Bw. 1287, 1410, 1424, 1437, 1442, 1846v., 1938v.; Civ. 1294; Bb.7115)

Article 1431. A debtor who has clearly agreed to an assignment of rights by the creditor to a third party, can no longer make use of the comparison against the individual for whose benefit the assignment took place, which he could have made use of against his creditor. An assignment of rights, which was not approved by the debtor, but which has been notified to him, shall only restrict the comparison of the debts which arose after the notification. (Bw. 613, 1417, 1420, 1435, 1533; Civ. 1295)

Article 1432. If the mutual debts are not payable at the same location, they may not be compared unless there is reimbursement of the costs incurred in the assignment. (Bw. 1393, 1395, 1405, 1412; Civ. 1296)

Article 1433. In the event of several debts being susceptible to comparison and being claimable from one person, one shall, with regard to the comparison, follow the rules stipulated in article 1399. (Bw. 1397; Civ. 1297)

Article 1434. Comparison shall not occur to the disadvantage of the rights acquired by a third party. In this regard, a debtor who has become a creditor, following the seizure by a third party of that which is owed, cannot, to the disadvantage of the person effecting seizure, benefit from comparison of debt. (Bw. 1388; Rv. 728v., 744; Bb. 1459; Civ. 1298)

Article 1435. A person, who has settled a debt, which has been legally nullified by comparison, may no longer upon claiming the debt which he has not compared, avail of the privileges and mortgages which were related to the debt to the disadvantage of a third party,, unless he has lawful grounds for pleading ignorance of the existence of the debt with which his debt should have been compared. (Bw. 1426; Civ. 1299)

## **Section 5**

### **Concerning consolidation of debts**

Article 1436. If the attributes of the creditor and debtor are united in one and the same person, a consolidation of debts shall take place by law, which shall nullify the debt. (Bw. 706, 718-1, 736, 754-1, 807-3, 818, 1032, 1539, 1727; Civ.1300)

Article 1437. Consolidation of debts which has taken place with the principal debtor, shall also benefit his guarantors. If it takes place with the guarantor, it shall not result in the nullification of the principal contract. If it takes place with one of the debtors who are severally liable, it shall benefit the other debtors who are severally liable in respect only of the part of the debt which he owes. (Bw. 1288, 1293, 1410, 1424, 1430, 1442, 1821, 1846, 1938v.; Civ. 1301)

## **Section 6**

### **Concerning the discharge of a debt**

Article 1438. A discharge of a debt shall not be presumed, but must be proven. (Bw. 1415, 1441, 1865; Civ. 1315)

Article 1439. The voluntary return of an original private proof of debt by the creditor to the debtor, shall prove the discharge of the debt, even with respect to the co-debtors who are severally liable. (Bw.1279v., 1321, 1857, 1874v., 1878, 1916; Civ. 1282)

Article 1440. The discharge of a debt, or the release granted pursuant to an agreement for the benefit of one of the co-debtors who are severally liable, shall release all the others, unless the creditor expressly reserves his rights with respect to the latter mentioned; in which case, he cannot claim the debt until after the deduction of the share of the individual whose debt has been discharged. (Bw. 1279v., 1287, 1289, 1442, 1857; Civ. 1285)

Article 1441. The return of assets provided as collateral shall not be sufficient proof of the discharge of a debt. (Bw. 1150v., 1438; Civ. 1286)

Article 1442. The discharge of a debt, or the release pursuant to an agreement, granted to the principal debtor, shall also discharge the guarantors. The discharge granted to the guarantor shall not release the principal debtor. The discharge granted to one of the guarantors, shall not release the others. (Bw. 1410, 1424, 1430, 1437, 1821, 1838, 1846v., 1938; Civ.1287)

Article 1443. The amount received by a creditor from a guarantor for fulfillment of the guarantee, shall be deducted from the debt, and shall be used to settle the debt of the principal debtor and the other guarantors. (F.131; Civ.1288)

## **Section 7**

### **Concerning the destruction of the assets owed**

Article 1444. In the event that the specific assets, which constitute the subject matter of the agreement, are destroyed, cannot be traded, or are lost, to the extent that one is not aware whether or not the assets still exist, the agreement shall become void, unless the assets are destroyed or lost due to no fault of the debtor, and prior to his negligence in delivering the assets. The contract shall also be voided in the event that the debtor fails to deliver the assets which were not insured against unforeseen circumstances; similarly, in the event that the assets are delivered to the creditor and are destroyed in the same manner, the contract shall also be voided. The debtor must prove the unforeseen circumstances alleged. (S.17-497) Regardless of the manner in which expropriated assets are destroyed or lost, it shall not release the individual who has expropriated these assets from the obligation to compensate to the value thereof. (Bw. 579-3, 718-2, 736, 754-5, 795, 807-6, 818, 923, 999, 1099, 1157, 1235v., 1244, 1264, 1275, 1285, 1327, 1332v., 1362, 1472, 1510, 1553, 1605, 1607, 1646-2, 1648, 1708, 1744v.; Civ.1302)

Article 1445. If the assets owed are destroyed, can no longer be traded or are lost through no fault of the debtor, the debtor is required, in the event that he has any rights or claims for recourse related to these assets, to release them to the creditor. (Bw. 1716; Civ. 1303)

## **Section 8**

### **Concerning the invalidity and the nullification of the contracts**

#### **(CF. S. 38-524 under BW.1456)**

Article 1446. All contracts concluded by minors or individuals under guardianship, are legally void, and must be declared void, upon a claim filed by one of them or on their behalf, based upon the grounds of their minority or guardianship. Contracts, concluded by married women and by minors who have been acknowledged as competent, shall only be void by law, to the extent that the contracts concluded are beyond their competence. (Bw.108v., 113, 116, 282, 330v., 419, 425, 429v., 452, 1330v., 1453; Civ. 1305)

Article 1447. The provision in the previous article shall not apply to contracts resulting from a misdemeanor or infringement, or from any act which has caused damage to another party. (S.26-335 jjs. 458, 565 and 27-108) Minority cannot be invoked in respect of contracts by minors, prenuptial agreements, in due observance of article 151, or to labor agreements, in due observance of article 1601g, or to labor agreements to which article 1601f is applicable. (Bw. 1365v.; civ. 1309v.)

Article 1448. (S.27-31 jjs. 390, 421) If the formalities for the benefit of minors and individuals under guardianship and which are required for the validity of certain deeds have been complied with, or if the person who exercises parental authority, or the guardian who exercises guardianship, has performed acts, provided that such shall not be beyond his competence, the minors and individuals under guardianship, with respect to their acts, shall be deemed to have committed such after having come of age or outside guardianship, without prejudice to their rights to claim recourse from those who exercise parental authority, the guardians, or the conservators, if there are grounds therefore. (Bw. 309, 330, 393v., 401, 403, 407, 430, 452; Civ. 1314)

Article 1449. Contracts concluded under duress, or due to error or fraud, shall result in a legal claim to nullify such. (Bw. 1053, 1121, 1321v., 1452v., 1858; Civ. 1117)

Article 1450. If adults, and also minors if they have been regarded as adults, have been disadvantaged, they may only demand the nullification of the contracts, in the specific instances stipulated by law. (Ov. 79; Bw.429, 1653, 1112-3, 1113v., 1124, 1858; F.41v.; S.38-524 under Bw.1456; Civ.1118, 1313)

Article 1451. The nullification of contracts, based upon \*387 the incompetence of the individuals as mentioned in article 1330, shall result in the restoration of the assets and the parties to the position that they were in prior to the conclusion of the contract, provided that anything granted or paid to the incompetent parties, as a result of the contract, may be reclaimed to the extent only that such is still in the possession of the incompetent party, or to the extent that it appears that the settlement or payment has been beneficial to him, to the extent that what has been enjoyed has been used or extended for his benefit. (Bw. 116, 1387, 1446, 1702; Civ. 1312).

Article 1452. Nullification, on grounds of duress, error or fraud, shall also result in the assets and the parties being restored to the position that they were in prior to the conclusion of the contract. (Bw.1451)

Article 1453. In the instances stipulated in articles 1446 and 1449, the individual against whom the legal claim for nullification is granted shall also be bound, to reimburse the costs, damages and interest payments, provided that there are grounds therefor. (Bw. 1243v.)

Article 1454. (S.1906-348) In all instances where the period during which a legal claim for nullification of a contract may be made is not limited to a shorter time period by a specific legal regulation, the period shall be five years. (Bw. 1489, 1500) The period shall be effective as follows: in case of minority, from the date on which the age of majority is reached; in case of guardianship, from the date that such shall cease; in case of duress, from the date that such has ceased; in case of error or fraud, from the date of discovery; in case of acts of a married woman concluded without authorization of the husband, from the date of dissolution of the marriage; in case of invalidity, which was covered in article 1341, from the date upon which the required level of awareness exists. The above-mentioned time period within which the legal claim must be filed shall not apply to the invalidity which can be presented as a defense or demurrer, which may always be brought. (Bw.108, 115v., 414, 1511, 1690; F.49; Civ. 1304)

Article 1455. The individual, who purports to be able to claim the nullification of a contract on various grounds, is required to submit evidence of all those grounds and shall be liable to punishment upon late submission of same, unless the opposing party could not have notified such individual earlier. (Rv.41, 136)

Article 1456. The legal claim for nullification shall lapse, if, the minor, an individual under guardianship, a married woman who has acted without the assistance of her husband, or those who can cause duress, error or fraud, have confirmed the contract expressly or by implication, following the date of the coming of age of the minor, the \*388 discontinuance of guardianship, the dissolution of marriage, the discontinuance of force, or the discovery of the error or fraud. (Bw.117, 1327, 1892; Civ. 1311)

#### **Notes regarding usury ordinance 1938 S.38-524, effective September 9, 1938**

*(following Article 1456 in Indonesian version)*

The Royal Decision (K.B.) of July 17, 1916, Ind. S.16-643, opposing usury, is hereby revoked and Article 2 of the Usury Ordinance stipulates as follows:

Art.2 (1): If, from the beginning, a difference of value has arisen with in regard to the mutual obligations of the parties to an agreement, and the imbalance, considering the circumstances is considered to be excessive, the judge, may, at the request of the disadvantaged party, or in official capacity, limit the obligation of such party or declare the agreement void, unless there is probable cause that the disadvantaged party has fully anticipated the consequences of the agreement concluded and he has not acted frivolously, based upon lack of experience or in a state of emergency.

(2): Evidence by witnesses is admissible in all circumstances (Bw. 1895; Rv.171)

(3): Prior to passing a decision, as set forth in the first paragraph, the judge shall allow the parties to speak of the circumstances which could have justified the excessive imbalance of the mutual obligations.

(4): Should the judge pass a decision, as set forth in the first paragraph, he shall, in his judgment, regulate the consequences for both parties in a fair fashion, provided that in the event of nullification of the agreement, the parties shall be required to be re-instated in the condition that they were in, prior to the entering of the agreement.

### **Chapter V**

#### **Concerning sale and purchase**

##### **Section 1**

##### **General provisions**

Article 1457. A sale and purchase is an agreement, by which one party is bound to deliver a certain matter, for which the other party shall pay a stipulated price. (Bw. 499, 1235v., 1332v., 1465, 1533v.; Civ. 1582)

Article 1458. The agreement shall be deemed to be concluded between the parties as soon as agreement has been reached concerning the subject matter and the price, notwithstanding that the matter has not been delivered, or that payment has not been made. (Bw. 1340, 1474, 1513; Rv. 102; Civ. 1583)

Article 1459. The ownership of the asset sold shall not be transferred to the buyer until after delivery takes place which shall occur in accordance with articles 612, 613 and 616. (Ov.26; Bw. 584, 1475, 1686; Rv. 526; Civ. 1583)

Article 1460. If the asset sold consists of a specific article, it shall be, from the time of the purchase, the liability of the buyer, notwithstanding that delivery has not yet taken place; and the seller shall be entitled to demand the consideration. (Bw.1237, 1266, 1444, 1462, 1481, 1513, 1545; Civ.1138, 1624)

Article 1461. In the event that assets are not sold by quantity, but according to weight, number or size, such assets shall be the liability of the seller until they are weighed, counted or measured. (Civ. 1585)

Article 1462. If, however, the assets are sold by quantity, these shall be the liability of the buyer, notwithstanding that the assets have not been weighed, counted or measured. (Bw. 1460; civ. 1568)

Article 1463. Sale and purchase by trial, or of assets which an individual usually samples beforehand, shall always be presumed to have taken place pursuant to a condition precedent. (Bw. 1263v.; civ. 1587v.)

Article 1464. In the event that the sale has been executed with the payment of a deposit, none of the parties can cancel the sale by retaining or returning the deposit. (Bw. 1338, 1488; Civ. 1590)

Article 1465. The sale price shall be determined by the parties. The valuation, however, shall be determined by a third party. If the third party is unwilling or unable to do so, then no sale shall take place. (Bw. 1458, 1634; Civ. 1591v.)

\*391 Article 1466. The expenses incurred in the sale and purchase deed and other additional costs, shall be payable by the buyer, unless it has been stipulated otherwise. (Bw. 1395, 1476; Civ. 1593; Overscr. 10; R.v. Overschr.13)

Article 1467. No sale or purchase shall take place between spouses, with the exception of in the three following instances:

1. If one of the spouses transfers the assets to the other spouse from whom he or she has been legally divorced, in order to provide the spouse with that which he or she is entitled to in accordance with the law. (Bw. 186v., 243)

2. If there is a valid reason for the transfer carried out by the husband to the wife, notwithstanding that they are not legally divorced, for example in order to return the assets of the wife which have been sold or a sum of money belonging to her, if the assets sold or the money are excluded from the community property. (Bw.105, 124, 139v., 153, 195)

3. In the event that a wife transfers the assets to her husband in consideration for a sum of money which was promised to him a dowry, to the extent that these assets are not part of the community property. (Bw.139)

However, in these three instances, the rights of the heirs of the parties involved shall not be prejudiced, if one of the latter mentioned shall also be entitled to an indirect benefit. (Bw. 105, 140, 183, 309, 393, 425, 452, 481, 985, 1678; Rv. 507; Civ. 1595)

Article 1468. Judges, members of the prosecution counsel, court clerks, attorneys, litigators, process servers and notaries shall not be entitled to rights and legal claims in respect of which lawsuits are still pending at the court of justice in whose legal jurisdiction they are serving; breach of this provision shall result in nullification and shall render the guilty party liable for compensation of costs, damages and interest. (Bw. 1243v., 1554; Civ. 1597).

Article 1469. Public officials shall not, on their own behalf or on behalf of other individuals, purchase assets which are sold by them or in their presence, and breach of this provision shall result in the same

punishment being imposed. (Bw. 1243v., 1554; Civ. 1597) With regard to movable assets, the Governor General shall have the authority to, in the public's interest, release the officials from the aforementioned prohibition, if he deems it advisable. He shall also in specific circumstances, provided that it is in the interest of the sellers, grant permission to the officials as mentioned in this article to purchase immovable assets which are sold in their presence. (Weesk.3)

Article 1470. The same punishment shall also apply to the \*392 following or other individuals, who shall not act as buyers in a private sale: trustees of assets the sale of which they have been assigned with; managers of assets belonging to the land and public institutions, which have been assigned to their care and management. It shall however be at the discretion of the Governor General to grant release of this prohibition to the public managers. The guardians may buy the immovable assets belonging to their wards, in the manner stipulated in article 399. (Bw. 351, 400, 452, 1243, 1454, 1792v., 1800; Civ. 1596; Weesk.7)

Article 1471. The sale and purchase of another person's assets shall be void, and may result in a claim against the seller for compensation of costs, damages and interest, if the buyer was unaware that the assets belonged to somebody else. (Bw. 582, 966, 1180, 1316, 1363, 1384, 1493v., 1496v., 1499, 1523, 1717, 1961, 1977; Civ. 1599)

Article 1472. If, at the time of the sale, the assets sold are entirely destroyed, the sale shall be void. If, however, only part thereof is destroyed, the buyer shall be entitled to forego the sale, or claim the remaining part, and to determine the sale price thereof pursuant to comparative appreciation. (Bw. 1275, 1320-3, 1338, 1444; Civ. 1601)

## **Section 1**

### **Concerning the obligations of the seller**

Article 1473. The seller is required to clearly express his commitments; all vague and ambiguous stipulations shall be interpreted in a manner to his disadvantage. (Bw. 1342v., 1349; Civ. 1602)

Article 1474. He shall have two main obligations; to deliver the sold assets and to safeguard them. (Bw. 1235, 1475v., 1491v.; Civ. 1603)

Article 1475. Delivery is a transfer of the assets sold into the control and ownership of the buyer. (Bw. 612v., 1459; Civ. 1604)

Article 1476. The costs of the delivery shall be borne by the seller, and the pick-up costs shall be at the expense of the buyer, unless otherwise stipulated. (Bw. 1495, 1466; Civ. 1608)

Article 1477. Delivery shall take place at the location where the sold goods are located at the time of the sale, unless otherwise agreed. (Bw. 1338, 1393, 1412; Civ. 1609)

Article 1478. The seller shall not be obligated to deliver the assets, if the buyer has not paid the sale price, and if the seller has not granted him an extension of the period for payment. (Bw. 1139-3, 1144, 1182, 1390, 1514; Civ. 1612)

Article 1479. Revoked by S. 1906-348.

Article 1480. In the event that delivery does not take place due to the seller's negligence, the buyer may demand nullification of the sale in accordance with the provisions of article 1266 and 1267. (Bw. 12136, 1243, 1517; Civ. 1610)

Article 1481. The assets shall be delivered in the condition that they are in at the time of the sale. All gains shall belong to the buyer with effect from that date. (Bw. 500v., 571, 963, 1235, 1237, 1243, 1391, 1460; Civ. 1614)

Article 1482. The obligation to deliver assets shall include anything which is attached thereto and which is intended for the owner's permanent use, including evidence of ownership, if such exists. (Bw. 507, 584, 588, 612v., 1235v., 1338v., 1481, 1533; Civ. 1615)



Article 1483. The seller must deliver that which is sold in its entirety, as stipulated in the agreement, subject \*394 to amendments hereinafter mentioned. (Civ. 1616).

Article 1484. If the sale of immovable assets has taken place and stipulations have been made regarding the extent thereof or contents which are further stipulated to be subject to a certain price for that measurement, the seller shall be obligated to deliver the amount stipulated in the agreement; and if he is unable to do so, or if the buyer does not demand such, the seller shall be obligated to accept with a proportionate reduction of the price. (Bw. 1489, 1501, 1588; Civ. 1617)

Article 1485. If, however, in the circumstances referred to in the previous article, the size of the immovable assets is greater than stipulated in the agreement, the buyer shall have the option to either increase the price proportionately, or to cancel the sale, if the excess exceeds one twentieth of the size stipulated in the agreement. (Bw.1489; Civ.1618)

Article 1486. In all other circumstances, whether regarding the sale of a certain article, or a sale which concerns separate and specific plots of land and which states the size or describes the assets sold, followed by the statement of size, the statement of the size shall not provide grounds for the seller to increase the price in respect of the increase in size, nor shall it provide the buyer with grounds for any reduction in the price if there is a reduction in size, other than to the extent that the difference between the actual size and the one stated in the agreement, shall be approximately one twentieth, as computed according to the value of the entire sold assets, unless otherwise stipulated. (Bw.1484v.; Civ. 1619)

Article 1487. In the event that there are grounds for increasing of the sale price in respect of the increase in size in accordance with the previous article, the buyer shall have the option to cancel the sale or pay the increased sale price including interest, if he has retained the immovable assets. (Bw. 1481, 1515; Civ.1620)

Article 1488. In all circumstances in which the buyer has the right to cancel the sale, the seller shall be bound to, in addition to the sale price, if he has received such, return the costs incurred in the sale and delivery, to the extent that he has paid such in accordance with the agreement. (Bw.1454, 1484v., 1490; Civ.1622)

Article 1489. The seller's legal entitlement to supplement the sale price, and the buyer's legal claim for reduction of the price or cancellation of the sale, shall be filed within a period of one year effective from the day on which delivery took place; failure to comply with such time period shall cause these legal claims to lapse. (Bw. 1454, 1484v., 1490; Civ. 1622)

Article 1490. In the event that two plots of land in the same agreement are sold together for one price and the size of each is stipulated and it appears that one is bigger than the other, the difference shall be settled by \*395 reconciling the amounts until the required amount has been reached, and the claim either for an increase in or reduction of the sale price shall no longer proceed, unless in accordance with the rules mentioned above.

Article 1491. The obligation of the seller to the buyer to provide a warranty, ensures the following two matters, firstly, the safe and peaceful ownership of the assets sold; secondly, the security against any hidden defects in the assets, or those hidden defects which may cause cancellation of the sale. (Bw. 1084, 1208, 1474v., 1492v., 1504v., 1534v., 1990; Rv.70v.;Civ.1625)

Article 1492. Notwithstanding that no stipulations have been made regarding the warranty at the time of sale, the seller shall be legally obligated to indemnify the buyer against dispossession which may be enforced against the entire sold assets or part thereof, or against the encumbrances which one claims to have on such assets, and which have not been disclosed at the time of the purchase. (Bw. 1208, 1339, 1474, 1496v., 1500v., 1544; Rv.580-1; Sw. 266; Civ. 1626)

Article 1493. The parties may, pursuant to specific agreements increase or reduce the obligations stipulated by law; they may even agree that the seller shall not be bound by any kind of warranty. (Bw. 1249, 1338, 1473, 1506, 1534; Civ. 1627)

Article 1494. Notwithstanding that it has been stipulated that the seller shall not be bound to provide a warranty, he shall remain liable for the consequences of any acts committed by him; all agreements to the contrary shall be void. (AB.23; Bw.1534; Sw.266; Civ. 1628)

Article 1495. The seller shall, pursuant to the same stipulation, in the event of dispossession, be obliged to return the consideration for the sale, unless the buyer, at the time of the sale, was aware of the danger of dispossession or purchased the assets at his own risk. (Bw.1493, 1496-1, 1505, 1774; Civ.1629)

Article 1496. If the warranty has been provided or if nothing has been stipulated, the buyer shall be entitled, in the event of dispossession, to claim the following from the seller:

1. the return of the sale consideration; (Bw. 1495, 1497) 2. the return of the proceeds, in the event he is obligated to return those to the owner carrying out dispossession; (Bw. 575v.) 3. the costs incurred by the buyer in filing the claim, as well as the costs incurred by the original claimant; (Bw. 1503; Rv. 58) 4. the compensation of costs, damages and interest, including the legal costs incurred in the sale and delivery, to the extent that the buyer has paid such. (Bw.1208, 1243, 1246, 1466, 1476, 1488v., 1498v., 1508v.; Rv.70v.; Civ.1630)

\*396 Article 1497. If at the time of dispossession, it is discovered that the assets sold have depreciated in value or have clearly deteriorated as a result of either the negligence of the buyer or force majeure, the seller shall be bound to return the entire consideration. However, if the buyer has benefited from the damage caused by him, the seller shall be entitled to deduct an amount equivalent to the profit enjoyed by the buyer from the consideration. (Bw.1207; Civ. 1631v.)

Article 1498. If the sold assets are discovered, at the time of the dispossession, to have appreciated in value, notwithstanding that the buyer has not committed any acts, the seller shall be obligated to pay the buyer the portion of the price which exceeds the sale value. (Bw. 1207, 1496-4, 1497; Civ. 1633)

Article 1499. The seller shall be obligated to return to the buyer, or through the individual who has effected dispossession on the seller's behalf, any amount which the buyer has spent towards repairs and necessary improvements to the assets. If the seller disposes of another person's assets in bad faith, he shall be obligated to return all costs incurred to the buyer, even those which were only spent to improve or alter the assets. (Bw. 575, 579, 581, 1207, 1364, 1471, 1508; Civ. 1634v.)

Article 1500. In the event that only part of the assets is dispossessed, and that particular part, in relation to the entire assets, is so distinct that the buyer would not have made the sale without the part dispossessed, he may cancel the sale, provided that he has filed the legal claim within one year following the day on which the judgment for dispossession has obtained legal validity. (Bw.1454, 1511; Civ.1636)

Article 1501. If the sale is not canceled in the event that there is a claim for part of the sold assets, the buyer shall be compensated for the part that has been dispossessed according to the value at which the assets were appraised at the time of the dispossession, but not in proportion to the entire sale price, whether the sold assets have appreciated or depreciated in value. (Bw. 1584, 1496, 1500; Civ. 1637)

Article 1502. If the sold assets appear to be encumbered by servitude's, and this fact has not been notified to the buyer, or he is unaware of it, and the servitude's are of such significance that one has reason to presume that the buyer would not have concluded the sale if he had knowledge thereof, he may demand the cancellation of the sale, unless he shall prefer to be compensated. (Bw. 1266, 1492, 1496, 1505; Civ. 1638).

Article 1503. The warranties with respect to dispossession shall cease, if, the buyer, pursuant to the judgment which has obtained legal validity, has been sentenced without having had to summon the seller, and the latter proves that there were sufficient grounds to reject the claim. \*397 (Bw. 1496, 1865; Rv. 70v.; Civ. 1640)

Article 1504. The seller shall be bound to warrant against hidden defects of the sold assets, which would render them unsuitable for the intended use, or which would reduce the use in such manner, that if the buyer had been aware of such defects, he would not have purchased those assets, or would have purchased them at a lower price. (Bw. 1322, 1491, 1507, 1511v., 1552, 1733; Civ. 1641)

Article 1505. The seller shall not be obliged to be responsible for visible defects, which the buyer could have discovered himself. (Bw.1495, 1502; civ. 1642)

Article 1506. The seller shall be responsible for the hidden defects, notwithstanding that he may be unaware of them himself, unless, in that case, he had stipulated that he would not be bound to any warranties whatsoever. (Bw. 1493v., 1507, 1552; Civ. 1643)

Article 1507. In the instances mentioned in article 1504 and 1506, the buyer shall have the option to either return the assets and demand a refund of the sale consideration, or keep the assets and reclaim that part of the sale price, as determined by the judge, after having consulted experts. (Rv. 136; Civ. 1644)

Article 1508. If the seller was aware of the defects in the assets, he shall be obliged, in addition to returning the sale consideration received therefor, to compensate the buyer for the costs, damages and interest. (Bw. 1243, 1248, 1496, 1499, 1552, 1753; Civ. 1643)

Article 1509. If the seller was unaware of the defects in the assets, he shall be obliged only to return the sale price, in addition to compensating the buyer for the costs incurred in the sale and delivery, to the extent that he has paid for them. (Bw. 1496; Civ. 1646)

Article 1510. If the assets sold contained hidden defects as a result of which they have been destroyed, the loss incurred shall be borne by the seller who shall be obliged to return the sale consideration and provide other compensation, as mentioned in the two previous articles; however, any loss caused by accident shall be borne by the buyer. (Bw. 1444v., 1496; Civ. 1647)

Article 1511. The legal claim resulting from defects which have caused the cancellation of the sale, shall be filed by the buyer as soon as possible, having regard to the nature of the defects, and by taking into account the customs of the locality where the sale was concluded. (AB.15; Bw. 1454, 1500, 1507; Civ. 1648)

Article 1512. This legal claim shall not proceed with regard to sales which take place pursuant to legal authority. (Rv.472,521v.; Civ.1649)

## **Section 2**

### **The obligations of the buyer**

Article 1513. The principal obligation of the buyer shall be to pay the sale price, at the time and location stipulated in the agreement. (Bw. 1139, 1182, 1382v., 1460, 1478, 1516; K.98; Civ. 1650)

Article 1514. If nothing has been stipulated in this regard upon concluding the sale, the buyer shall pay at the location where and at the time that delivery shall occur. (Bw. 1393, 1477; Civ. 1651)

Article 1515. The buyer shall, notwithstanding that there is no express agreement, be obligated to pay interest accrued upon the sale price, if the sold and delivered assets produce proceeds or other income. (Bw. 1250; Civ.1652)

Article 1516. If the buyer's ownership is interrupted by virtue of a collateral claim or pursuant to a legal reclamation, or if he has valid reasons to fear that it shall be interrupted, he may defer payment of the sale price until the seller has ceased the interruption, unless the seller chooses to provide security, or it has been stipulated that the buyer shall be obligated to pay regardless of any interruption. (Bw. 1198, 1478, 1492v., 1543; K.230v.; Civ. 1653)

Article 1517. In the event that the buyer does not pay the sale price, the seller may demand the cancellation of the sale in accordance with the provisions of article 1266 and 1267. (Bw. 1139-3, 1141, 1144v., 1182, 1481; K.230v.; F.36v.; Civ. 1654v.)

Article 1518. In the event of the sale of articles and furniture, the cancellation of the sale, for the benefit of the seller, shall take place by law and without any notification, after the lapse of the stipulated time for the collection of the assets sold. (Bw. 515, 1266, 1427; Civ.1657)

## **Section 3**

### **The right to re-purchase (CF. S. 37-585\* ORD. On the clauses regarding gold 1937)**

Article 1519. The ability to re-purchase that which has been sold shall arise from an agreement, pursuant to which the seller reserves the right to reclaim the sold assets, in return for the refund of the original sale price, together with the compensation referred to in article 1532. (Bw. 1169, 1265, 1524; Civ. 1659)

Article 1520. The period of validity of the right to re-purchase may not be stipulated to be for more than five years. If, however, a longer time period has been stipulated, it shall be reduced to the aforementioned five years. (Civ. 1660)

Article 1521. The stipulated time period shall be interpreted as absolute, and a judge shall not be permitted to extend it, and in the event that the seller fails to make his legal claim for re-purchase within the stipulated time period, the buyer shall continue to be the indisputable owner of the sold assets. (Bw. 1258, 1577; Civ. 1661v.)

Article 1522. This time period shall run against all individuals, even minors, without prejudice to the right of reclamation of the relevant parties, should there be grounds therefor. (Bw. 1258, 1577; Civ. 1661v.)

Article 1523. The seller of immovable assets, who has reserved the right to re-purchase the sold assets, may exercise his right against a second buyer, notwithstanding that no provision regarding such right has been made in the second agreement. (Bw. 1340, 1342, 1471, 1577, 1977; Civ. 1664)

Article 1524. A person who has purchased pursuant to the agreement for re-purchase shall succeed to all rights of the seller; he can invoke prescription against the original owner or against those who claim to have collateral or other rights to the sold assets. (Bw. 1577, 1952; Civ. 1665)

Article 1525. He may exercise the privilege of dispossession against the creditors of the seller. (Bw. 1200, 1833; Civ. 1666)

Article 1526. In the event that he, who pursuant to the agreement for re-purchase, has bought an indivisible share in immovable assets, and who, after a legal claim has been filed against him for separation and distribution, has become the buyer of the entire assets, may require the seller to take over the entirety, in the event that the latter mentioned intends to invoke the aforementioned agreement. (Bw. 573; Civ. 1667).

Article 1527. If several individuals, jointly, own certain assets, and have disposed of such in the same agreement, each respective individual may exercise his right to re-purchase to the extent of his share only. (Bw. 1296, 1529; Civ. 1668)

Article 1528. The same shall also apply if an individual, singularly, disposes of certain assets and leaves several heirs. Each one of these heirs may only exercise the right to re-purchase, to the extent of his share in the inheritance. (Bw. 1083, 1299, 1529; Civ. 1669)

Article 1529. However, in the circumstances referred to in the two previous articles, the buyer may demand that all other co-sellers or co-heirs, shall be summoned to agree among one another in relation to the re-purchase of the entire assets; and in the event that they fail to reach agreement, the claim for re-purchase shall be denied. (Civ. 1670)

Article 1530. If the sale of certain assets, belonging to various individuals, has not been concluded by all owners jointly and in its entirety, but each one of them has separately disposed of part of such assets which belonged to him, each owner may exercise the right to re-purchase separately, with respect to the share that is owing to him; and the buyer may not compel the party who exercises his right in this manner, to take over the entire assets. (Civ. 1671)

Article 1531. If the buyer is succeeded by several heirs, they can only exercise their right to re-purchase, to the extent of their respective shares, whether in the event that the estate has not been divided, or in the event that the assets sold have been distributed among the heirs. If, however, the estate has been divided, and the assets sold have become the share of one of the heirs, then the legal claim for re-purchase with regard to the entire assets, may be filed against him. (Bw. 1296v.; Civ. 1672)

Article 1532. The seller who exercises the agreement for re-purchase is obligated to return the original sale consideration, and also to provide compensation for all valid costs incurred with respect to the sale and delivery, including the costs of necessary repairs, and those which have been incurred resulting in

the appreciation in value of the sold assets, in the amount of such increase. He may not become the owner of the re-purchased assets, until after compliance with all such requirements. If the seller, pursuant to the provision for re-purchase, re-purchases the assets, those assets shall be free from all encumbrances and mortgages imposed by the buyer, and passed on to him; however, the seller is required to \*401 comply with any lease agreements which the buyer has entered into in good faith. (Bw. 500, 576, 762, 772, 780, 793, 817, 1265, 1577; Civ. 1673).

#### **Section 4**

##### **Specific provisions in connection with the purchase and sale of receivable debts and other intangible rights**

Article 1533. The sale of a receivable debt shall include all that is attached to it, such as guarantees, privileges and mortgages. (Bw.501, 613, 963, 1481v., 1538; K.113, 176, 194; Civ. 1692)

Article 1534. A person, who disposes of a receivable debt or another intangible right, shall guarantee the existence of such right at the time of delivery, notwithstanding that the sale has taken place without any warranty. (Bw. 1491v., 1495v., 1537; K.70; Civ. 1693)

Article 1535. He shall not be responsible for the financial capability of the debtor, unless he has bound himself as such, and if so only to the extent of the sale price, which he has received for the receivable debt. (Civ. 1694)

Article 1536. If he has agreed to guarantee the financial capability of the debtor, this agreement shall be interpreted as applying to the current financial capability, and shall not apply to the future status, unless otherwise stipulated. (Bw. 1535; Civ. 1695)

Article 1537. An individual, who disposes of an inheritance, without stipulating the specific items, shall not be bound beyond the extent of his warranty in his capacity as heir. (Bw. 1084, 1118, 1334; Civ. 1696)

Article 1538. If he has already enjoyed the profit from certain assets, or, has received the amount of the debt due to the inheritance, or has disposed of some assets from the estate, he shall be obligated to compensate the buyer for such, unless otherwise stipulated. (Bw. 1482, 1533; Civ. 1697)

Article 1539. The buyer shall be obligated to compensate the seller for all payments made with respect to the debts and encumbrances on the inheritance, and to comply with the claim filed by the seller as the creditor of the inheritance, unless otherwise stipulated. (Bw. 1100, 1338, 1436; Civ. 1698)

Article 1540. If, prior to the delivery of a receivable debt which is sold, or of another intangible right, the debtor has settled the debt with the seller, this shall be sufficient to release him from the debt. (Bw. 613, 1459; Civ. 1691)

#### **Section 4**

##### **Concerning the regulations which are particularly relevant to the lease of agricultural land**

Article 1588. The specification, in an agreement for the lease of agricultural land, of a smaller or greater area than the actual area, shall not form grounds for an increase or decrease in the rent which shall arise only in the circumstances and according to the provisions of the fifth chapter of this book. (Bw.1484, 1489; Civ.1765)

Article 1589. If the lessee of agricultural land does not stock the land with the necessary cattle and agricultural equipment required for pasturing or planting; if he discontinues the pasturing or planting, or does not act as a proper head of the household in this regard; if he should use the leased property for a purpose other than that which it was designated for; or if, in general, he does not comply with the stipulations specified in the lease agreement and as a result thereof the lessor is jeopardized, the latter mentioned shall then be authorized to, depending upon circumstances, demand the nullification of the lease, with compensation of costs, damages and interest. (Bw. 1139-2, 1140, 1142v., 1146, 1243v., 1266v., 1560v., 1581; F.38; Civ.1766)

Article 1590. All lessees of agricultural land must store the products of their labors in the designated places of storage. (Bw.1139-2, 1140v.; civ.1767)

Article 1591. The lessee of agricultural land must notify the owner of all events occurring on the leased premises while working the land and failure to do so shall render him liable for compensation of costs, damages and interest. This notification shall be given within the same period as that which is stipulated to lapse between the time of the summons and the date of appearance at court depending upon the distance of the localities. (Bw. 5556, 802, 1366, 1557v.; Rv.10v.; Civ.1768)

Article 1592. If, during the term of a lease for several years, the whole or one half of the annual harvest is destroyed due to unforeseen circumstances, then the lessee may claim a reduction in the rent, unless the harvests from previous years were sufficient to compensate him therefor. If he has not yet been compensated, the estimate of the reduction of the rent cannot be made until the end of the lease, when the profits of all the years shall be reconciled. \*415 The judge may however, permit the lessee to retain part of the rent temporarily, proportionate to the loss suffered. (Bw. 500, 729, 1553; Civ. 1769)

Article 1593. If the lease is entered into for one year only, and the entire or part of the harvest is lost, the lessee shall be released from paying the entire rent or a proportionate amount thereof. If the loss consists of less than one half, the lessee shall not be entitled to any discounts. (Bw.729, 1592; Civ.1770)

Article 1594. The lessee shall not demand any discounts, if the loss of the produce is suffered after it has been separated from the land, unless the lease agreement provides that a certain portion of the harvest is promised to the owner in its original state; in which case the owner shall also be liable for his portion of the loss, provided that the lessee has not failed to deliver the owner's share of the harvest. In addition, the lessee may not claim any reduction, if the cause of the damage, at the time of conclusion of the lease, already existed and was known by him. (Bw.762, 1593; Civ.1771)

Article 1595. The lessee, may pursuant to a specific agreement, be rendered liable in the event of these unforeseen circumstances. (Bw.1592v., 1596; Civ.1772)

Article 1596. Such agreement, shall, however only cover regular unforeseen circumstances such as: volcanic eruptions, earthquakes, a lengthy drought, insects which destroy harvests, lightning or the untimely fall of tree-blossom. This agreement shall not apply to extraordinary events which do not usually occur on the land, such as destruction caused by war, floods; unless the lessee has undertaken to be liable in all events, either foreseeable or unforeseeable. (Bw.1369, 1592,1595; Civ.1773)

Article 1597. A lease of land, not concluded in writing, shall be deemed to have been concluded for the period required by the lessee for the collection of all produce of the leased plot of land. As such, a lease of a pasture, an orchard, and of all other land from which all the produce shall be collected within the course of a year, shall be deemed to have been entered into for a year. A lease of agricultural lands, which shall be planted in rotation, shall be deemed to be entered into for as many years as there are rotations of that nature. (Bw. 1570v., 1585v.; Civ.1774)

Article 1598. If, after the termination of a lease concluded in writing, the lessee shall remain in possession of the property and is permitted to do so, the consequences of the new lease shall be regulated by the previous articles. (Bw. 1573, 1587; Civ. 1776)

Article 1599. The lessee whose lease is terminated and \*416 his successor to the lease, are obligated to accommodate one another in the manner required in order to facilitate the vacation and occupation of the property, with regard to the planting for the subsequent year, the harvesting of fruit which are still on the field, as well as otherwise in accordance with local custom. (AB.15; Civ.1777)

Article 1600. The lessee shall also, upon his departure, leave the hay and the fertilizer from the previous year, if he received such at the commencement of his lease; and notwithstanding that he did not receive any, the owner may, according to an estimate to be made, continue to request these items to be left. (Bw. 507-3; Civ. 1778)

## **Section 5**

### **Concerning the hiring of servants and laborers**

The old Fifth Section of Chapter 7, pursuant to S.79-256 declared to be applicable to the Indonesian and assimilated population, is pursuant to S.26-335 see also 458, 565 and 27-108 substituted by the Seventh Chapter A, however, pursuant to the stipulation in article VI (Closing Provisions) of aforementioned S.26-335 (see pg.603), the old fifth section is still applicable to Chinese and other Foreign Orientals and to Indonesians, unless otherwise stipulated by ordinance. Chapter 7, section V reading as follows:

Old Article 1601. One may only contract to render one's services for a specific time period or specific assignment. (AB.23; Bw.22, 1335, 1603; K.4-8, 394v.; Civ.1780)

Old Article 1602. Statements made by the master under oath shall be accepted as true as follows: with regard to the amount of the agreed wage; with regard to the payment of the wage in respect of the previous year; with regard to any wages paid in advance from the wage of the current year; and with regard to the term for which the employment contract is entered into. (Bw. 1149-4, 1367, 1929v., 1968; Civ. 1781)

Old Article 1603. Servants and laborers may, if they are hired for a specific period of time, not leave their employment without a valid reason, nor shall their position be terminated, prior to the expiration of their period of employment. If, within a stipulated or customary period of employment, they leave their employment, without any valid reasons, they shall forfeit the wages which they have earned. The employer shall, however, be authorized to dismiss them at any time, without any valid reason, but, in such circumstances he shall be obligated to pay them, in addition to any wages due, compensation of six weeks wages, effective from the date upon which they were dismissed from his services. If the contract of employment was entered into for a term of less than six weeks, or if it has less than six weeks unexpired, they shall be entitled, in such circumstances to the full wage. (Bw. 971, 1611, 1969)

Pursuant to S.26-335 see also 458, 565 and 27-108 the \*418 aforementioned printed old section 5 of Chapter 7 is substituted with the below mentioned Seventh Chapter A. (Cf. note 7 Chapter A) Furthermore, please find the following stipulations pursuant to S.26-335, articles V and VI:

#### **Article V**

##### **Transitory provisions.**

A. The rights and obligations resulting from labor agreements, which are valid at the time this decision becomes effective, shall be applicable as of this time date, but only in respect of the following provisions, regulated pursuant to the stipulations of this decision.

B. Minors, who are employed pursuant to a labor agreement entered into on their behalf by their legal representatives, shall be regarded as having concluded the labor agreement by themselves by proxy from their legal representatives; the proxy shall be deemed to have been granted subject to the conditions stipulated in the agreement by the legal representatives. If the minors at the stipulated time were employed as laborers, without their legal representative having concluded a labor agreement on their behalf, the term, as mentioned in article 1601h, shall be deemed to have commenced as of the aforementioned.

#### **Article VI**

##### **Closing provisions**

A. The provisions of article I of this decision shall, unless otherwise stipulated, not apply to the Chinese population, as defined in the ordinances of March 29, 1917 (S.No.129) and of December 9, 1924 (S. No.557) (See page 379 of this ordinance; Cf.Bw.1603x) Provided that it is not otherwise stipulated by this ordinance, articles 1601, 1602 and 1603 of the Civil Code for Indonesians and Foreign Orientals which were revoked by this decision shall continue to apply to Europeans. (Bw. 1603 x)

B. The regulation regarding Assistants with respect to the East coast of Sumatra, Aceh and Tapanuli, in its current form or subsequently amended shall continue to be applicable. Pursuant to S.38-98 jo.136, as of July 1, 1938, the Regulation regarding Assistants (S.21-334) is revoked and substituted by the Supplementary Regulation of the Planters \*.

C. (Supplemented S.28-533 see also 29-261; S.41-511 see also 513) All deeds and written documents in connection with concluding, amending or terminating labor agreements, including all documents, which the employer or laborer or their legal representatives jointly or severally, whether privately, or before a public notary, without the assistance of a third party, shall draw up for the execution \*419 of the labor agreement, as well as the documents required for obtaining a legal decree relevant to the labor agreement without an actual lawsuit and those decrees shall not be liable to stamp duty, even if the stipulations of Chapter Seven A of the Third Book of the Civil Code are or are not entirely applicable to the labor agreement. (Supplemented S.35-67) The exemption from stamp duty shall also apply to the receipts issued by insurance companies or insurance funds in the form of legal entities with regard to premiums or contributions deposited by the employers or employees for the purpose of affording the employees a pension.

Pursuant to two ordinances of March 15, 1932, in S.32-97 and 98, due to a situation of emergency, the following temporary provisions were made:

a. with regard to the repatriation of laborers, who were employed or recruited outside Indonesia; b. with regard to the termination period, to be considered by the employers at the termination of the labor agreements, these ordinances were applicable until September 13, 1939 (S.39-98) following which this material shall be definitively regulated by S.39-545, Regulation regarding repatriation of laborers 1939\*, and S.39-546, see Bw. 1603 h, i etc. Cf.S.48-98, Regulations regarding Organization of the Commission for Labor Affairs (notification of amended text of S.47-162, 218, 219); S.47-163, 218 see also 48-56, Regulations regarding labor relations for war victims; S.41-396\*, Regulations regarding right of termination in respect of specific non-European laborers.

## **Chapter VII A**

### **Concerning agreements regarding the performance of services**

#### **Section 1**

##### **General provisions (B.W. 1603X)**

Article 1601. With the exception of agreements to perform several services, which are regulated by the terms and conditions agreed upon and in the absence of such, shall be regulated by custom, there are two kinds of agreements in which one party covenants to the other to perform services in return for remuneration, as follows; a labor agreement and a for work. (Bw.1338, 1601a, 1604; AB.15; Civ.1779)

Article 1601a. A labor agreement is an agreement in which one party, the laborer, agrees to render his services to the other party, the employer, for a specific term in return for remuneration. (Bw. 1603e, 1603y)

Article 1601b. The contract for work is the agreement by which one party, the contractor, binds himself to the other party, the client, to carry out specific tasks for a specific price. (Bw. 1604v.)

Article 1601c. If an agreement contains the features of a labor agreement and of any other kind of agreement, then the provisions regarding a labor agreement as well as those relevant to another kind of agreement, which also have the same features, shall apply; in the event of a dispute regarding these provisions, those relating to the labor agreement shall apply. If a contract for work is followed by more similar agreements, whether directly or otherwise, or if, upon the conclusion or execution of the contract for work, it appears that the intention of the parties is to conclude more such similar agreements in such manner that the various contracts shall be regarded as a joint labor agreement, then the stipulations regarding the labor agreement shall be applicable to these agreements on a joint and several basis, with the exception of the stipulations of the sixth section of this title. If, however, in such case, the first agreement has been concluded for test purposes only, it shall be deemed to have retained its nature as a contract for work and the stipulations of the sixth section shall then apply to it. (Bw.1603x, 1604v.)

#### **Section 2**

##### **Concerning labor agreements in general**

Article 1601d. In the event that a labor agreement is concluded in writing, the costs of the deed and other additional costs shall be borne by the employer. (Bw. 1466, 1601y)



Article 1601e. If, upon concluding the agreement, a deposit has been provided and accepted, it shall not authorize the parties to cancel the agreement by ordering the retention or return of the deposit. The deposit may only be deducted from the wage, if the services have not been rendered for longer than three months, whereas the agreement has been entered into for a longer or unspecified time period.

Article 1601f. With regard to labor agreements concluded by a married woman as a laborer, the law shall presume that she has obtained the approval of her husband. She can, therefore, commit all acts in relation to these agreements, to grant a discharge and to appear in court, without the assistance of her husband. She shall be entitled to use whatever she has received or claimed pursuant to the executed labor agreement, for the benefit of her family. (Bw. 108v., 111, 1916; F.20-2)

Article 1601g. A minor shall be competent to conclude a labor agreement as a laborer, if he has been given either verbal or written authorization to do so by his legal representative. A verbal authorization can only apply to the conclusion of a certain labor agreement. If the minor has not reached the age of eighteen years, then the authorization shall be granted in the presence of the employer, or of the individual who acts on his behalf. The authorization cannot be conditional. If the authorization is issued in writing, the minor must submit the authorization to the employer, who shall immediately issue a certified copy to the minor and shall return the authorization to the minor or to the individual who is entitled to it upon termination of the labor agreement. To the extent that the authorization is not subject to certain specific stipulations, the minor in the performance of anything that is related to the labor agreement entered into by him pursuant to the authorization issued, shall be equal to an adult, without prejudice to the provision in the third paragraph of article 1602f. However, he cannot appear in court without the support of his legal representative, unless it is apparent to the judge that the \*423 legal representative is incapable of expressing himself. (Bw. 1446, 1603m; Rv.944)

Article 1601h. If an incompetent minor has concluded a labor agreement and as a result thereof, without any objection from his legal representative, has worked in his employer's service for a period of six weeks, he shall be regarded as having been authorized verbally by his representative to conclude his labor agreement. (Bw. 1446, 1454, 1916; S.26-335, article V, pg.603)

Article 1601i. A labor agreement concluded between two spouses shall be void. (Bw. 106v., 1467, 1678)

Article 1601j. (S.39-546; 47-208) A regulation stipulated by the employer shall only bind the laborer if he has declared in writing that he agrees with such regulation and if the following is complied with: (Bw.1601m, 1601x)

1. that a complete copy of the regulation shall be furnished to the laborer free of charge by or on behalf of the employer;
2. that a signed complete copy of the regulation has been submitted by or on behalf of the employer to the Department of social affairs (Afdeling Arbeid van het Departement van sociale Zaken) for the public's review;
3. that a complete copy of the regulations shall be displayed at a location that is accessible by the laborer, preferably in the workplace, where it shall be visible and legible. The submission and the review of the regulations at the Department of social affairs shall be free of charge. Each interested party may obtain a free copy of the regulations from the Department of social affairs. Each stipulation, which violates any provision of this article shall be void. (AB. 23; Bw. 1320-1, 1601y; K.402, 428)

Article 1601k. If, during the service relationship, a regulation shall be stipulated or an existing one shall be amended, the new regulation or the amended one shall bind the laborer only if a complete copy of the draft or of the proposed amendments has been submitted to him for his review, prior to the confirmation thereof during such a time period and without any charge, so that he may be properly advised of the contents. If the laborer, following the stipulation of the new or the amended regulation, does not agree, then within a period of four weeks after he has become aware of the stipulation, he may request the termination of the labor agreement from the judge. The judge shall decide after the hearing or proper summons of the opposing party in the highest instance and shall approve the request, unless he is of the opinion that the laborer's interest shall not or shall not to a serious extent be disadvantaged as a result of the new or amended regulation. Pending the decision of the judge and upon denial of the request, the service contract shall continue and the new or amended regulation \*424 shall apply as of the day on which it was effected. If the request is granted, the judge shall decide when the service contract shall terminate and the laborer shall be entitled to compensation as stipulated in article 1603q which relates to termination by the employer. Each stipulation which violates any provision of this article shall be void. (AB.23; Bw.1603h and i; K.402, 428)

Article 1601l. A statement from a laborer, in which he covenants to agree with any regulation to be stipulated in future or any future amendment to an existing regulation shall be void. (AB.23; K.402,428)

Article 1601m. The stipulations of the regulation can only be deviated from by specific written agreement. (Bw. 1601d; K.402, 428)

Article 1601n. Each stipulation between the employer and the laborer, which violates a collective labor agreement to which they are both bound, shall be declared void if a claim has been filed by any party to the collective labor agreement, with the exception of the employer himself. A collective labor agreement shall be interpreted as a an arrangement, drawn up by one or more employers or one or more associations of employers which form legal entities, with one or more associations of laborers which form legal entities, concerning labor conditions, which must be taken into account at the time the labor agreements are concluded. (RO.116g)

Article 1601o. In calculating the daily wage for the purpose of this title, a day shall consist of ten hours, a week of six days, a month of twenty five days and a year of three hundred days. In the event that the wage, either in its entirety or partially, shall be determined in a manner other than in terms of time, then the daily wage shall be computed according to the average wage of the laborer, computed over the last thirty working days; in the absence of this criteria, the wage shall be determined as the customary wage for the labor that is most similar in nature, location and time. (Bw. 1603q)

Article 1601p. The wage of laborers, who are not given lodgings by the employer, shall not be stipulated otherwise than in terms of the following:

1. monetary;
2. food for consumption including food supplements, lighting and fuel supplies for use at the location where they are distributed;
3. clothing, to be worn by the laborers in the performance of their services;
4. a specific amount of the products of the company, from which the wage is earned, or the basic or supplementary material used by that company, to the extent that the nature and amount of the products or basic or supplementary material form the basic necessities of life for the \*425 laborer and his family, or are used by the company which employs the laborer, as basic or supplementary material, implements or tools, but in no circumstances shall it include alcoholic drinks and opium;
5. the use of a specific piece of land or pasture or stables for a stipulated number of animals according to kind, belonging to the laborer or one of the members of his family, the use of work tools or equipment, including the maintenance thereof;
6. specific labor or services, by or on behalf of the employer performed for the laborer;
7. the use of a designated residence or part thereof, free medical treatment for the laborer and his family, free use of one or more servants, of an automobile or other means of transportation or of one or more horses and other such similar allowances which reduce the expenses of the household, to the extent that it is not yet included in the previous provisions;
8. a stipend during a period of leave after a specific number of years of service, or the entitlement to free transportation to the place of origin or to and from the place where leave shall be taken. (Bw. 1601r; K.429)

Article 1601q. In the event that no specific wage has been stipulated pursuant to an agreement or regulation, the laborer shall be entitled to such wage that at the time the agreement was concluded, would customarily have been stipulated for a similar job at the location where it is performed. If no such custom exists, the wage shall be reasonably determined by taking into account the circumstances. (K.402)

Article 1601r. To the extent that a wage, other than that permitted in article 1601 p, is stipulated, the amount shall be evaluated in monetary terms and shall be deemed to be stipulated as five times the amount. The entire wage due shall, however, not exceed more than one third of the wage determined in

accordance with the provisions of the previous article. Any stipulation which violates any provision of this article shall be void. (AB.23; Bw.1602i; K.429)

Article 1601s. Each agreement between the employer or one of his officials or supervisors and one of the laborers who is under their supervision shall be prohibited and void, if it provides that the laborer shall be obliged to spend his wage or other income or part thereof in a specific manner, or to obtain his necessaries from a specific place or from a specific individual. (AB.23; Bw. 1601 p and t) This provision shall not apply to a stipulation which provides for participation by the laborer in a fund, provided that the fund complies with the conditions stipulated by ordinance. (Bw. 1602r, paragraph 1 sub 3; S.26-377\*)

\*426 Article 1601t. If the laborer, notwithstanding a prohibited and void stipulation as mentioned in the previous article, has concluded an agreement with the employer, no contract shall result therefrom. The laborer shall be entitled to reclaim the money that was deducted from his wage and the costs incurred in concluding the agreement, without being bound to return that which has been given to him to fulfill the agreement. The judge shall however be authorized, pursuant to admittance of the laborer's claim, to limit the judgment to such amount as would appear fair having regard to the circumstances, but shall grant the amount, which, according to his evaluation, is the amount in respect of the loss suffered by the laborer. If the laborer, despite a prohibited and void stipulation, as aforementioned, concludes an agreement with a person other than the employer, he shall be entitled to claim the amount that he has paid pursuant to such agreement or whatever remains owing and may be claimed from the employer. The provisions of the second paragraph shall also apply to this. Each laborer's right to claim pursuant to this article shall lapse after a period of six months. (Bw. 1602j, par.3, 1603t)

Article 1601u. The employer shall impose a fine in the event of violation of the conditions of an agreement concluded in writing or of a regulation, if the conditions are stipulated and the fine is specified in the agreement or the regulation. (Bw. 1601j) The agreement or the regulation, in which the fine is stipulated, shall clearly specify the purpose of the fine. They shall not, either directly or indirectly personally benefit the employer or the individual who has been authorized to impose the fine on the laborers. Each fine, stipulated in a regulation or agreement, shall be specified in a specific amount, in the currency that is used for the wage. (Bw. 1602h) The total amount of fines imposed on the laborer within a week, shall never be higher than the amount of his daily wage. No fine imposed shall be higher than this amount. (Bw. 1601e, 1601o) Each stipulation which violates any provision of this article shall be void. However, deviations from the second, third, fourth paragraphs shall be permitted in agreements concluded in writing or in a regulation but only with regard to laborers who earn more than eight guilders per day. If this occurs, then the judge shall be authorized to stipulate a smaller fine if the aforementioned amount appears unreasonable to him. (AB.23; Bw.1309) The stipulation in respect of punishment by the employer, as mentioned in the tenth section of the first chapter of this Book shall apply to the stipulation and the specification of fines within the meaning of this article. (Bw.1306, 1601x, 1602r, first paragraph sub 2; K.410)

Article 1601v. The employer shall not be permitted to impose fines and claim compensation at the same time in relation to the same matter. (Bw. 1307) \*427 Each stipulation which violates this provision shall be void. (AB.23)

Article 1601w. If one of the parties intentionally or due to his actions breaches one of his obligations and the damage suffered by the opposition as a result thereof cannot be evaluated in terms of money, the judge shall, in a fair manner, stipulate a sum of money as compensation. (Bw. 1241)

Article 1601x. An agreement between the employer and the laborer, which restricts the latter-mentioned, following the termination of his employment, in his capacity to be employed in a certain manner shall be valid only if it has been agreed with an adult laborer in writing or in a regulation. (Bw. 1601j) The judge, may, either based on a claim of the laborer or upon his defense in a dispute, nullify such an agreement in its entirety or partially, on grounds that, the comparison between the interest of the employer to be protected and that of the laborer shows that the laborer has been unfairly disadvantaged by such agreement. With regard to the agreement mentioned in the first paragraph, the employer cannot assume any rights, if he has terminated the employment unlawfully, or if the laborer intentionally or due to his own fault has submitted an urgent reason to terminate the employment and has exercised this authority, or if the judge at the request or pursuant to a claim by the laborer has declared the labor agreement to be terminated based upon urgent reasons which were submitted by the laborer and caused intentionally by or due to the actions of the employer. (Bw. 1603e, 1603n, 1603p) If the employer of the laborer has negotiated compensation to apply in the event of a violation by the latter-mentioned of a provision as mentioned in the first paragraph, the judge shall be authorized to reduce the compensation to a smaller sum, if the agreed sum appears to be excessive. (Bw. 1309, 1611u; K. 404)

Article 1601y. Revoked: S.28-533 see also 29-261, currently article VI C, pg.603.

### **Section 3**

#### **Concerning the obligations of employers**

Article 1602. An employer is obligated to pay the wage of the laborer at a stipulated time. (Bw. 1601 o-r p-2 sub 3; F.232)

Article 1602a. The wage payable in respect of a certain period of time is due from the date upon which the laborer is employed until the termination of his employment. (Bw. 1601 o).

Article 1602b. No wage shall be due in respect of a period during which the laborer has not performed the agreed labor.

Article 1602c. However, the laborer shall be entitled to the wage stipulated to be payable in respect of a certain period of time, for a relatively short time period, if, as a result of illness or accident, he is prevented from performing his tasks, unless the illness or accident has been caused intentionally or as a result of his misconduct, or is the result of a physical handicap in respect of which he has deliberately submitted false information to the employer upon concluding the agreement. (Bw.1244v.) (S.39-256, 292) If, however, he receives monetary compensation or benefits in such case as a result of legal regulations regarding illness or accidents, or pursuant to insurance or from certain funds, in which participation is mandatory, or which result from the labor agreement, then the wage shall be reduced by the amount of the compensation or benefit. (Bw. 1601 s; S.39-255\*, 256\*, 693\*) The laborer shall also retain his rights to the wage payable in respect of a certain period of time for a shorter time period computed in a fair manner, if he, without monetary compensation, either in compliance with an obligation imposed by law or authority which could not have been fulfilled outside his hours of work, or as a result of very special circumstances beyond his control, was prevented from performing his tasks. (Bw. 1602 u) The following shall be interpreted as very special circumstances for the purpose of this article: the delivery of a child by the spouse of the laborer, the demise and funeral of one of his co-inhabitants or one of his kin or relatives by marriage unlimited in the direct line and in the second degree of the collateral line. The exercise of the voting right shall also be interpreted as compliance with an obligation imposed by the law or authority. (Bw. 290v.) In the event that the monetary wage is stipulated in a \*429 manner other than in respect of a certain period of time, the provisions of this article shall also apply, provided that the wage shall be deemed to be the customary wage which the laborer would have earned during that time if he had not been prevented from doing so. The wage, however, shall be reduced by the amount of the expenses which the laborer has saved by not performing the labor. The provisions of this article may only be deviated from by written agreement or regulation. (Bw. 1601j; K.412, 416h)

Article 1602d. The laborer shall not lose his right in respect of a wage agreed in respect of a certain period of time, if he has been willing to perform the agreed tasks, but the employer has not made use of this, either due to his fault or due to an incidental obstruction to him personally. The provisions of the second, fifth, sixth and seventh paragraphs of the aforementioned article are applicable hereto.

Article 1602e. If the wage consists entirely or partially of an amount that is dependent on information which should have been apparent from the employer's bookkeeping, then the laborer shall be entitled to request information, regarding the evidence which would be required to know the amount of his wage, from the employer. It may be stipulated by written agreement or regulation that notification of the aforementioned evidence, instead of being submitted to each laborer separately, shall be submitted to a stipulated number of laborers in the service of the employer or to one or more experts in the bookkeeping section which shall be selected by the laborers in writing. The notification of evidence by or on behalf of the employer shall be given in confidence, if such is expressly requested by the laborer and the individual with whom he is replaced in accordance with the previous paragraph; the latter-mentioned, however, can never be bound to the laborer to observe confidentiality. The requirement for secrecy shall be abolished insofar as is necessary, if this matter is disputed in court. (Supplemented with S.31-367 see also 368) To the extent that the information, referred to in the first paragraph, concerns the profit gained by the employer's undertaking or part thereof, the provisions of the first paragraph, either stipulated in a written agreement or regulation, may be deviated from which may be in a manner other than that described in the second paragraph, provided that, having regard to the provisions of the second paragraph, the laborer shall always be given an explicit and clear notification, which describes the computation of the amount referred to in the first paragraph. (supplemented with S.31-368) Without prejudice to the application of the fourth paragraph, the notification as mentioned in

the previous paragraph shall occur, if so desired, pursuant to express requirement for confidentiality by the laborer as described in the third paragraph. (Bw.1601j, 1602n; Sw.323)

\*430 Article 1602f. In order to pay the wage owed to the laborer, the authorization referred to in the first paragraph of article 1385 shall be in writing. If it is stipulated in the written authorization, as mentioned in article 1601 g, that the wage in the form of money shall entirely or partially be given to the legal representative, instead of being handed to the minor, then he shall, with respect to the payment of the wage, or the part thereof which is due him, be regarded as the laborer. Notwithstanding that no such condition has been included in written authorization, or even in the verbal authorization, the monetary wage due to the minor shall be given to the legal representative, if he opposes in writing, the payment of the wage to the minor. In circumstances other than those mentioned in the second and third paragraph of this article, the employer shall be released from his obligation to make payment of the wage directly to the minor. (Amended by S.38-622) Payment to third parties, in violation of the provisions of this or the next article, shall be void.

Article 1602g. Seizure by the employer of the wage owed to the laborer, if the monetary wage is in the amount of eight guilders per day or less, shall not apply to more than one fifth of the monetary wage. If the monetary wage is more than eight guilders a day, the seizure shall continue to apply only to one fifth of the wage, and shall thereafter be unlimited upon further seizures. There shall be no restrictions if the purpose of the seizure is to recoup support payment, to which the employer taking possession is entitled according to the law. (Bw. 1601o; Rv. 451v., 749v.) Transfer, pawning, or any other act pursuant to which the laborer assigns any right in respect of his wage to a third party, shall be valid only to the extent that a seizure of his wage shall be valid. (Bw. 613, 1153) Authorization to claim a wage, in any shape or form, issued by the laborer, may be revoked. (Bw. 1792v., 1814) Each agreement, which violates any provision of this article, shall be void. (AB. 23; K.433, 446; F.20-2)

Article 1602h. The payment of a wage comprising money shall be made in legal Indonesian currency, provided that the wage stipulated in foreign currency shall be computed according to the rate on the date and at place of payment, or in the event that no rate is obtainable in such location, it shall be in accordance with that at the nearest business location where a rate is obtainable. (LN. 53-40 article 8\* pg.392; K.433, 445) Exceptions may be made to the provision in the first paragraph for specific regions or part of regions by ordinance.

Article 1602j. Payment of the wage in a manner other than that stipulated in the previous two articles, shall be void. The laborer shall continue to be entitled to claim the wage due to him from the employer, without being obliged to return to him that which was received by virtue \*431 of the payment which has been nullified. The judge shall however, be authorized, pursuant to the granting the laborers' claim, to restrict the penalty to such an amount that he deems fair in view of the circumstances, but ultimately to the amount that in his opinion was the amount of loss suffered by the laborer. Each laborer's right to claim pursuant to this article shall lapse after a period of six months. (Bw. 1601 t, paragraph 4; 1603 t)

Article 1602k. If the location of payment of the wage is not stipulated in the agreement or regulation or by custom, then payment shall occur at the option of the employer, either at the location where the tasks are usually performed, or at the office of the employer if this is located at the place where the majority of the laborers reside, or at the residence of the laborer. (Bw. 1393)

Article 1602l. The payment of the wage stipulated to be in respect of a certain period of time shall occur as follows: (Bw.16020; K.452d) if the wage is stipulated for a week or shorter period of time, after each week; if the wage is stipulated to be in respect of a period of time which is longer than one week, but shorter than one month, after the lapse of the period in respect of which the wage is stipulated to be payable; if the wage is stipulated on a monthly basis, after every month; if the wage is stipulated to be in respect of a longer period of time than one month, after every quarter. This arrangement may only be deviated from to such extent, that in an agreement concluded in writing or regulation, the payment shall be stipulated to be of a wage in respect of a shorter period of time than one half of a month, after each half of a month, and of a wage that has been stipulated on a monthly basis, after each quarter. The payment of the wage of laborers who live with the employer, shall, in deviating to a certain extent from the above-mentioned provisions, take place every time after the lapse of the period of time, as indicated by local custom, unless it has been stipulated by written agreement or regulation that the payment shall occur pursuant to the provisions of the first paragraph. (AB.15; Bw. 1601j) The periods of payment, under or pursuant to this article, may always be expedited by the parties upon mutual agreement.

Article 1602m. The payment of the wage stipulated in the form of money but not in respect of a certain period of time, shall take place having regard to the provisions of the previous article, provided that this wage shall be deemed to have been stipulated in respect of a period of time for which the wage would

usually be stipulated for labor which is the most comparable to the labor for which the wage is owed, in terms of nature, location and time. (Bw. 1601 q; K. 452 d)

Article 1602n. To the extent that the wage stipulated in the form of money comprises an amount, that is dependent \*432 upon information which is apparent from the employer's books, payment shall take place every time that the amount of the wage can be determined, provided that the payment shall occur at least once a year. To the extent that the information referred to in the first paragraph concerns the profit gained by the employer's undertaking or part thereof, and the nature of the enterprise or the custom results in the profit being stipulated after the lapse of more than one year, it can be agreed by written agreement or regulation, that the payment shall be made after every stipulation. (Bw. 1601j, 1602e)

Article 1602o. If the monetary wage is stipulated in part to be in respect of a period of time, and in part in another manner, or if the parts of the wage have been stipulated to be in respect of different periods of time, then the provisions of article 1602 l through 1602 n shall apply to each part.

Article 1602p. Each payment shall be of the entire amount of the wage due. However, with respect to the wage which is stipulated in the form of money, but dependent on the result of the task to be performed, it may be agreed by written agreement or regulation, that every time, should the possibility arise, without prejudice to the definite computation upon the first payment date, a specific part of the wage shall be paid, which shall comprise at least three fourths of the customary wage for labor which is most comparable in terms of nature, location and time. (Bw. 1390; K. 444)

Article 1602q. To the extent that the wage stipulated in the form of money, or the portion thereof that remains after deduction of that which the employer is not obliged to pay, and after deduction of that to which third parties, in accordance with the provisions of this title, shall apply their rights, shall not be paid later than after the third working day after such date, on which the payment should have occurred pursuant to articles 1602l, 1602m and 1602o, then, if this failure to pay is caused by the employer, the laborer shall be entitled to an increase due to the delay, which from the fourth until the eight working day shall amount to five hundredth (5%) a day and for each working day thereafter shall amount to one hundredth (1%), provided that the increase arising due to delay shall in no circumstances exceed one half of the amount owing. The judge shall, however, be authorized to restrict the increase to such amount as he deems appropriate having regard to the circumstances. (K.430, 452c.) An agreement, which deviates from a specific provision of this article, shall apply only to laborers whose wages stipulated in money amount to more than eight guilders a day. (AB.23; Bw.1250)

Article 1602r. In addition to the termination of the service relationship, the claim for payment of the wages due may only be compared with the following debts of the laborers: (Bw. 1425v., 1968v.) \*433 1. compensation for the damage caused by the laborer to the employer; (Bw. 1601 x) 2. the fines payable to the employer pursuant to article 1601 u, provided he submits written evidence, specifying the amount of each fine, including the time when and the reason for which it was imposed, stipulating the provision of the regulation or the written agreement which has been breached; 3. the contribution to a fund by the employer in accordance with the second paragraph of article 1601 s deposited on behalf of the laborer; 4. the rent in respect of a residence, a space, a piece of land or of implements or tools, used by the laborer in his own business, and leased by the employer to the laborer pursuant to a written agreement; (Bw. 1560-2, 1601 p sub 5) 5. the sale price of regular and common necessities of the household, excluding alcoholic drinks and opium, as well as that of basic or supplementary material used by the laborer in his own business, which shall be delivered by the employer to the laborer, provided such delivery is evidenced by a written declaration submitted by the laborer, in which the cause and the amount of the debt are stipulated, and provided that the employer shall not seek more than the actual cost, and that that amount shall not be higher than that which the laborer can pay elsewhere for the necessities of the household, basic or supplementary material. (Bw. 1601 p sub 4) 6. the amount of wages paid in advance, by the employer to the laborer in the form of money, provided it is apparent from a statement as mentioned in the previous number; 7. the amount of overpayment of wages; (Bw.1359) 8. the charges for medical care and treatment, which shall be made pursuant to article 1602x, borne by the laborer. With respect to that which the employer may claim pursuant to numbers 2, 3 and 5, he may not compare more than one fifth of the fixed wage stipulated in the form of money with each payment of the wage, which should have been paid in that case; with respect to what he may claim in its entirety pursuant to the provisions of this article, the debt comparison shall not extend further than two fifth parts of the same amount. Any agreement, which would extend the employer's authority to compare the debts, shall be void. (AB.23)

Article 1602s. If the entire wage or part thereof of the laborer is stipulated in the form of lodging, board or other necessities of life, the employer shall be obligated to fulfill this, provided that they are in accordance with the requirements of health and proper conduct, pursuant to local custom. Any

agreement, which excludes or restricts the obligations of the employer, shall be void. (AB.15, 23; Bw.1601p sub 2 and 3, 1603p-2 par. sub 4)

Article 1602t. An employer, who is temporarily prevented from paying the portion of a wage that is applied to lodging, board or other necessities of life, if the prevention is not as a result of his own actions, shall owe \*434 the laborer compensation, the amount of which shall be stipulated by agreement or, in the absence of such, by local custom. (AB.15; Bw. 1239)

Article 1602u. The employer shall be obligated to afford the opportunity to the live-in laborers, without making deductions from their wages, to fulfill their religious obligations, and to enjoy rest from their labors, in both cases in the manner stipulated by agreement, or in the absence of such, as regulated by local custom. (AB.15; Bw.1602 c)

Article 1602v. (Amended by S.36-481 see also 38-137) The employer must organize the labor in such manner, that the laborer shall not be obliged to perform any labor on Sundays and on the days, which according to local custom in respect of the stipulated tasks are regarded as Sundays. (K. 441)

Pursuant to S.36-481 see also 38-137, dated July 1, 1938 the following new paragraphs 2-5 have been inserted, pursuant to S.47-208 paragraph 3 has been amended:

If the nature of the labor is such that, the employer is entitled to deviate from the stipulation in the previous paragraph, provided that at least two free Sundays shall be provided in a month and the number of holidays a year shall be not less than 52. If, in connection with the specific requirements of certain enterprises, it cannot be reasonably expected that in such enterprises or in specific departments or periods of those enterprises at least two free Sundays shall be provided a month, then, with prior approval of the Department of social affairs, a regulation deviating from the previous paragraph may be stipulated in respect of the laborers or group of laborers in those enterprises, provided that the number of holidays a year shall be 52. Rules may be stipulated pursuant to government ordinance for the issuance of the aforementioned approval. (S.37-27 see also 38-137\* below) If an act has been committed which violates the stipulations in the first or second paragraph as well as against a deviating arrangement as mentioned in the third paragraph, the laborer shall, upon deviating from that which is stipulated in article 1601 w, in respect of each free Sunday or any other holiday not enjoyed, be entitled to compensation in the amount of twice the daily wage stipulated in terms of money. Each right to file a claim pursuant to this article, shall lapse after three years, effective as of the last day of the calendar year in which an insufficient number of free Sundays or other holidays have been provided. With respect to minor laborers, the employer must regulate the labor in such manner which, according to local custom, provides them with the opportunity to follow advanced or repeat classes in religion or to learn a trade. Any agreement which violates this stipulation shall be void. (AB.15,23) (Supplemented S.31-367 see also 368) Pursuant to government ordinance, rules may be stipulated obliging the \*435 employer if deemed necessary to record the holidays taken in designated registers.

Pursuant to S.33-72 and 268 regulations regarding registers of holidays in pharmacies, warehouse enterprises and shipyards were stipulated, which were revoked pursuant to S.38-366. See LN 54-37 Regulations regarding annual leave pertaining to laborers (Peraturan Istirahat Tahunan bagi buruh). Pursuant to S.37-27 see also 38-138, dated July 1, 1938 the following is stipulated:

#### **Regulations concerning laborers' holidays**

Article 1. (1) (Amended by S.48-81) The approval of the Minister of Justice of the stipulation of a deviating regulation, as mentioned in the third paragraph of article 1602 v of the Civil Code, shall be requested on stamped paper addressed to the Minister, that shall be filed with the inspector of the labor inspection board of the area, in which the enterprise of the party making the request is located. The inspector shall forward the request, together with his advice thereon, as soon as possible, via the Head of the Labor Department of the Department of social affairs, to the Director of social affairs. (2) The request shall include a complete draft of the regulation to be stipulated. 2. (1) The approval requested shall not be issued, if it is not evident from the regulation to be stipulated, 1. in which manner the condition stipulated in paragraph 3 of article 1602v of the Civil Code which relates to the minimum of 52 holidays a year, shall be complied with, 2. that there is no stipulation that the regulation shall apply no longer than a term stipulated therein, which shall not exceed a duration of one year. (2) (Amended by S.48-81) Upon expiration of the term referred to in the previous paragraph, the regulation shall no longer be valid and a new regulation, duly approved by the Director of Social Affairs shall be stipulated. (3) The approval for the stipulation of a new regulation may be denied, if it appears that the regulation which was previously applicable, has not been fully complied with. 3. Upon the filing of a request as mentioned in article 1, the decision shall be issued in writing, a copy of which shall be forwarded to the party

making the request. 4. (1) The manager of an enterprise, to which approval has been issued for the stipulation of a deviating regulation as mentioned in article 1 and in respect of which the registration of holidays has not already been legally prescribed for other reasons, shall be obligated to ensure that the holidays enjoyed by each laborer employed by such enterprise shall be recorded in a register at the offices of the enterprise, which shall be arranged in accordance with the model described in the government ordinance. (New model: S.40-246) (2) (Supplemented by S.38-206) If the approval for the stipulation of a deviating regulation as mentioned in article 1 shall be issued in respect of specific parts of an enterprise only, then the obligation in the previous paragraph shall only apply to those specific parts of the \*436 enterprise. (3) A laborer as interpreted within the meaning of the first paragraph shall be an individual whose labor agreement is subject to the stipulations of the seventh chapter A of the third book of the Civil Code. (4) The manager shall be obligated within 5 days after the last day of each month to affix his signature to the recordings referred to in paragraph (1). (5) The register as mentioned in paragraph (1) shall upon request, immediately be made available by the manager for inspection by the officials of the labor inspection board. 5. (Amended by S.38-206) (1) Violation by the manager of the stipulations in article 4 paragraphs (1), (4) and (5), as well as the confirmation by him in the register of an incorrect entry in the register pertaining to holidays enjoyed by a laborer, shall be punishable by imprisonment for a maximum of two months or a monetary fine subject to a maximum of five hundred guilders. A second or subsequent violation, within two years after the last conviction has become irrevocable, may result in imprisonment for a maximum term of three months. (2) A separate punishment shall be imposed for each violation with regard to each laborer who has violated the provisions of article 4 para. (1) and par. (4), without prejudice to the observance of article 70 par. (2) of the Penal Code. (3) The individuals responsible for discovering the actions punishable under this article shall be the officials of the labor inspection, in addition to the officials who are assigned to the discovery of punishable acts in general.

Article 1602w. The employer shall be obligated to design and maintain the rooms, implements and tools, in which or with which the laborer shall perform the tasks, and also to stipulate such regulations and to issue such instructions regarding the performance of the tasks, in such manner that the laborer shall be protected against endangerment to himself, his honor and property, insofar as is reasonable in connection with the nature of the labor. In the event that those obligations are not complied with, the employer shall be liable to the laborer for damages, as a result of performing his tasks in the course of his duty, unless he can provide evidence that the failure to comply has been caused by force majeure, or that the damage to a significant extent can be imputed to the laborer's blatant actions. (Bw. 1245v.) If the laborer, as a result of the employer's failure to comply with his obligations, in the performance of his service, severely injures himself which injury results in death, the employer shall be obliged to compensate the surviving spouse and the children or parents of the deceased who were supported by his labor, unless he can provide proof that the death was caused by force majeure, or due to the laborer's fault. (Bw. 1245, 1370). Any agreement, which restricts or excludes the obligations of the employer, shall be void. (AB.23) However, some regulations may be stipulated pursuant to an ordinance, which transfer the employer's obligation regarding compensation as mentioned in the second and third \*437 paragraph, to other parties.

Article 1602x. The employer must, in case of illness or accident of a laborer who lives with him and who has been in his service for a period of not less than six weeks, provide him with proper nursing and medical treatment, to the extent that this has not been provided otherwise. He shall be entitled to charge the laborer with the costs in respect of the first four weeks only, if the illness or accident was caused deliberately or due to his immorality or is the result of a physical handicap, regarding which, the laborer deliberately misinformed him upon entering into the agreement. Any agreement which excludes or restricts the obligations of the employer shall be void. (AB.23; Bw.1602r 1 sub 8, 1602s, 1603c; K.412, 416h)

Article 1602y. The employer shall in general be obligated to do and to avoid anything that a proper employer in similar circumstances should do and avoid. (Bw.1339, 1603d)

Article 1602z. The employer must, at the termination of the service relations, upon the request of the laborer, furnish him with a dated and signed letter of recommendation. The letter of recommendation shall contain an accurate description of the nature of the tasks performed and the duration of service, as well as but only at the specific request of the individual to whom the letter of recommendation shall be issued, details of the manner in which the laborer has fulfilled his obligations and the manner in which the relationship of employment was terminated; however, if the employer terminated the relationship without providing any reasons therefor, he shall be obligated only to make a statement to such effect, and shall not be obligated to notify the reasons as such; if the laborer terminated the relationship of employment unlawfully, then the employer shall be entitled to specify such in the letter of recommendation. (Bw. 1603n) The employer, who refuses to provide the requested letter of recommendation, who includes inaccurate information in the letter of recommendation against his better judgment or who inserts a mark into the letter of recommendation for the purpose of providing



information regarding the laborer which is not included in the text of the letter of recommendation, or who provides information to third parties which directly conflicts with the recommendation letter, shall be liable for the damage resulting therefrom with regard to the laborer as well as to third parties. (Bw. 1239) Any agreement which excludes or restricts the obligations of the employer, shall be void. (AB.23)

#### **Section 4**

##### **Concerning the obligations of laborers**

Article 1603. The laborer shall be obligated to perform the agreed tasks to the best of his ability. The nature and extent of the labor to be performed which is not described in the agreement or regulation, shall be decided in accordance with custom. (AB.15; Bw.1339)

Article 1603a. The laborer shall be obligated to perform the tasks himself; he may not be substituted by a third party other than by approval of the employer. (Bw. 1383; F.36-2)

Article 1603b. The laborer shall be obligated to comply with the requirements regarding the performance of the tasks and with those which promote the good order of the employer's enterprise, furnished to him by or on behalf of the employer within the limits of the legal requirements or pursuant to the agreement or regulation or, in absence thereof, in accordance with custom. (AB.15; Bw.1339, 1601 jb.)

Article 1603c. A laborer who lives with his employer must conduct himself in accordance with the rules of the household. (Bw. 1602 s, 1602 x)

Article 1603d. The laborer shall in general be obligated to do and avoid that which any laborer in similar circumstances should do and avoid. (Bw.1339, 1602y)

#### **Section 5**

##### **Concerning the various manners in which the relationship of employment, arising from a labor agreement, shall be terminated**

Article 1603e. The relationship of employment shall terminate by law, if the time period expires pursuant to an agreement or regulation, or by legal requirement, or in the absence thereof, as determined by custom. Advance notice, shall in such event be required in the following circumstances only: 1. if such is agreed upon by written agreement or by regulation; 2. if, by legal requirement or according to custom, even in respect of a previously stipulated time period, a notice shall be given, and the parties shall not, had they been permitted, deviate from such by written agreement or regulation. (AB.15; Bw.1339, 1601jv., 1603q, 1603u; K.433, 448v)

Article 1603f. (As amended by S.39-546) If the relationship of employment, following the lapse of time as described in the first paragraph of the previous article, is continued by the parties without any objection, then it shall be deemed that the agreement was concluded for the same time period, subject to it being for not more than one year, and subject to the same conditions. If the relationship of employment is extended for less than six months, then it shall be deemed to be concluded for an indefinite period, but subject to the same conditions. The same shall apply, if in the events stipulated in the second paragraph of the previous article, the timely notice is not given. Pursuant to a written agreement or by regulation, the consequences of an untimely notice may be regulated differently, provided that the relationship of employment shall be extended for at least six months. (Bw.732, 1573, 1587, 1598, 1603 q)

Article 1603g. If the term of a relationship of employment has not been indicated by agreement, regulation or legal requirement, or by custom, then it shall be deemed to have been concluded for an indefinite time period. (AB.15; Bw.1339) If the relationship of employment has been concluded for an indefinite time period or until it has been declared terminated, then any one party shall be entitled to terminate such relationship by giving notice having regard to the provisions of the following two articles.

Article 1603h. (Amended S.39-546) The termination notice shall only be given towards the last day of the calendar \*440 month. Any agreement, which would have the effect of a termination notice being given on a day other than a day close to the last day of the calendar month, shall be void. (Bw.1339; K.433, 450; F.39)

Article 1603i. (Amended by S.39-546) Without prejudice to the stipulations in the following two paragraphs of this article the period of notice shall be at least one month. The term in the previous paragraph may be extended by written agreement or regulation with regard to the laborer for not more than one month, if the relationship of employment, at the time of the notice, has lasted for at least two continuous years. The term stipulated in the first paragraph shall be extended for the employer, respectively for one month, two months or three months, if at the time of the notice the relationship of employment has lasted respectively at least one year but less than two years, at least two years but less than three years for a continuous period of time. Any agreement, which violates any provision of this article, shall be void. (Bw.1601jv., 1603 ibis, 1603 iter; K. 433, 450; F.39)

Article 1603i bis. (Supplemented by S.39-546) A new labor agreement, concluded by a laborer with the same employer for a definite time period of less than six months, within four weeks of the termination of the previous relationship of employment, shall, regardless of whether the previous relationship of employment was concluded for a definite or indefinite time period, be considered as an agreement concluded for an indefinite time period. (Bw.1916, 1921)

Article 1603i ter. (Supplemented by S.39-546) Relationships of employment with the same employer, which have been interrupted or were for a period of less than four weeks, or were directly following one another in the manner stipulated in article 1603 f, shall be, with regard to the termination notice in article 1603 i, deemed to be continuous. (Bw. 1916, 1921)

Article 1603j. The relationship of employment shall be terminated upon the demise of the laborer. (Bw. 1575, 1603 k, 1612)

Article 1603k. The relationship of employment shall not be terminated by the death of the employer, unless it is provided otherwise in the agreement. However, the heirs of the employer as well as those of the laborer shall be authorized to terminate the relationship of employment entered into for a specific time period, by giving notice pursuant to the provisions of article 1603 h and 1603 i, as if it was concluded for an indefinite period of time. (Bw.1575, 1603j; K.433, 450; F.39)

Article 1603l. If a trial period is stipulated, then each of the parties shall be authorized, within such time period, to give notice of termination of the relationship of employment. Any agreement, which stipulates different trial periods \*441 for the parties, or which stipulates a time period of longer than three months, as well any agreement concluded between the parties for a new trial period, shall be void. (Bw. 1499)

Article 1603m. If the legal representative of a minor considers that the labor agreement concluded by the minor shall have or has harmful consequences, or that the requirements stipulated in the authorization in article 1601 g have not been complied with, he may request the judge at the location of the actual residence of the minor in writing to declare the labor agreement to be dissolved. The judge shall not grant the request until after the hearing or proper summons of the minor, and also of the employer, and if the minor is under guardianship and such guardianship has been assigned to the Orphan's Chamber, of the latter mentioned. If the judge grants the request, he shall then stipulate the date on which the relationship of employment shall be terminated. No appeal shall be permitted to be filed against the decision, without prejudice to the authority of the Attorney General at the Supreme Court to, only on a point of law, appeal for cassation of the decision. (Bw. 366, 1603v; RO. 170)

Article 1603n. Each one of the parties may terminate the relationship of employment without any notice or without having regard to the provisions applicable to termination; however, the party who effects such without the other party's approval, is acting unlawfully, unless he compensates the other party at such time as stipulated in article 1603 q, or terminates the relationship of employment for an urgent reason, duly notifying the other party thereof. (Bw. 1603w; K.433, 451)

Article 1603o. With regard to the employer, within the meaning of the previously mentioned article, those acts, traits or the behavior of the laborer, which shall result in the fact that the employer cannot be reasonably expected to continue the relationship of employment, shall be regarded as urgent. (Bw. 1339, 1602y, 1603d, 1603v) Urgent reasons, inter alia, may be considered to exist as follows: 1. if the laborer upon entering into the agreement has misled the employer by furnishing him with forged or falsified letters of recommendation, or if he has deliberately misinformed the employer regarding the manner in which his previous relationship of employment was terminated; (Bw. 1602 z) 2. if, the laborer, does not possess any of the skills or expertise for the tasks to which he has bound himself; 3. if the laborer, despite warnings, becomes inebriated, is guilty of abuse of opium or other debauchery; 4. If he is guilty of theft, embezzlement, fraud or other misdemeanors, which render him unworthy of his employer's trust; (Sw. 362, 372, 378) 5. if the laborer mistreats, grossly insults or seriously threatens the employer, members of his family or household members or co-workers; (Bw. 1365 v.) \*442 6. if the

laborer induces or attempts to induce the employer, members of his family or household members to commit acts that are in violation of the law or proper morals; 7. if the laborer, deliberately or despite warnings, recklessly damages or seriously endangers the employer's property; (Sw. 406) 8. if the laborer deliberately or despite warnings, recklessly, exposes himself or others to serious danger; 9. if the laborer discloses any particulars regarding the employer's household which he should have kept confidential; (Sw. 322) 10. if the laborer persistently refuses to comply with reasonable orders or instructions issued to him by or on behalf of the employer; (Bw.1603b) 11. if the laborer in some other manner grossly neglects the duties assigned to him pursuant to the agreement; 12. if the laborer, as a result of intentional or reckless actions, becomes incapable of performing the stipulated tasks.(K.411, 418) Agreements, which permit the decision to be made by the employer in the event of an urgent reason within the meaning of article 1603n, shall be void. (AB.23)

Article 1603p. In respect of the laborer, such circumstances which would render it impossible to reasonably expect the laborer to continue the relationship of employment shall be regarded as urgent reasons within the meaning of article 1603 n (Bw. 1339, 1602y, 1603d and v) Urgent reasons, may, among others be deemed to exist in the following circumstances: 1. if the employer mistreats the laborer, members of his family or household members, grossly humiliates or seriously threatens them, or tolerates such treatment by the other household members or subordinates; (Bw.1365v.; Sw.310, 336,351) 2. if the employer induces or attempts to induce the laborer, members of his family or household members, to commit acts in violation of the law or proper morals, or tolerates such inducement or attempted inducement by one of the members of his household or subordinates; (Sw.293v.) 3. if the employer cannot pay the wage at a specific time; (Bw. 1602) 4. if the employer, in the event that board and lodging are included in the labor agreement, does not provide such in a proper manner; (Bw.1602t) 5. if the employer does not provide the laborer with sufficient labor, in the event that the laborer's wage is dependent on the amount of labor performed; (Bw. 1602 p) 6. if the employer, does not properly provide the agreed support to the laborer, whose wage is dependent on the labor performed; 7. if the employer in some other manner grossly neglects the duties assigned to him pursuant to the agreement; 8. if the employer instructs the laborer, despite his refusal, to perform labor in the company of another employer, even though the nature of the relationship of employment does not stipulate such. 9. if the continuation of the relationship of employment, \*443 on the part of the laborer, could involve serious endangerment to life, health, morals, or good name, and such was not evident at the time that the agreement was concluded; 10. if the laborer due to illness or other causes due to no fault of his shall become incapable of performing the agreed tasks. (S.39-545\*; K.412, 419) Agreements, which provide for the decision to be made by the laborer in the event of an urgent reason within the meaning of article 1603n, shall be void. (AB.23)

Article 1603q. (Amended by S.31-367, 368; 39-546) The compensation for damage as mentioned in articles 1601 k and 1603 n, shall, with regard to relationships of employment which are or are deemed to have been concluded for an indefinite time period, be equal to the amount of the wage owing in respect of the period until the first day following termination by termination notice; with regard to a relationship of employment concluded for a specific time period, compensation shall be equal to the amount of the wage for the duration that the service relationship, according to articles 1603 e and 1607 f, should have existed. Wage, in this case shall be defined as parts of the wage, as mentioned in numbers 1 and 7 of article 1601 p. If the wage of the laborer is not fully or partly stipulated according to a period of time, then the rules of article 1601 o shall apply. Any agreement which stipulates a lower amount of compensation for the laborer shall be void. (AB.23) A higher amount of compensation may be stipulated pursuant to a written agreement or regulation. (Bw. 1601 d and j.) The judge shall be authorized to reduce the amount of compensation, as mentioned in the first and fourth paragraph of this article, if he deems the compensation to be too high. Interest shall be due on the amount of the compensation owing, calculated as six percent (6%) a year, commencing from the day that the relationship of employment was terminated. (Bw. 1250).

Article 1603r. If one of the parties has ended the relationship of employment without any termination notice or without having regard to the stipulations applicable to termination, and has, at the same time compensated the opposing party in the manner stipulated in the previous article, the opposing party shall be entitled to submit a claim for further compensation, if there exists special circumstances as a result of which, the damage incurred cannot be regarded as having been compensated for by the compensation received. (Bw. 1309)

Article 1603s. In the event that one of the parties has unlawfully terminated the relationship of employment, the opposing party shall be entitled to claim either the amount stipulated in article 1603 q or the entire compensation. The same provisions shall apply, if one of the parties intentionally or due to his fault has provided the opposing party with an urgent reason to terminate the relationship \*444 of employment without any notice or without having regard to the stipulations applicable to the termination, and the opposing party has exercised such authority. (Bw. 1239, 1603 n, o, p, t)

Article 1603s bis. (Supplemented by S.31-367 see also 368) If the employer terminates the relationship of employment with the intention of releasing himself from the obligation to provide the laborer with an agreed period of leave following a specific number of years of service, which was stipulated in or related to the agreement, then the laborer shall be entitled to claim compensation for such period of leave in addition to that which he is entitled to upon dismissal, which compensation he should have enjoyed during his leave in accordance with the agreement, and if he was entitled to free transportation pursuant to the agreement, the amount that would have been required for the trip to the place of origin or destination of leave, at the time that the relationship of employment was terminated. (Bw. 1603 t; S.39-545\*) If, apart from the case mentioned in the previous article, half of the service period stipulated in the agreement required for the extension of the leave, has lapsed, and the employer, unilaterally, without providing any urgent reasons, terminates the agreement, he must, in addition to whatever he owes the laborer, pay him a certain sum which is proportionate to the amount of compensation referred to in the first paragraph as the proportion due at the time at which the agreement is terminated, after the term of employment required for obtaining leave has passed and the term of employment required for obtaining a leave. For the purpose of calculating the term of employment, the month in which the agreement ends shall be regarded as full whole month. The same shall apply, if the laborer, after part of the service period as mentioned in the previous paragraph has passed, terminates the relationship of employment for urgent reasons provided by the employer, as well as if the judge declares the agreement to be terminated, for significant, but not urgent reasons as mentioned in article 1603 v or as a result of an urgent reason provided by the employer, or pursuant to article 1267, if the employer does not fulfill his obligations. If the judge declares the agreement to be terminated for a reason other than an urgent reason, he shall be authorized to reduce the amount of money as stipulated in the second paragraph to such sum that he shall deem fair having regard to the circumstances.

Article 1603t. (Amended by S.31-366 see also 368) Each right to claim pursuant to the two aforementioned articles shall lapse after a period of one year. (Bw. 1601 t, par.4, 1602 j par.3)

Article 1603u. If the relationship of employment has been entered into for longer than five years or for the duration of the life of a specific individual, the laborer shall nevertheless be authorized to terminate at the time that five years have elapsed after the agreement was concluded, by giving a termination notice of six months. \*445 Any agreement, which excludes or restricts this authority to terminate, shall be void. (AB.23; Bw. 1603 e, h; K. 433, 449)

Article 1603v. Each one of the parties shall at all times, even prior to commencement of the labor, be authorized to submit a written request to the residential judge at the location of his actual residence, to have the labor agreement declared terminated. Any agreement which excludes or restricts this authority for termination shall be void. (Bw. 1603 s bis; S. 39-545\*) That which shall be regarded as significant reasons shall be, in addition to urgent reasons as mentioned in article 1603 n, changes in the personal or financial status of the applicant or opposing party or in the circumstances in which the tasks shall be performed, which are of such nature that the service relationship shall, in order to ensure equitable treatment, be terminated immediately or after a short period of time. The judge shall not grant the request until after a hearing or proper summons of the opposing party. The last two paragraphs of article 1603 m are applicable hereto.(K.412, 420)

Article 1603w. The authority of the parties to claim, in accordance with article 1267, the dissolution of an agreement with compensation of costs, damages and interest, shall not be excluded by the stipulations of this section. (Bw. 1603 m, o, u)

### **Closing Provisions**

Article 1603x. Labor agreements concluded between an employer, who is subject, and a laborer, who is not subject to the aforementioned provisions of this title, shall be governed by these stipulations, regardless of the intent of the parties, if the labor is similar or almost similar to that which as a rule is performed by laborers who are subject to the stipulations of this title. Labor agreements, which are concluded by an employer, who is not subject, and a laborer, who is subject to the aforementioned stipulations of this title, shall, regardless of the intent of the parties, be governed by these stipulations. (Bw.1601c, 1603y; S.26-335 articles V,VI, pg. 602)

Article 1603y. (Amended by S.34-214 see also 38-2) The aforementioned stipulations of this chapter are not applicable to individuals employed by the government, by regions or parts of regions, by municipalities, by the water board or any other public legal entity, unless they are declared applicable prior to the commencement of the relationship of employment by or on behalf of the parties, or by legal regulation.

Article 1603z. Special rules may be stipulated pursuant to an ordinance with regard to agreements for the performance of labor in agricultural plantations or handicraft companies, at railways and at other transport companies and other enterprises.

## **Section 6**

### **Concerning the contracting of work**

Article 1604. (Amended by S.26-335 see also 458) In respect of contracting of work, individuals may agree that the contractor shall only carry out the work or that he shall also provide the material. (Bw. 1457, 1971; Civ. 1787)

Article 1605. (Amended by S.26-335 see also 458) In the event that the contractor is required to provide the material and the work, in any manner, and such is lost prior to delivery, he shall be liable for the loss, unless the principal engaging the contractor was negligent in accepting the work. (Bw. 1237, 1243 v., 1444v., 1460v.; Civ. 1788)

Article 1606. (As amended by S.26-335 see also 458) If the contractor is only required to provide labor and the work is lost, then he shall be liable only for the loss to the extent that it was caused by him. (Bw. 1365, 1444; Civ. 1789)

Article 1607. (As amended by S.26-335 see also 458) If the work, as in the circumstances mentioned in the previous article, has been lost for reasons other than the negligence of the contractor, prior to the delivery and without the principal being negligent in accepting the work and approving it, then the contractor shall not be entitled to claim the agreed price, unless the work has been destroyed due to a defect in the material. (Bw. 1444, 1609; Civ. 1790)

Article 1608. (As amended by S.26-335 see also 458) If the work is carried out in parts or by measurement, it may be inspected in parts; the inspection shall be considered to have occurred in respect of the parts paid for, if the client pays the contractor for the parts completed. (Bw. 1605, 1609; Civ. 1791)

Article 1609. If a building contracted for and constructed for specific consideration, is entirely or partly lost due to a defect in the composition of the materials, or even due to the unsuitability of the land, then the architects and contractors shall be liable therefor for a duration of ten years. (Bw. 654, 1369, 1967; Civ.1792)

Article 1610. (As amended by S.26-335 see also 458) If an architect or contractor has agreed to construct a building pursuant to specifications devised and determined with the owner of the land, he may not demand an increase in price, \*448 even if it is argued that there has been an increase in the laborers' wages or building material, nor in the changes or additions made which were not included in the specifications, if those changes or increases have not been approved in writing, and if no agreement has been reached with the owner regarding the price. (Bw. 1139-8; Civ. 1793)

Article 1611. The principal may, if he so desires, terminate the contract, even though the work has been commenced, provided that he compensates the contractor for all the costs and labor incurred and the profit that he would have gained. (Bw. 1338; Civ. 1794)

Article 1612. (As amended by S.26-335 see also 458) A contract shall terminate upon the demise of the contractor. The principal, however, must settle with the heirs, in proportion to the price stipulated in the agreement, the value of the work carried out and the building material made available, provided that the work or the building material can be used by him. (Bw. 1383, 1575; Civ. 1795v.)

Article 1613. The contractor shall be responsible for the acts of his employees. (Bw. 1367; Civ. 1797)

Article 1614. Bricklayers, carpenters, smiths and other tradesmen, who are employed for the construction of a building or any other work which is contracted, shall not have any legal right to claim against the individual on whose behalf the work is performed, an amount other than the amount due to the contractor at the time they file their lawsuit. (Bw. 1139-8, 1147, 1971; Rv. 728v.; Civ. 1798)

Article 1615. Bricklayers, carpenters, smiths and other tradesmen, who contract directly to carry out work for a specific price, shall be bound by the rules described in this section. They are contractors in the area of trade in which they are employed. (Bw. 1604v. Civ. 1799)

Article 1616. (As amended by S. 26-335 see also 458) Laborers, who have access to a property, to perform work thereon, shall be entitled to retain such property, until the total costs and laborers' wages have been paid, unless the client has provided sufficient security for such costs and laborers' wages. (Bw. 1139-5, 1147, 1968)

Article 1617. The rights and obligations of carriage drivers and boatmen are stipulated in the Commercial Code (K.91v., 394v.)

## **Chapter VIII**

### **Concerning partnerships**

#### **Section 1**

##### **General provisions**

Article 1618. A partnership is an agreement by which two or more individuals bind themselves to contribute something jointly with the intent of sharing the proceeds therefrom among one another. (Bw.1621, 1624, 1633, 1635; K.15v., 286, 320v.; civ. 1832.)

Article 1619. All partnerships shall have a lawful objective and shall be concluded for the mutual benefit of the parties concerned. Each partner is required to contribute money, assets or services to the partnership. (Bw.132v., 1335, 1631, 1633, 1648; Civ.1833)

Article 1620. Partnerships are either unlimited or limited. (Bw.1621,1623; Civ.1835)

Article 1621. The law only acknowledges unlimited partnerships of which the only purpose is to make profit. Partnerships which are prohibited are all partnerships which comprise either all the assets of the partners, or part thereof, under a general title; without prejudice to the stipulations of the sixth and seventh chapter of the First book of this Civil Code. (Bw. 119v, 139v., 1066; Civ. 1836v.)

Article 1622. An unlimited profit making partnership shall only consist of that which the parties, in any manner, shall achieve due to their efforts, in the course of the partnership's existence. (Civ. 1838)

Article 1623. A limited partnership is one which only relates to certain specific matters, or to the use thereof, or to the proceeds which shall result thereof, or to a specific undertaking, or to the operation of an enterprise or occupation. (K.57v.; Civ. 1841v.)

#### **Section 2**

##### **Concerning agreements among the partners**

Article 1624. The partnership shall commence existence at the time the agreement is concluded, unless otherwise stipulated. (Bw. 1253, 1268; Civ. 1843)

Article 1625. Each partner shall be liable to the partnership for whatever contribution he has agreed to make, and if this contribution comprises a specific object, he must insure such, as in the case of a sale and purchase. (Bw. 1237, 1264, 1491v., 1631, 1648; Civ. 1845)

Article 1626. The partner who is required to make a monetary contribution to the partnership and fails to do so, shall by law, and without having to be charged thereof, become liable to make interest payments on this sum of money, to be calculated from the day on which this amount should have been contributed. The same shall apply to the funds which he has withdrawn from the joint account, to be calculated from the date on which he withdrew such funds for his personal benefit. The above shall be without prejudice to any indemnification for further costs, damages and interest, should there be grounds therefor. (Bw. 1243, 1250, 1481, 1805; Civ. 1846)

Article 1627. The partners who have committed themselves to contribute their services and expertise to the partnership, shall be accountable for all profits, which they have acquired, through their specific expertise which is the object of the partnership. (Bw. 1622, 1633; Civ. 1847)

Article 1628. If one of the partners, on his own behalf, claims a collectable debt from a party who is also indebted to the partnership, then the payment received by him shall be calculated in proportion to both the debts owing to the partnership and to him, notwithstanding that at the time of receipt of payment he has stipulated that the payment shall be set off against his own receivable debt; however, if he stipulates upon receipt that the entire payment shall be set off against the partnership's receivable debt, then this stipulation shall be complied with. (Bw. 1396, 1399, 1426; Civ. 1848)

Article 1629. If one of the partners has received his total share in a joint receivable debt of the partnership that remains outstanding, and the debtor to the partnership thereafter becomes insolvent, the partner must contribute the share that he has already received to the joint account, notwithstanding that he has already discharged his share. (Bw. 1628; Civ. 1849)

\*452 Article 1630. Each partner must indemnify the partnership against damage caused by him to the partnership, and he cannot set off compensation for such damage against the profit, which he, due to his efforts and skills in other matters, has provided to the partnership. (Bw. 779, 1243v., 1365v., 1426v.; Civ. 1850)

Article 1631. If the matters, in respect of which only the enjoyment has been given to the partnership, comprise specific objects which do not perish through use, they shall continue to be for the account of the partner to whom they belong. If the assets deteriorate through use; if they depreciate in value while being retained; if they were designated for sale, or if they were acquired by the partnership pursuant to an estimate stipulated in a description or inventory, they shall be for the partnership's account. If the assets have been appraised, then the partner cannot claim more than the amount at which they have been appraised. (Bw. 757, 1237v., 1444v., 1625, 1746; Civ. 1851)

Article 1632. A partner can claim his rights in respect of the partnership, not only regarding the amount which he has spent in respect of the partnership, but also in respect of the agreements which he has concluded in good faith on behalf of the partnership, and also in respect of damage incurred during his management which was unavoidable. (Bw. 1626, 1636, 1639, 1641, 1644, 1810; Civ. 1852)

Article 1633. In the event that the partnership agreement does not stipulate the respective share of each partner in the profits and losses, each share shall be proportionate to his contribution to the partnership. With respect to an individual who has only contributed his skills, his share shall be calculated as the same as the share of the partner who contributed the least amount. (Bw. 1618, 1631, 1635, 1643; Civ. 1853)

Article 1634. The partners cannot stipulate that the regulation of the amount of their share shall be conducted by one of them or a third party. Such a stipulation shall be regarded as not having been written, and thus the stipulations in the previous article shall be taken into consideration. (Bw. 1254, 1465; Civ. 1854)

Article 1635. An agreement, in which one of the partners is granted all the profits, shall be void. (Bw. 1254) It shall however, be permitted to agree that all losses shall be assumed by one or more partners. (Bw. 1335, 1618, 1634; civ. 1855)

Article 1636. A partner, to whom, pursuant to a specific stipulation in the partnership agreement, the management is assigned, may, despite opposition from the other partners, commit any acts, which are related to his management, provided that these are committed in good faith. (K.44) \*453 This authority cannot be revoked without legal grounds therefor, during the existence of the partnership; however, if this authority is granted in a later deed, and not pursuant to the partnership agreement, this shall be revocable like any other simple power. (Bw. 1338, 1630, 1639, 1642, 1645, 1800, 1813, 1817; Civ. 1856)

Article 1637. If the management is assigned to several partners without having their job descriptions determined, or without the stipulation that one cannot act without the other, then each one of them shall be authorized to carry out any acts relating to such management. (Bw. 1804; Civ. 1857)

Article 1638. If it has been stipulated that the managers may not act without one another, then one manager cannot, without a new agreement, act without the assistance of the others, notwithstanding that they may be temporarily unable to participate in the acts of management. (Civ.1858)

Article 1639. In the absence of specific stipulations regarding the manner of management, the following rules shall be observed:

1. the partners shall be deemed to have granted to one another the power to manage on behalf of one another. Each act committed by any one of them shall be binding in respect of the share of the other partners, notwithstanding that they have not granted their approval, without prejudice to the rights of the latter mentioned, or of any one of them, to object to the act, if it has not yet been committed. (Bw. 1636, 1642, 1645)

2. each partner may use the assets belonging to the partnership, provided that he uses them for the purpose for which they are designated, and provided that he does not use them to jeopardize the partnership, or in such manner that shall obstruct the other partners' use of the assets to which they are entitled; (Bw. 1626, 1630)

3. each partner shall have the authority to require the other partners to share the expenses, which are incurred for the maintenance of the assets which are deemed necessary to the partnership; (Bw. 575, 579-1)

4. none of the partners may, without approval of the others, make any improvements to the immovable assets belonging to the partnership, notwithstanding that he claims that those improvements would benefit the partnership. (Bw. 581; Civ. 1859)

Article 1640. The partners who are not responsible for the management, shall neither transfer, pawn, nor encumber the movable assets, belonging to the partnership. (Bw. 1320, 1330-3, 1636, 1639; Civ. 1860)

Article 1641. Each of the partners may, without approval of the others, accept a third party as a shareholder of the shares which he has in the partnership; however, he cannot, without approval, admit him as member of the \*454 partnership, notwithstanding that he is responsible for the management. (Bw. 1636, 1639; Civ. 1861)

### **Section 3**

#### **Concerning contracts concluded by the partners with respect to third parties**

Article 1642. The partners shall not be individually bound for the total debts of the partnership; and one partner cannot bind the other on his behalf, if the latter mentioned has not granted him authority to do so. (Bw. 1639, 1644, 1655; K. 17v.; civ. 1862)

Article 1643. The partners, may be charged by the creditor with whom they have conducted business, each for the same amount and the same share, even though some of the shares in the partnership should be less than others; unless, upon becoming indebted, the requirement that all partners are jointly liable according to their proportionate shareholding in the partnership is specifically stipulated. (Bw. 1633, 1644; Civ. 1863)

Article 1644. An agreement on behalf of the partnership to commit an act, shall only bind the partner who has agreed to such act, and shall not bind the other partners, unless they have granted him authority therefor, or if the matter benefits the partnership. (Bw. 1636, 1639; K.58; Civ. 1864)

Article 1645. If one of the partners concludes an agreement on behalf of his partnership, the partnership may demand the implementation thereof. (Bw. 1317, 1354, 1639, 1644, 1799)

### **Section 4**

#### **Concerning the various manners in which a partnership is dissolved**

Article 1646. A partnership shall be dissolved for the following reasons:



1. expiration of the time period for which it was established; (Bw. 1647, 1649)
2. due to the destruction of the assets or the attainment of the object for which the partnership was established; (Bw. 1444v., 1623, 1648)
3. pursuant to the intent of several or one of the partners; (Bw. 1649v.)
4. due to the demise or guardianship of one of the partners or if he has been declared bankrupt or insolvent. (Bw.3, 433v., 1651; F.22, 55; Civ. 1865)

Article 1647. The dissolution of partnerships, established for a specific time period, may only be demanded by one of the partners, prior to the expiration of such time period, upon legal grounds such as; if one of the other partners has not fulfilled his obligations, or if a continuing indisposition renders him incompetent to take care of the partnership's matters, or other such similar circumstances, the legality and the severity of which shall be decided upon by the judge. (Bw. 1266, 1646; Civ. 1871)

Article 1648. If one of the partners has agreed to transfer ownership of some assets to the partnership, and such assets are destroyed prior to the transfer, then the partnership shall, with respect to all the partners, be dissolved. The partnership shall also be dissolved due to the destruction of the assets, if only the use thereof has been transferred to the partnership, but the ownership thereof has remained with the partner. The partnership shall however, not be dissolved due to the destruction of the assets, if ownership of such has already been transferred to the partnership. (Bw. 1237, 1444v., 1624v., 1631, 1646-2; Civ. 1867)

Article 1649. A partnership may be dissolved pursuant to the intent of some or one of the partners if it has been established for an indefinite time period. The dissolution shall take place, in such case, by notifying all the partners, provided such termination notice shall be given in good faith and in a timely manner. (Bw. 1338, 1646-3, 1647; Civ. 1869)

\*457 Article 1650. The notice shall be deemed not to have been given in good faith, if a partner notifies the partnership, with the intention of appropriating the profits, which the partners intended to enjoy on a joint basis, to himself only. The notice shall be deemed to have occurred in an untimely manner, if the assets are no longer complete and it is demanded in the interest of the partnership that such dissolution shall be postponed. (Bw. 1338, 1618; Civ. 1870)

Article 1651. If it is agreed that, in the event of the demise of one of the partners, the partnership shall continue to operate with his heir as his replacement, or with the surviving partners only, then such stipulation shall be complied with. In the latter circumstances, the heir of the deceased shall have no right upon the division of the partnership, beyond that of the deceased partner at the time of the partner's demise; he shall, however, share in the profits and in the losses, which are the natural consequences of acts committed prior to the demise of the partner who he has succeeded. (Bw. 833, 955, 1646-3; K.30; Civ. 1868)

Article 1652. The rules regarding the distribution of inheritance, the manner of distribution, and the obligations resulting thereof among the co-heirs, shall also be applicable to the distribution among the partners. (Bw. 1066v.; K.32v.; F.55; Rv.102; Civ. 1872)

## **Chapter IX**

### **Concerning legal entities**

Article 1653. In addition to an actual partnership, the law shall also acknowledge associations of individuals as legal entities, whether they are established by public authority or acknowledged as such, or whether they are permitted as lawful, or whether they are established with a specific objective, provided that they do not violate the law or proper order. (AB.23; Bw.1245, 1337, 1618v.; Bb.478, 734)

Article 1654. All established legal entities shall be, even as private individuals, authorized to perform civil acts, without prejudice to the public ordinances, in which such authority may be amended, restricted or rendered subject to certain formalities. (Bw. 526, 808, 810, 899v., 1046, 1137, 1680, 1852, 1954; S. 70-64 articles 9, 10\*; Bb. 4392)

Article 1655. The managers of legal entities shall be, unless otherwise stipulated in the deed of establishment, the agreements and the regulations, authorized to act on behalf of the entity, to bind such to third parties and to bind third parties to such, and also, to appear in court as plaintiff as well as defendant. (Bw. 1636, 1656v., 1792v.; Rv. 6-2 and 3, 236)

Article 1656. All acts, in respect of which the managers were not authorized, shall bind the legal entity only to the extent of the actual benefit, or if the acts are properly approved thereafter. (Bw. 1644, 1657v.; S.70-64 art. 1v.\*)

Article 1657. If the deeds of establishment, the agreements and regulations do not contain stipulations regarding the management of the legal entity, then no one shall be authorized to act on behalf of the company, or bind the company in any manner other than that stipulated in the previous article. (Bw. 1639-1)

Article 1658. To the extent that the deed of establishment, agreements and the regulations have provided otherwise, the managers are required to account for their actions to the members of the legal entity, and each member shall be entitled to summon them by law therefor. (Rv. 764v.)

Article 1659. If the deeds of establishment, agreements and regulations do not contain any specific stipulations regarding voting rights, then each member of a legal entity shall possess the same voting right, and a decision shall be based upon a majority of votes. (K.54)

\*460 Article 1660. The rights and obligations of the members of such association shall be regulated according to ordinances which are established or acknowledged by public authority, or based upon their own deed of establishment, agreements and regulations, and in the absence thereof, in accordance with the provisions of this title. (Bw. 1644; S.70-64 article 2\*)

Article 1661. Members of a legal entity shall not be personally liable for the contracts concluded by the company. The debts may only be settled with the assets of that company. (Bw. 1655, 1665)

Article 1662. A legal entity established by public authority, shall not be dissolved by the demise or the resignation of the members, but shall remain in existence until legally dissolved. If all of the members as aforementioned are absent, then the court within whose jurisdiction the entity is established, shall be authorized to, at the request of the interested party and after having heard and at the request of the prosecution counsel, stipulate the rules, which are required for the benefit of the legal entity. (Bw. 1664)

Article 1663. All other legal entities shall continue in existence until they are expressly dissolved, in accordance with their deeds, regulations or agreements, or until the object of the association has been attained. (Bw. 808, 1653; S.70-64 art. 6v., 9\*; Bb.3299)

Article 1664. If the ordinances of the legal entity or deeds, regulations or agreements, do not contain any other stipulations, then the right of the members shall be personal and shall not pass to their heirs. (Bw. 1651, 1662; S.70-64 art.9\*)

Article 1665. Upon the dissolution of such legal entity, the remaining members or the last remaining member shall be obligated to settle the company's debts out of the proceeds, and if thereafter, there remains a balance of such proceeds, then they may distribute it among themselves, or it may be granted to one member and it may also be passed on to their/his heirs. They shall be, with respect to the summoning of the creditors, the settling of the accounts and the settling of the debts, subject to the same requirements as heirs who have accepted an inheritance under the privilege of estate description. Failing the fulfillment of these requirements, they shall each be personally liable for all the debts, and they shall pass this liability on to their heirs. (Bw. 1033v.; S.70-64 art. 6v.\*)

## **Chapter X**

### **Concerning gifts**

#### **Section 1**

##### **General provisions**

Article 1666. A gift is an agreement, whereby the donor, while still living, grants assets voluntarily and irrevocably for the benefit of the donee who accepts such. The law shall not acknowledge gifts other than gifts among the living. (Bw. 170, 172v., 179, 913, 1314, 1675, 1683, 1688; Civ. 893v.)

Article 1667. A gift shall only relate to the current assets of the donor. In the event that it relates to future assets, it shall be deemed invalid. (Bw. 169, 178, 966v., 1157, 1471; Civ. 943)

Article 1668. A donor shall not be entitled to retain control over an object donated; such a gift, to the extent that it relates to that object shall be considered invalid. (Bw. 171, 1256, 1666, 1671; Civ. 944, 946)

Article 1669. The donor shall be permitted to continue to enjoy or use the movable or immovable assets donated, for his benefit, or to use them on behalf of another party; in which circumstances, the stipulations of the tenth chapter of the second book of this Civil Code shall be taken into account. (Bw. 124, 756v., 785, 883, 922; Civ. 949v.)

Article 1670. A gift shall be invalid, if it is made subject to the condition that debts or liabilities, other than those stipulated in the deed of gift itself, or specified in a list attached thereto, must be fulfilled. (Bw. 1256, 1688-1; Civ.955)

Article 1671. The donor may reserve the right to a certain sum of money out of the assets donated. In the event that he passes away without having appropriated the sum of money, then the entire gift shall be transferred to the donee. (Bw. 1668; Civ. 946)

Article 1672. The donor may reserve the right to reclaim the donated assets, if the donee or his heirs pre-decease him; this, however, can only apply for the benefit of the donor. (Bw.174, 178, 879, 1675; Civ. 951)

Article 1673. The effect of the right to reclaim shall be that all transfers of the assets to other parties shall be invalidated, the assets shall be returned to the donor free and released from all encumbrances and mortgages which were imposed on such assets since the time at which the gift was made. (Bw. 948, 1093, 1169, 1209; Civ.952)

Article 1674. The donor shall not, in the case of any \*463 legal charges be obligated to grant any discharges. (Bw. 1491v.)

Article 1675. The provisions of articles 879, 880, 881, 882 and 884 and of article 894 as well as the seventh and eight sections of the thirteenth chapter of the second book, are applicable to gifts. (Bw. 1679).

## **Section 2**

### **Concerning authority to grant gifts and enjoy the privileges thereof**

Article 1676. All individuals may grant and receive gifts, with exception of the individuals who are declared incompetent by law. (Bw. 108, 124, 896, 1320, 1330, 1677v.; Civ. 902)

Article 1677. Minors may not grant gifts, with the exception of that which is stipulated in the seventh chapter of the First Book of this Civil Code. (Bw. 139, 151, 897, 904v., 1330-1, 1676, 1681; Civ. 903v.)

Article 1678. Gifts between spouses, while still married, shall be prohibited. However, this stipulation shall not apply to gifts of movable, tangible objects, the value of which is not excessive in view of the financial status of the benefactor. (Bw. 119, 149, 168v., 1467, 1601, 1687; Civ. 1096)

Article 1679. In order to be competent to accept a gift, the donee must have existed at the time that the gift took place, having regard to the rule stipulated in article 2. (Bw. 174, 178, 836, 899, 1675; Civ. 906)

Article 1680. (Amended by S.37-572) Gifts granted to public or religious institutions, shall not have any consequences, other than to the extent that the Governor General or the official designated by the Governor General has granted the managers of such institutions the right to accept such gifts. (Bw. 900, 1653v; Civ. 910, 937)

Article 1681. (Amended by S.72-11) The stipulations of the second and last paragraph of article 904, including articles 906, 907, 908, 909 and 911 shall apply to gifts. (Bw. 973v., 1679)

### **Section 3**

#### **Concerning the form of gifts**

Article 1682. Any gifts, with the exception of those stipulated in article 1687, may only take effect by notarial deed, and the original document of such gift shall remain with the notary. (Bw. 1893v.; Not.39; civ. 931)

Article 1683. No gift shall bind the donor, or shall have any effect, until the day on which it has been expressly accepted, either by the donee, or by an individual, to whom, authority has been granted by authentic deed to accept gifts which have been or shall be granted to the donee. If the acceptance does not take place in the deed of gift, this can take place by subsequent authentic deed, the original document of which shall be kept, unless this shall take place during the donor's life, in which case, the gift, with respect to the latter mentioned, shall only be valid from the day on which the acceptance shall be notified to him. (Bw.170, 177, 1666, 1796; Not. 30v., 35; Civ. 932)

Article 1684. Gifts granted to a married woman, shall only be accepted in accordance with the stipulations of the fifth chapter of the First Book of this Civil Code. (Bw. 108, 167, 1330-3, 1678; Civ. 934)

Article 1685. (As amended by S.27-31 see also 390, 421) Gifts granted to minors, who are under parental supervision, shall be accepted by those, who exercise such parental right. Gifts granted to minors or individuals under guardianship, shall be accepted by the guardian who has been authorized by the court. If the court has granted the authority, the gifts shall be valid, notwithstanding that the donor passes away prior to the granting of such power. (Bw. 300, 307, 330v., 370, 385, 402, 452, 1330, 1448; Civ. 935)

Article 1686. Ownership of the assets covered in the gift, even if such gift is properly accepted, shall not vest in the donee, other than by a transfer, effected in accordance with articles 612, 613, 616 etc. (Ov.26; Bw.1459, 1475, 1666; Civ.938)

Article 1687. Gifts of movable, tangible objects, or debt claims to be paid to bearer, do not require any deeds, and shall be valid by a single delivery to the donee, or to a third party, who shall accept the gift on his behalf. (Bw.613, 1354v., 1682, 1792v.)

### **Section 4**

#### **Concerning the revocation and the invalidation of gifts**

Article 1688. A gift cannot be revoked or invalidated, other than in the following circumstances: (Bw. 172, 179, 920, 924, 1666, 1692; F.43v.) 1. due to failure to satisfy the conditions, subject to which they have been made; (Bw.1317, 1689) 2. if the donee is guilty of or is an accessory to manslaughter of the donor, or is guilty of another crime committed against the donor; (Bw. 1690) 3. if he refuses to support the donor after he has fallen into circumstances of poverty. (Bw.324, 1690; Civ.953, 955)

Article 1689. In the first instance, the gift shall remain with the donor, or he may reclaim such, free of all encumbrances and mortgages which might have been imposed thereon by the donee, together with the gains and proceeds enjoyed by him as of the time that he neglected to fulfill the conditions. The donor, may, in that instance, exercise the same rights in relation to a third holder of the donated immovable assets as those exercisable in relation to the donee. (Bw. 928, 1093, 1209, 1236, 1673, 1797; Civ. 945)

Article 1690. In the two last instances specified in article 1688, the transfer or mortgage of or other encumbrances on the gift shall not be invalidated prior to the demand for invalidation of the gift being stipulated following the promulgation of article 616. All transfers, mortgages or other encumbrances, which take place after the aforementioned stipulation, shall be invalid if the claim for revocation is admitted. (Ov. 26; Bw. 1454; Civ. 958)

Article 1691. The donee shall, in the circumstances mentioned in the previous article, return the gift, together with the gains and proceeds, to be calculated as of the day the legal claim was filed, or in the

event that the assets have been transferred, the value thereof, at the time the legal claim was filed, together with the gains and proceeds at that time. He must also compensate the donor for the mortgages and other encumbrances imposed on the immovable assets by the donee also prior to the legal claim. (Bw. 1236, 1391v., 1444; Civ. 958)

Article 1692. The legal claim, stipulated in the previous article, shall expire after one year, to be calculated from the day that the event, which resulted in the legal claim, took place, and could have been known to the donor. \*467 The legal claim may not be filed by the donor against the heirs of the donee, nor may the heirs of the donor file a claim against the donee, unless in the latter circumstances the legal claim has already been filed by the donor, or if he passes away within the year that the event which resulted in the charge occurred. (Bw. 1688-2 and 3; Civ. 957)

Article 1693. The stipulations in this chapter shall not form grounds for the obstruction of the stipulations in the seventh chapter of the First Book of this Civil Code. (Bw. 139v., 168v., 176v; Civ. 959)

## **Chapter XI**

### **Concerning deposits**

#### **Section 1**

##### **Concerning deposits in general, and concerning the various types**

Article 1694. A deposit shall take place, if an individual accepts assets from another party, subject to the condition that he must keep such and return such in their original state. (Bw. 1697, 1700, 1714, 1949; Civ. 1915)

Article 1695. There are two kinds of deposit; the actual deposit and sequestration. (Bw. 1696v., 1730v.; Civ. 1916)

#### **Section 2**

##### **Concerning sequestration and similar types of deposit**

Article 1730. Sequestration is the deposit of assets being disputed, with a third party, who has bound himself to return such assets together with the proceeds thereof, to whomever shall be declared to be the rightful owner by the court, following the settlement of the dispute. This deposit shall take place, either by agreement or upon court order. (Bw. 478, 833, 956, 1697, 1731v., 1736v.; Rv. 580-4; Civ. 1955v.)

Article 1731. Sequestration shall take place by agreement, if the disputed assets are voluntarily deposited with a third party by one or more individuals. (Civ. 1956)

Article 1732. It is not an absolute requirement that sequestration shall occur free of charge. (Bw. 1696, 1707-2, 1733; Civ. 1957)

Article 1733. Sequestration shall be subject to the same rules as the actual deposit, subject to the following exceptions. (Bw. 1696v., 1737; Civ. 1958)

Article 1734. Sequestration may concern movable and immovable assets. (Bw. 1696, 1738-2; Civ. 1959)

Article 1735. The sequestrator, shall not be released from the deposit of the assets prior to the resolution of the dispute, unless all interested parties issue their approval thereof or there is another valid reason.

Article 1736. Sequestration upon a court order shall take place if the judge demands that assets being disputed shall be placed on deposit. (Bw. 561, 1726, 1730v., 1737, 1885; Civ. 1961)

Article 1737. Legal sequestration by court order shall be assigned either to an individual who has been mutually approved by the parties, or to an individual who has been officially appointed by the judge on the basis of his occupation. In both cases, the individual, to whom the assets have been entrusted, shall

be subject to all conditions of the sequestration by agreement, and shall be also bound to submit to the judge annually, upon the demand of the prosecution counsel, a summarized account of his management, by displaying or indicating the assets entrusted to him, however, if the relevant parties do not approve the account, he cannot oppose them by arguing that the account has been approved by the court. (Bw. 1733v.; K.84; Rv.55-4; Civ. 1963)

\*475 Article 1738. The judge may order sequestration in the following circumstances: (Bw. 473, 1885; K.94; Rv. 508) 1. regarding movable assets, which are seized while in the possession of the debtor; (Rv. 454, 718, 723, 753) 2. regarding movable or immovable assets, of which the title or ownership is disputed between two or more individuals; (Bw. 561, 833, 956) 3. regarding assets which a debtor offers in settlement of his debt. (Bw. 1412; Rv. 809v.; Civ.1961)

Article 1739. The appointment of a legal custodian shall result in mutual obligations between the individual carrying out the attachment and the custodian. The custodian shall take care of the maintenance of the seized assets in the manner of a good head of the household. He shall deliver those assets, either for sale, to settle the debt with the individual who has seized the assets, or to the party against whom the attachment occurred, if such attachment has been revoked. The individual who seizes the assets shall be obligated to pay the fee, as stipulated by law, to the keeper. (Bw. 1706v.; civ. 1962; S.1851-27 article 48)

## **Chapter XII**

### **Concerning lending for use**

#### **Section 1**

##### **General provisions**

Article 1740. A loan for use is an agreement, in which one party delivers assets to another party for unrestricted use, subject to the condition that the party receiving the assets, shall return these after having used them for a specific period of time. (Bw. 1389, 1429-2, 1697, 1714; Civ. 1875v.)

Article 1741. The lender shall remain the owner of the assets on loan. (Bw. 1746, 1748, 1752, 1755; Civ. 1877)

Article 1742. Anything tradable that belongs to individuals and does not perish through use, may be the subject matter of the agreement. (Bw. 505, 537, 1332, 1740, 1744; Civ. 1878)

Article 1743. Contracts which have resulted from lending for use, shall be passed on to the heirs of the individual lending the assets, and to those who receive the loan. If, however, an individual makes a loan specifically to the recipient only thereof, then his heirs shall not be entitled to further enjoyment of the assets lent. (Bw. 833, 955, 1318, 1717, 1721, 1826; Civ. 1879)

#### **Section 2**

##### **Concerning the obligations of the party who receives something lent for use**

Article 1744. An individual who receives something on loan, must be responsible, as a proper head of the household, for the storage and the maintenance of the assets lent. He cannot use the assets in any manner other than that which is in accordance with their nature, or that which has been stipulated in the agreement; and shall be liable to pay costs, damages and interest, should there be grounds therefor. In the event that he uses the assets lent, for a different purpose, or for a longer period of time, than as deemed necessary, then he shall also be liable for the loss of the assets, notwithstanding that this loss might have occurred due to an accident. (Bw.1235, 1245v., 1391, 1444, 1708, 1740, 1746; Civ. 1880v.)

Article 1745. If the assets lent are lost accidentally, which loss could have been prevented by the party who has received the assets on loan by using his own assets, or if he could only retain one and has given priority to his own, then he shall be liable for the loss of the other assets. (Bw. 1235v., 1245, 1444, 1706v.; Civ. 1882)

Article 1746. If the assets were appraised at the time that they were lent, the loss shall be attributed to the party who has received the assets on loan, notwithstanding that the loss occurred as a result of an accident, unless it is provided otherwise. (Bw. 1245, 1631; Civ. 1883)

Article 1747. If the assets have depreciated in value as a result only of the use for which they were lent, and due to no fault of the user, he shall not be liable for the depreciation. (Bw. 1391; Civ. 1884)

Article 1748. If the user has incurred costs in using the assets lent, he shall not be entitled to reclaim these. (Bw. 1752; Civ. 1886)

Article 1749. If several individuals have jointly received assets on loan, they shall be respectively responsible to the lender for all of the assets. (Bw. 1282, 1301v.; Civ. 1887)

### **Section 3**

#### **Concerning the obligations of the lender**

Article 1750. The lender shall not reclaim the assets lent until after the lapse of a specific time period, or in the absence of such stipulation, until after the assets which have been lent have been used, or could have been used. (Bw. 1269, 1725, 1740, 1759; Civ. 1888)

Article 1751. If, however, during that period of time, or before the user has finished using the assets, the lender intends to use the assets lent due to urgent and unexpected reasons, the judge may, depending upon the circumstances, order the user to return the assets lent, to the lender. (Bw. 1269, 1579; Civ. 1889)

Article 1752. In the event that the user, during the term of the loan for use, in order to protect the assets, incurs several unusual necessary expenses, for reasons which were of such an urgent nature that he was unable to notify the lender thereof in advance, then the latter mentioned must compensate him therefor. (Bw. 1139-4, 1147v., 1157, 1357, 1364, 1728, 1748; Civ. 1890)

Article 1753. If the assets lent are damaged to the extent that the individual using them may be jeopardized, then the lender, insofar as he had been aware of the defects but failed to notify the user thereof, shall be responsible for the consequences. (Bw. 1365v., 1504, 1762; Civ. 1891)

### **Chapter XIII**

#### **Concerning loans for consumption**

##### **Section 1**

##### **General provisions**

Article 1754. A loan for consumption is an agreement, in which one party provides another with a specific amount of consumable items, subject to the condition that the latter mentioned shall return similar types of items of the same amount and quality. (Bw. 505, 1392, 1740, 1763; Civ. 1892)

Article 1755. Pursuant to this loan for consumption, the borrower shall become the owner of the items lent, and in the event that these items perish in any manner, the loss shall be borne by him. (Bw. 1237, 1741; Civ. 1893)

Article 1756. The debt resulting from a monetary loan, shall only be in respect of the amount of money as stipulated in the agreement. In the event that prior to the date of settlement, there is an appreciation or depreciation in the value of the currency, or a change in the valid currency, the amount lent shall be returned in the currency that is valid at the time of settlement, to be calculated at the current rate applicable at that particular moment. (Bw. 1250, 1389; Civ. 1895; cf.S. 37-585\* gold clauses)

Article 1757. The rule, stipulated in the previous article, shall not be applicable if the parties have expressly agreed that the same amount and the same kind of coins as the kind lent shall be returned. In this case, the borrower shall return the exact amount and type of coins. If the type of coins no longer exist in sufficient quantity, the absence of such shall be compensated for with coins of the same metal, if

possible of the same content, and which together contain the same amount of precious metal, as the coins lent. (Bw. 1389; Civ. 1896)

Article 1758. In the event that the loan comprises bars of gold and silver, or other items, the debtor shall always return the same amount and quality, regardless of any appreciation or depreciation in the value, and shall not be bound further. (Bw. 1754, 1763; Civ. 1897)

## **Section 2**

### **Concerning the obligations of lenders**

Article 1759. A lender shall not reclaim that which has been lent prior to the lapse of the period of time stipulated in the agreement. (Bw. 1269v., 1725, 1750v., 1763; Civ. 1899)

Article 1760. In the event that no specific time period is stipulated, the judge may, if the lender demands the return of the items and depending upon circumstances, grant an extension of time to the individual who has received the items on loan. (Bw. 1390; Civ. 1900)

Article 1761. If the parties have agreed that the party who has received items or money on loan shall return these when he is capable of doing so, the judge shall then, depending upon circumstances, stipulate the date for the return. (Bw. 1256, 1268; Civ. 1901)

Article 1762. The stipulation in article 1753 shall apply to loans for consumption. (Bw. 1365v., 1504; Civ.1898)

## **Section 3**

### **Concerning the obligations of borrowers**

Article 1763. An individual, who receives something on loan, must return such, in the same amount and condition and on the stipulated date. (Bw. 1269v., 1392, 1754, 1756, 1759; civ. 1902; cf.S.37-585\* gold clauses)

Article 1764. If he is unable to do so, then he must settle the value of that which is lent, having regard to the time and location at which the items should have been returned pursuant to the agreement. If neither the time nor the location is stipulated, then the settlement shall take place at the value of the items lent at the time and at the location at which the loan was made. (Bw. 1243v., 1250, 1393; civ. 1903)

## **Section 4**

### **Concerning loans subject to interest**

Article 1765. It shall be permitted to agree interest in respect of the loan of money or other consumable items. (Bw. 505, 1250, 1754, 1768, 1975; Rv.344; Civ. 1905)

Article 1766. The party, who has received a loan, and has paid interest which was not agreed, cannot reclaim such, nor can he reduce the principal sum, unless this exceeds the legal interest in which case the overpayment may be reclaimed or the principal sum may be reduced. The payment of interest which is not agreed shall not oblige the debtor to continue to pay it; however, agreed interest shall be due until the return or delivery of the principal amount, even if return or delivery could have taken place after the maturity date. (Bw. 1359, 1397, 1404v., 1768; Civ. 1906)

Article 1767. Interest shall arise either by law, or by agreement. Legal interest shall be stipulated by law. The interest stipulated in an agreement may exceed the legal interest, in all circumstances that are not prohibited by law. (S.1848-22 see also 1849-63; K.147) The amount of interest payable negotiated in the agreement shall be stipulated in writing. (Bw. 391, 413, 797v., 1098, 1250, 1286, 1768, 1780, 1805, 1839, 1975; Civ. 1907; T.XIII-379)

Article 1768. If the lender has agreed to interest, without determining the amount, the individual who has received the loan, is obligated to pay the interest in accordance with the legal interest. (Bw. 1767)



Article 1769. Evidence of payment of the principal sum without any indication of interest payments, shall be presumed to include interest payments, and the debtor shall be discharged therefrom. (Bw. 1394, 1397, 1438, 1916, 1921; Civ. 1908)

## **Chapter XIV**

### **Fixed or perpetual interest**

Article 1770. The establishment of perpetual interest is an agreement in which the lender agrees to pay interest, upon payment a principal sum which he agrees not to reclaim. (Bw.511-2, 1252, 1394, 1975; Civ.1909)

Article 1771. This interest is by its nature redeemable. The parties may only agree that the redemption shall not take place until after a specific time period, which if interest is agreed, shall be not more than ten years, or in the absence of notification of the creditor in advance, upon a specific, previously stipulated time period which shall not exceed a period of one year. (Bw. 751v., 1269v., 1520; Onteig.40; civ.1911)

Article 1772. The person liable to pay perpetual interest may be forced to redeem in the following circumstances: 1. if he has not paid any interest owed for two consecutive years; (Bw. 1782) 2. if he fails to deliver the security stipulated in the agreement to the lender; (Bw. 1781) 3. if he has been declared bankrupt or insolvent. (Bw. 1271, 1782, 1843-2; F.127; Civ. 1912v.)

Article 1773. In the first two instances, mentioned in the previous article, the debtor shall be released from the obligation of redemption, if, within twenty days effective as of the court's reminder, he pays all the previous installments due or delivers the promised security. (Bw.1238)

## **Chapter XV**

### **Concerning aleatory agreements**

#### **Section 1**

##### **General provisions**

Article 1774. (Amended by S.33-47 see also 38-2) An aleatory agreement concerns an act, of which the outcome, with regard to profits and losses, whether in respect of all parties or of an individual, depends on an uncertain event. The following are of such nature: insurance agreements; (K.246v., 287v., 592v., 686v.) annuities; (Bw. 1775v.) games and gambling (Bw.1788v.) The first-mentioned agreement shall be regulated in the Commercial Code. (Bw. 1253v.; Civ.1964)

#### **Section 2**

##### **Concerning the agreement regarding annuities and the consequences thereof**

Article 1775. Annuities may be established by secured agreement or by deed of gift. They may also take effect pursuant to a last will. (Bw. 511-2, 764, 918, 922, 960-2, 1252, 1780, 1975; Civ. 1968v.)

Article 1776. Annuities may be established in respect of the lender, or of whomever is granted the enjoyment thereof, or with regard to a third party, notwithstanding that he shall not benefit therefrom. (Bw.1777v.; Civ.1971)

Article 1777. The same can be established in respect of one or more persons. (Bw. 1776; Civ.1972)

Article 1778. Annuities may be established for the benefit of a third party, notwithstanding that the money has been provided by another individual. In this regard, such payments shall not be subject to the formalities which are required for gifts. (Bw. 1317, 1682; Civ.1973)

Article 1779. All annuities established for an individual who dies on the day on which the agreement is entered into, shall be invalid. (Bw.1335, 1774; civ. 1974)

Article 1780. Income from annuities may be stipulated to be whatever amount is agreed by the parties. (Bw. 1317, 1682; Civ. 1973)

Article 1781. The individual on whose behalf an annuity has been established pursuant to a secured agreement, may demand the nullification of the said agreement, if the debtor has not delivered the agreed security. In the event of nullification, the debtor shall be obliged to pay the agreed outstanding interest, until the principal sum has been paid. (Bw. 1266v., 1772-2, 1773; Civ.1977)

Article 1782. Default on annuities which have arisen, shall not entitle the recipient of interest to demand payment of the principal sum, or the return of the assets delivered by him, on which interest is payable; he shall only be entitled to charge the debtor for the outstanding interest, to demand indemnification, and to request security for the outstanding interest. (Bw.1266v., 1394, 1722-1; Civ.1978)

Article 1783. Revoked: S.1906-348.

\*490 Article 1784. The debtor cannot be released from the obligation to make payment of the annuity by offering to return the principal sum, and by agreeing not to reclaim the interest paid; he is obliged to continue the payment of the annuity, for the duration of the life of the individual or individuals for whom the interest is established, regardless of how onerous it will be upon him. (Bw. 1771; Civ. 1979)

Article 1785. The holder of an annuity shall be entitled only to payment of the annuity for the number of days that the party for whom the annuity was established, has lived. If the agreement indicates that the annuity shall be paid in advance, the right to the installment which should have been paid, shall be granted with effect from the day on which the payment should have occurred. (Bw.502, 763v.; Civ.1980)

Article 1786. An individual cannot stipulate that an annuity shall not be subject to seizure, unless it has been established gratuitously. (Bw.1131v., 1429-3; Rv.749; Civ.1981)

Article 1787. The recipient of the interest shall not reclaim the interest outstanding, unless he can indicate that the individual for whom the annuity was established is still alive. (Bw.1975; Civ.1983)

### **Section 3**

#### **Concerning games and gambling**

Article 1788. The law shall not admit any legal claim with respect to a debt resulting from games or gambling. (Sw.303, 542v.; Civ. 1965)

Article 1789. The aforementioned stipulation, shall not include games which involve physical exercise, such as fencing, running etc. Nevertheless the judge can deny the claim or reduce it if the amount claimed appears excessive to him. (Civ.1966)

Article 1790. An individual may not deviate from the stipulations in the two previous articles by a renewed debt. (Bw.1413v)

Article 1791. Under no circumstances, can the individual, who has voluntarily paid for the loss, reclaim it, unless, the winner has committed fraud, deceit or embezzlement. (Bw. 1328, 1359, Sw.378; Civ. 1967)

### **Chapter XVI**

#### **Concerning the issuance of mandates**

##### **Section 1**

#### **Concerning the nature of the mandate**

Article 1792. A mandate is an agreement, by which an individual assigns authority to another, who accepts it, to perform an act on behalf of such mandator. (Bw.78v., 1354v.,1549, 1945; K.79v.; Civ.1984)

Article 1793. Authority may be granted and accepted pursuant to a public deed, or privately, in a letter, and may also be granted verbally. The acceptance of authority may also be implied, and shall be deduced from the implementation of the authority by the individual authorized. (Bw.79, 109, 1171, 1683, 1796, 1874, 1895v., 1945; BS.12,41; F.116; Rv.38, 150, 256,439,860; Civ.1985)

Article 1794. A mandate shall take place gratuitously, unless otherwise agreed. (Bw.1021, 1358, 1549, 1801, 1808;Civ.1986) In the latter mentioned case, if the fees are not expressly stipulated, the mandatary shall not demand more than that which is stipulated in article 411 in respect of guardians. (Ov.80; T.XIII-404)

Article 1795. A mandate can be either specific, being related to one or more matters, or general, being related to all matters of the mandator. (Bw.79,334,1683,1925,1934,1945;BS.12,41;K.331,360,362;F.116;Rv. 38,150,272,439,860;Civ.1987)

Article 1796. A mandate, granted in general wording, shall only extend to acts of management. A specific mandate shall be required in order to transfer assets, or encumber them, to reach a compromise, or to perform any other act of ownership. (Bw.115, 1171, 1385, 1405-1, 1683, 1934; K.362, 365; Rv.256; Civ.1988)

Article 1797. The mandatary shall not do anything which is outside the scope of his authority; the authority to perform the matter by compromise shall not include the authority to submit the matter to the decision of arbitrators. (Bw.1316, 1806, 1851v.; Rv.615v.; Civ.1989)

Article 1798. Women and minors may be appointed as representatives, but the mandator shall not file any legal claims against minors, other than in accordance with the general provisions which apply to contracts with minors, and against married women who have accepted the authority without authorization from their husbands, in accordance with the rules, as stipulated in the fifth and seventh titles of the First Book of this Civil Code. (Bw.108v., 114v.,330,333,385v.,1006,1330v.,1446,1813; \*494 K.20;Rv.617;Civ.1990)

Article 1799. The mandator may file a claim directly against the party with whom the representative had dealings on behalf of the mandator, and may demand the immediate fulfillment of the agreement. (Bw.1792, 1803; K.78)

## **Section 2**

### **Concerning the obligations of the mandatary**

Article 1800. The mandatary must execute the authority, for as long as he has not been discharged from it, and shall be responsible for the costs, damages and interest incurred by not executing such authority. He must also finalize any matter, which he commenced at the time the mandator passed away, if loss could occur as a result of not finalizing the matter immediately. (Bw.1243, 1245, 1338,1354v., 1470, 1813, 1817, 1819, Civ.1991; Bb.2778)

Article 1801. The mandatary shall be liable for malice, as well as for any negligent acts committed in the course of implementing his authority.

Notwithstanding this, liability for negligence shall be less stringently enforced with regard to a party who has accepted authority gratuitously, than with regard to a party who has accepted compensation therefor. (Bw. 1235, 1328, 1356, 1707v., 1794; Civ. 1992)

Article 1802. The mandatary is required to account for his actions, and to be accountable to the mandator for anything that he has received pursuant to his mandate, notwithstanding that that which has been received might not have been owing to the mandator. (Bw. 1805, 1807; Rv.764v. Civ.1993)

Article 1803. The mandatary shall be responsible for an individual who he has designated to implement the authority in his place; 1. if he has not been authorized to designate another individual in his place; 2. if he has been granted such authority without indicating a specific individual and the individual designated by him appears to be incompetent or incapable. The mandator shall at all times be presumed to have granted the mandatary the ability to designate somebody else in his place for the management of property located outside the territory of the Netherlands Indies or on an island other than where the mandatary is established. In any event, in this regard, the mandator may file any

charges directly against the party who has been designated by the mandatary to act in his place. (Bw. 802, 1367, 1710, 1799; K.89; Civ.1994)

Article 1804. If, in the same deed, several representatives or mandataries have been appointed, they shall not be severally liable, unless it has been expressly stipulated. (Bw. 1016, 1280, 1282, 1637, 1759, 1793, 1811; Civ. 1995)

\*496 Article 1805. The mandatary shall settle the interest payments on the principal sums which he has expended for personal use, effective from the time that he has spent it, and the interest payments on the sums which he is required to return upon the closing of the account, shall be made effective as of the day on which he fails to exercise his authority. (Bw.391, 1238, 1243, 1250, 1626, 1718, 1767, 1801, 1810; Civ. 1996)

Article 1806. The mandatary, who has properly notified the individual with whom he has been involved in such capacity, of his mandate, shall not be liable with respect to anything that occurs outside the scope of his authority, unless he had committed himself thereto personally.

### **Section 3**

#### **Concerning the obligations of the mandator**

Article 1807. A mandator is required to fulfill the contracts entered into by the mandatary, pursuant to the authority granted to him. He shall not be bound by any other acts, except to the extent that he has expressly or implicitly validated such. (Bw.1338, 1357, 1792, 1892; K.656; Civ.1998)

Article 1808. The mandator must refund the mandatary the advances made and costs incurred in the implementation of the mandate, and must pay his fee, if such has been agreed. (Bb.3064, 3171) If the mandatary is not guilty of negligence, the mandator cannot withdraw from the obligation to return and pay the amounts mentioned above, notwithstanding failure of the matter. (Bw. 1357, 1794; Civ. 1999)

Article 1809. The mandator shall also indemnify the mandatary against the losses suffered in implementing the mandate, provided that the mandatary cannot be accused of any carelessness. (Bw. 1728; Civ. 2000)

Article 1810. The mandator shall owe the mandatary interest in respect of advances owed, effective as of the day on which the advance payments were made. (Bw.1250,1805; Civ.2001)

Article 1811. In the event that a mandatary has been appointed by several individuals, to undertake a matter which is applicable to all of them, each individual shall be liable to the mandator for the entire matter concerning all consequences of the mandate. (Bw.1280, 1282, 1804, 1808v.; K.18; Civ.2002)

Article 1812. The mandatary shall be entitled to retain that which he possesses which belongs to the mandator for such period of time until everything has been repaid, which he, by mandate is required to claim. (Bw.575v., 715, 725, 1139-5, 1147, 1159, 1729; K.79, 82, 84v.; F.59)

### **Section 4**

#### **Concerning the various manners in which mandates are terminated**

Article 1813. A mandate shall terminate as follows: (Bw.470) due to revocation of the mandate granted to the mandatary; (Bw.1338v., 1814) due to termination of the mandate by the mandatary; (Bw.1636, 1800, 1817) due to the death, the guardianship, the bankruptcy or apparent insolvency, either of the mandator or the mandatary; (Bw.452, 1355, 1818v.; F.1v., 22) due to the marriage of the woman who has granted or accepted the mandate. (Bw.79, 105v., 463, 470, 1798; Civ. 2003)

Article 1814. The mandator may revoke the authority if he deems fit, and if there are grounds therefor, he may require the mandatary to return the mandate. (Bw.1187, 1636; Civ.2004)

Article 1815. The revocation which has been notified to the mandatary only, cannot be opposed by third parties, who have dealt with him unaware of this fact; without prejudice to the mandator claiming recourse from the mandatary. (Bw.1340; Civ. 2005)

Article 1816. The appointment of a new mandatary for the performance of the same function, shall cause the revocation of the appointment of the first mandatary, effective as of the date of notification of the appointment to the latter mentioned. (Rv.110; Civ.2006)

Article 1817. The mandatary shall release himself from the mandate by giving notice to the mandator. If, however, this notification due to its untimeliness, or for other reasons, shall cause the mandator to suffer loss due to the fault of the mandatary, then the mandatary shall compensate the mandator, unless the mandatary is unable to continue the authority, without causing significant damage to himself. (Bw.1243v., 1354v., 1800; civ.2007)

Article 1818. If the mandatary is unaware of the death of the mandator, or of the existence of any other reason which would cause the mandate to terminate, any acts which he has performed in ignorance of such shall be valid. In this regard, contracts entered into by the mandatary shall be valid in respect of third parties who have acted in good faith. (Bw/ 1338, 1800, 1819; civ. 2008)

Article 1819. In the event that the mandatary passes away, \*499 his heirs shall notify the mandator of this fact, if they are aware of the mandate, and they shall be responsible for that which would have been required in the circumstances in the interest of the mandator; non-compliance shall render them liable for costs, damages and interest, if there are grounds therefor. (Bw. 1243v., 1355, 1818; Civ. 2010)

## **Chapter XVII**

### **Concerning guarantees**

#### **Section 1**

##### **Concerning the nature of a guarantee**

Article 1820. The provision of a guarantee is an agreement in which a third party agrees, for the benefit of the creditor, to fulfill the obligations of the debtor, if he himself fails to fulfill these. (Bw. 1831; K.65, 129v., 202v.,Rv.55-5; Civ.2011)

Article 1821. No guarantee can be provided unless there exists a valid principal contract. However, one can become a guarantor for a contract, notwithstanding that it may be nullified by a demurrer, which relates only to the debtor personally, for instance, in the case of being a minor. (Bw. 1331, 1832-3, 1847; Civ. 2012)

Article 1822. A guarantor cannot bind himself to more, nor shall he be subject to more demanding requirements, than those to which the principal debtor has bound himself. A guarantee may also be provided for part of a debt, or be subject to less severe conditions. If the guarantee has been provided in respect of more than the debt or subject to more stringent conditions, then it shall not be entirely invalid, but shall be restricted to that which is covered in the principal contract. (Bw.1253v., 1268v., 1824; Civ. 2013)

Article 1823. An individual can act as a guarantor without being requested to do so by the party who has bound him self, and even without his knowledge. One can also act as a guarantor, not only for the principal debtor, but also for another existing guarantor. (Bw.1316v., 1354, 1382, 1839; Rv. 5-5; Civ. 2014)

Article 1824. A guarantee shall not be implied but shall be expressly indicated; it shall not extend beyond the terms to which it is subject. (Bw. 1574, 1822; K.129v., 202v.; Civ. 2015)

Article 1825. An unlimited guarantee in respect of a principal contract shall apply to all consequences of the debt, including the costs incurred in filing a claim against the principal debtor, and shall also apply to the expenses incurred after the guarantor has been reminded thereof. (Bw.1243, 1250; Rv.58; Civ. 2016)

Article 1826. The contracts concluded by guarantors shall be succeeded to by their heirs. (Bw.833, 955, 1318, 1743; Civ. 2017)

Article 1827. A debtor who is required to provide a guarantor, shall present individuals who are competent to \*502 bind themselves, who are capable of fulfilling the contract and who reside within Indonesia. (Bw.1329v., 1829; Rv.614; Civ.2018)

Article 1828. Revoked: S.38-276.

Article 1829. In the event that the guarantor, who has been voluntarily or pursuant to a court judgment accepted by the creditor, subsequently becomes insolvent, a new guarantor shall be appointed. There is only one exception to this rule, in the event that the guarantor is appointed pursuant to an agreement in which the creditor has demanded a specific individual as a guarantor. (Bw.1827; Civ.2020)

Article 1830. An individual, who by law, or pursuant to a court judgment is required to appoint a guarantor, but is unable to find one, shall be entitled in place of such to provide a pledge or mortgage. (Bw.335, 472, 784, 789, 819, 978, 1034, 1150v., 1827, 1832-5; Rv.54v., 128, 311, 722, 728; Civ. 2041)

## **Section 2**

### **Concerning the consequences of the guarantee between the creditor and the guarantor**

Article 1831. The guarantor shall not be obliged to pay the creditor unless the debtor fails to settle his debt; and, in this regard, the debtor shall be dispossessed of his assets in advance in order to settle the debt. (Bw.1283, 1820, 1833; Civ.2021)

Article 1832. The guarantor cannot demand that the debtor shall be dispossessed of his assets in advance in the following circumstances: 1. if he has relinquished his privileged right of dispossession; 2. if he, has severally bound himself to the principal debtor; in which case the consequences of the same contract shall be regulated in accordance with the basic principles which have been established with respect to several liability debts; (Bw.1278v.,1283) 3. if the debtor can submit a demurrer which is only relevant to him personally; (Bw. 1821, 1847) 4. if the debtor becomes bankrupt or insolvent; (F.1) 5. in the case of a guarantee ordered by the court. (Rv.54v., 311, 722, 728; Civ.2021, 2042)

Article 1833. A creditor shall not be required to firstly dispossess the principal debtor of the assets, until the guarantor so demands, pursuant to the first legal charge filed against him. (Bw.1831; Civ.2022)

Article 1834. The guarantor, who demands that the assets of the principal debtor be seized, shall inform the creditor of the debtor's assets, and shall advance the required sum to implement the dispossession. He cannot inform him of the assets, regarding which there is a dispute in court, or of those which have been encumbered as security for the debt, and which are no longer in the debtor's ownership, nor of property which is located outside Indonesia. (Bw. 1827; Civ.2023)

Article 1835. If the guarantor, in accordance with the previous article, has informed of the assets and has advanced the sum necessary for such dispossession, the creditor shall be, in the amount of the assets informed, with respect to the guarantor, responsible for the insolvency of the principal debtor, which shall arise thereafter due to the absence of claims. (Civ. 2024)

Article 1836. If several individuals have been appointed as guarantors for the same debtor and in respect of the same debt, each one of them shall be bound in respect of the entire debt. (Bw. 1280v., 1283; Civ.2025)

\*504 Article 1837. Notwithstanding this, each one of them, shall, to the extent that they have not relinquished their privileged right to division of debts, demand at the first legal suit that the creditor shall divide the loan, and shall deduct the share of each validly bound guarantor. In the event that at the time that one of the guarantors has pronounced the division of the debt, one or more co-guarantors are insolvent, then that guarantor, in proportion to his share, shall be obliged to settle on behalf of the insolvent guarantors; he shall however, not be liable if such insolvency occurs after the division of the debt. (Bw. 1283, 1832v.; Civ. 2026)

Article 1838. If the creditor himself, voluntarily, has divided his legal claim, then he cannot oppose the division of the debt, notwithstanding that some of the guarantors became insolvent prior to the division of the debt. (Bw. 1289v.; Civ. 2027)

## **Section 3**

## **Concerning the consequences of a guarantee between the debtor and the guarantor, and between the guarantors themselves**

Article 1839. A guarantor who has paid, shall have a claim against the principal debtor, whether the guarantee has been given with or without his knowledge. This claim for compensation shall take place, whether with regard to the principal sum or with regard to interest and costs. With regard to the costs, the guarantor shall only be compensated to the extent that he has given timely notification to the principal debtor of the charges filed against him. The guarantor shall also be entitled to compensation of costs, damages and interest, in the event that there are grounds therefor. (Bw.1243v., 1823, 1825, 1842; Civ.2028)

Article 1840. A guarantor who has paid the debt, shall, by law, have all the rights which the creditor had with regard to the debtor. (Bw.1400, 1402-3, 1403, 1844; Civ.2029)

Article 1841. If several debtors of the same debt are severally liable in respect of the entire debt, then the one who has been elected as guarantor for all of them may claim from each one of them indemnification of the amount he has settled. (Bw.1280, 1293, 1839, 1844; Civ. 2030)

Article 1842. The guarantor who has settled the debt once, shall have no claim against the principal debtor who has paid a second time, if he has not informed him of the payment made; without prejudice to his action to reclaim this payment from the creditor. If the guarantor has paid, without being legally obligated to do so, and without notifying the principal debtor thereof, he cannot demand payment from the debtor, if the latter mentioned, at the time of payment, is entitled to have the debt cancelled; without prejudice to the legal claim of the guarantor for reclaim from the creditor. (Bw.1271, 1359, 1839; Civ. 2031)

Article 1843. The guarantor, may, even prior to payment, approach the debtor to be indemnified for this or to be released from his contract; 1. if he has been charged in court for payment; (Bw.1831v.) 2. revoked: S.06-348. 3. if the debtor has bound himself to release him from the guarantee; (Bw.1338) 4. if the debt has become collectable, with the arrival of the term in which the debt shall be payable; (Bw.1268v., \*506 1850) 5. following the lapse of ten years, if the principal contract does not have a specific maturity date, unless the nature of the principal contract is such that it cannot lapse prior to a specific time, as in the case of a guardianship. (Bw.410, 414; Civ.2032)

Article 1844. (Amended S.06-348) If several individuals have been appointed as guarantors to the same debtor and with respect to the same debt, then the guarantor, who has settled the debt, as mentioned in the matter stipulated in number 1 of the previous article, and if the debtor has been declared bankrupt, may demand indemnification from the other guarantors, each in respect of his respective share. The stipulation of the second paragraph of article 1293 shall apply in this case. (Bw.1836, 1841; F.1, 131; Civ.2033)

### **Section 4**

#### **Concerning the nullification of guarantees**

Article 1845. The contract, arising out of a guarantee, shall be nullified for the same reasons that cause the termination of other contracts. (Bw.1381, 1408v., 1424, 1430, 1437, 1442v.,1574, 1846, 1938v., 1984; Civ. 2034)

Article 1846. Consolidation of debts which takes place between the principal debtor and the guarantor, shall occur when one becomes the heir of the other, but shall not nullify the legal claim of the creditor against the individual who has appointed himself as guarantor of that guarantor. (Bw.1437, 1823; Civ.2035)

Article 1847. The guarantor may put forth all the demurrers, which apply to the principal debtor, and which relate to the debt itself. He may, however, not present any demurrers, which only relate to the debtor himself. (Bw.1821, 1832-3; Civ.2036)

Article 1848. The guarantor shall be released from his obligations, if, due to the act of the creditor, he can no longer act on behalf of the creditor with respect to the mortgages and privileges of rights. (Bw. 1402-3, 1840; civ.2037)

Article 1849. The voluntary acceptance of any immovable or other assets by the creditor as payment for the principal debt, shall release the guarantor, notwithstanding that it subsequently appears that the creditor shall transfer the assets to a third party pursuant to a court judgment for the payment of said debt. (Bw.1389; Civ.2038)

Article 1850. A simple deferment of payment, granted by the creditor to the principal debtor, shall not release the guarantor from his obligations; he can however, in this regard, pursue the debtor to make payment or to release him from his guarantee. (Bw. 1408, 1574, 1843; Civ.2039)

## **Chapter XVIII**

### **Concerning settlement**

Article 1851. A settlement is an agreement in which parties, by handing over, agreeing, or retaining a matter, resolve a matter which is pending suit, or prevent a suit. (Amended S.25-525) This agreement shall be valid only if it is concluded in writing. (Bw. 407, 1117, 1796v., 1859, 1895; F.100; Rv. 31, 325,615; Civ. 2044).

Article 1852. To conclude a settlement, one shall have the competence to familiarize oneself with the issues covered in the settlement. Guardians and conservators shall not be allowed to conclude a settlement other than in accordance with the stipulations of the fifteenth and seventeenth titles of the first book of this Civil Code. The heads of the local government, in such capacity, and the public institutions shall not conclude a settlement other than by observing the formalities, described by the relevant laws. (Bw.407, 412, 452, 1795v.; Rv.31; Civ. 2045; Bb.379)

Article 1853. One can arrange a settlement regarding the civil matters which may arise out of a misdemeanor or infringement. In this regard, the settlement shall not prevent prosecution by the prosecution counsel. (AB.23, 25, 28, 30; Bw.1365v.; Sv.10; Civ.2046)

Article 1854. Settlements shall concern the matters covered therein; the relinquishment of all rights, actions and claims shall only be interpreted to the extent that they are related to the dispute, which is settled. (Bw.1350; Civ.2048)

Article 1855. Settlements shall only resolve the disputes covered therein, whether the parties have stipulated the objective in specific or general terms, or whether the objective is a necessary result of whatever is stipulated. (Bw. 1257, 1343v.; Civ.2049)

Article 1856. If an individual concludes a settlement concerning a right which he has been granted further to his own endeavors, and thereafter obtains a similar right from another party, then, he shall not be bound to the aforementioned settlement in respect of this most recently obtained right. (Bw.833, 955; Civ. 2050)

Article 1857. Settlements, concluded by one of the relevant parties, shall not bind the other relevant parties, and cannot be revoked by them. (Bw. 1340, 1937v.; Civ.2051)

\*510 Article 1858. In the last instance, settlements shall have the same validity among one another as a judgment. One cannot appeal such, whether for reasons of errors in the law, or due to another party being jeopardizing. (Bw. 1117, 1338, 1450; Rv.136-2; Civ.2052)

Article 1859. Notwithstanding this, a settlement may be nullified in the event that there is erroneous information regarding an individual or concerning the subject of the dispute. Settlements may be nullified in all events in which fraud or force have occurred. (Bw.1112, 1117, 1322v.,1328, 1449, 1862v.; Civ.2053)

Article 1860. One can also request the nullification of a settlement, if due to erroneous facts, it is concluded based on an invalid principle, unless the parties have expressly entered into such agreement regarding such invalidity. (Bw.1858v., 1892, 1894; Civ.2054)

Article 1861. A settlement, concluded pursuant to documents which are subsequently found to be fraudulent, shall be totally invalid. (Rv. 148v.; civ.2055)



Article 1862. A settlement concerning a dispute which has already been settled by a verdict, of which the parties, or one of them was unaware, shall be invalid. If the verdict of which the parties were unaware, is subject to an appeal, then the settlement shall be valid. (Bw.1859; Rv.83v.,327v.,378v.,385v.,402v.,; civ.2056)

Article 1863. If the parties, in general, have concluded a settlement concerning all matters pending among them, the documents, which were not known to them, but which were subsequently revealed, shall not be used as grounds for nullification of the settlement, unless these documents were concealed by one of the parties. The settlement shall however, be invalid, if it only concerns one matter, and if the documents discovered thereafter reveal that one of the parties does not have any right in respect of this particular matter. (Bw.1851, 1859; Rv. 385; civ. 2057)

Article 1864. An erroneous calculation carried out at a settlement shall be rectified. (Civ.2058)

## **BOOK FOUR - CONCERNING EVIDENCE AND PRESCRIPTION**

### **Contents**

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Chapter VII - Concerning Prescription

Chapter I - Concerning evidence in general

### **Chapter I**

#### **Concerning evidence in general**

Article 1865. Any one who claims to have any right or who refers to a fact to support such right, or who objects to another party's right, shall prove the existence of such right, or such fact. (Bw.166,250,1439; Rv.50,78,172,193,230v.; IR.163; RBg.283; Civ.1315)

Article 1866. Means of evidence shall comprise the following:

written evidence; (Bw.1867v.) evidence presented by witnesses; (Bw.1895v.) the inference; (Bw.1915v.) the confession; (Bw.1923v.) the oath. (Bw.1929v.)

The above shall apply by taking into consideration the rules described in the previous titles. (Ov.81; Rv.211v.,215v.; IR.164; RBg.284; Civ.1316)

*Editorial note: The vesting of a right by reason of lapse of time. Negative prescription is the divesting of a right by the same process. Prescription is used here in the sense of positive and negative prescription.*

### **Chapter II**

#### **Concerning written evidence**

Article 1867. Written evidence occurs in authentic or private documentation. (Bw.1868v., 1874v., 1902)

Article 1868. An authentic deed is one which has been drawn up in a legal format, by or before public officials who are authorized to do so at the location where this takes place. (AB. 18v.; Bw.265,356,938, 953, 1186-2, 1875, 1889; Rv.1; IR.165; RBg.285; Not.1, 9, 20v.; Cons. 12v., 17v.)

Article 1869. A deed which, due to the incompetence or incapability of the official or due to the absence of format, cannot be regarded as authentic, may be enforced as a private document, if this document has been executed by the parties. (Bw. 1874; Civ. 1318)

Article 1870. An authentic deed shall provide conclusive evidence regarding the contents stipulated therein for the parties, their heirs or parties having rights therein. (Bw. 1875; BS.25; Rv.54,440; Sv.380; IR.165, 304; RBg.285; Civ.1319)

Article 1871. An authentic deed, however, shall not provide conclusive evidence in respect of any kind of description, unless the information contained therein is connected directly with the subject of the deed. If the information described is not directly connected with the subject of the deed, this shall only serve as initial written evidence. (Bw.1875, 1902; IR.165; RBg.285; Civ. 1320)

Article 1872. In the event that any type of authentic deed is found to be forged, then the execution thereof shall be cancelled in accordance with the legal regulations of the Civil Legal Procedures. (Rv. 148v., 165v.; Civ.1319)

Article 1873. Further agreements, concluded pursuant to a separate deed, in breach of the original, shall only provide evidence among the parties to such deed, and their heirs or other parties who have rights therein, but shall not apply to third parties. (Bw.148, 1315, 1340; Civ.1321)

Article 1874. Private documents shall be considered to be, all privately signed deeds, letters, registers, documents pertaining to household matters and other documents, which are drawn up without the intervention of a public official. (Bw. 1875, 1878, 1880v., 1902; S.67-29\*) (Supplemented S.16-42, 43; amended 19-603,775) A finger print shall be the equivalent of a signature on a private document, certified by a dated and signed statement of a \*516 notary or another official designated by ordinance, which stipulates that he knows the party affixing the finger print, or that this party has been made known to him, that the contents of the deed have been explained to the party affixing the finger print, and that, thereafter, the finger print has been affixed in the presence of the official. The official shall record the document. Pursuant to an ordinance, further rules may be stipulated regarding the statement and recording as abovementioned. (S.16-46\*, pg.662; RBg.286)

Article 1874a. (Supplemented S.16-42 see also 43). If interested parties so desire, then even outside the matter as mentioned in the second paragraph of the previous article, executed private documents may be provided with a dated and signed statement of a notary or another official designated by ordinance, in which it is stated that he knows the signatory, or that he has been introduced to him, that the contents of the deed have been explained to the signatory, and that there after, the signing has taken place in the presence of the official. (S.16-46\*, pg.452) The stipulation in the third and fourth paragraphs of the previous article shall apply in this regard. (RBg. 287; S.67-29 see also 16-44, art.1a\*)

Article 1875. A private document, which has been acknowledged by the individual to whom it may refer or which shall be considered legally acknowledged, shall provide, with respect to the signatories and their heirs and parties having rights therein, conclusive evidence similar to an authentic deed, and the stipulation in article 1871 shall also be applicable in this regard. (Bw.833, 955, 1870, 1880; K.512, 556; Rv. 54; Sv.380v.; IR.304v.; RBg.288; Civ.1322; S.67-29 see also 16-44, art.1b\*)

Article 1876. An individual, whose private document has been disputed, shall be required to acknowledge or deny that such is his handwriting or signature; it shall however, be sufficient for his heirs or parties having rights therein to declare that they do not recognize the handwriting or the signature as the handwriting and signature of the individual that they represent. (Rv. 77v., 148v., 153; RBg.289; S.67-29, art.2\*; Civ.1323)

Article 1877. In the event that a party denies the writing or signature as his, or even if the heirs and the rightful parties declare that they do not recognize the writing or signatory, the judge shall order that the authenticity thereof shall be legally investigated. (Rv.148v.; RBg.290; S.67-29, art.3\*. Civ.1324)

Article 1878. Private unilateral debt agreements for the payment of a sum of money, or for some object which may be valued at a specific amount, shall be written in their entirety by the individual who shall sign the document, or shall at least in addition to the signature, contain an approval in the signatory's handwriting, specifying the amount of the sum or the number of the objects owed. In the absence of this, the executed deed may be accepted \*517 as initial written evidence in the event that the contract is rejected. (Amended S.16-42, 43; 38-276) The provisions of this article shall not apply to shares in a debenture loan, to debt agreements concluded by the debtor in the course of operating his business, nor shall they apply to private deeds which are provided with a statement as mentioned in the second paragraph in article 1874 and article 1874a. (Bw. 1902; K.100v., 174v., 178v.; RBg.291; S.67-29, article 4\*; Civ. 1326)

Article 1879. If the amount, stipulated in the deed, differs from that specified in the approval statement, then the contract shall be deemed to have been concluded for the lesser amount, notwithstanding that the deed, in addition to the approval statement, has been written in its entirety by the individual who has bound himself; unless one can prove which part of the two documents has been found to be erroneous. (Bw.1349; RBg.292; S.67-29, art.5\*; Civ. 1327)

Article 1880. (Amended S.16-42, 43) Private deeds, to the extent that they are not accompanied by a statement as mentioned in the second paragraph of article 1874 and article 1874a, shall have no legal validity with respect to third parties, unless they are acknowledged or recorded by a notary or other official designated by ordinance, in accordance with the rules stipulated in the ordinance; or if one of the parties who executed the agreement passes away; or if the existence of this private document shall be proven by deeds drawn up by public officials, or if the third party to whom the deed is applied shall acknowledge its existence in writing. (Bw. 1868, 1875; K.99, 133; RBg.293; S.67-29 see also 16-44, artc.6\*; Civ.1328; S.16-46\*, pg.452)

Article 1881. Registers and documents regarding household matters shall not be admitted as evidence for the benefit the individual who has drafted them; they shall provide evidence in respect of the following:

1. in all cases in which the documents expressly stipulate a payment received; 2. if it is expressly stipulated that any notation occurs to correct a defect in the title document for the benefit of the individual mentioned in the contract. In all other cases, the judge shall take into consideration those matters which he deems appropriate. (Bw.265, 1874, 1882, 1902, 1922; RBg.294; Civ.1331)

Article 1882. Revoked: S.27-146

Article 1883. Notations made by a creditor on a title document which has always remained within his possession, shall be recognized, notwithstanding that this document is neither signed nor dated by him, if such written document relates to the release of the debtor. The same shall apply to notations which the creditor has made on a copy of a receipt document, provided that such copy of the receipt is in the possession of the debtor. \*518 (Bw.1916; RBg.297; Civ.1332)

Article 1884. The owner of a title document, may, at his expense, demand its renewal, if the writing has become illegible due to age or any other reason. (RBg.298; Civ.2263)

Article 1885. If a title document is shared among several individuals, each one shall be authorized to demand that such document shall be stored at a third location, and thereafter, at his expense, a copy or a summary thereof shall be made. (Bw.1081, 1736v., 1888; K.35,67; RBg.299)

Article 1886. At every stage in a lawsuit, each party may request an order from the judge that the counter party shall submit the documents relevant to both parties and to the matter being disputed, and which are in the possession of the counter party. (K.12, 67; Rv.124v., 848v.; RBg.300)

Article 1887. Tallies and their equivalents shall be recognized among those who are accustomed to proving their small deliveries which are made or received, in such manner. (Bw.1874; Civ.1333)

Article 1888. The validity of written evidence exists in the original deed. If the original deed exists, copies and summaries shall only be recognized to the extent that they correspond to the original document, the display of which can be demanded at any time. (Bw.1885, 1889, 1891; BS.25; K.24v.; Rv.159; Sw. 263; RBg.301; Civ.1334)

Article 1889. If the original title document no longer exists, then the copies shall provide evidence, by taking into consideration the following provisions:

1. the engrossments of the first issued copies shall provide the same evidence as the original deed; the same shall apply to copies which are drawn up upon legal authority in the presence of the parties, following the proper summons of the parties, and shall further apply to those which are drawn up in the presence of the parties upon their mutual consent;

2. the copies, which, without intervention by the judge, or without the consent of the parties and following the issuance of the engrossments of the first copies, are made pursuant to the original deed prepared by the notary before whom the deed is drawn up, or by one of his successors, or by officials, who, in their position, have been entrusted with the originals and are authorized to issue copies in the event that the original deed is lost, shall be accepted by the judge as conclusive evidence;

3. if the copies, made pursuant to the original deed, are not made by the notary who drew up the deed, or by one of his successors, or by public officials who in their capacity are safekeeping the originals, then these may only be regarded as initial written evidence;

\*519 4. authentic copies of authentic copies, or of private deeds, may, depending upon the circumstances, provide initial written evidence. (Bw. 1871, 1888, 1902; Rv.159, 440, 856; RBg.302; Civ. 1335)

Article 1890. A deed copied in the public registers shall only serve as initial written evidence. (Bw.264v.,616,696,713,720,737,760,818,1179v.,1902; K.23,38;RBg.303; Civ.1336)

Article 1891. Deeds of acknowledgment shall discharge the obligation to present the original title document, provided that the contents of such deed are apparent from the document itself. (Bw.1888; Rv.124; RBg.304; Civ.1337)

Article 1892. A deed in which a contract is established or enforced, and in respect of which the law has permitted nullification or cancellation of a claim, shall be valid provided that such deed stipulates the main contents of the contract, and also stipulates the reasons for which nullification may be requested, and the intent to remedy the defects pursuant to which the claim could have been requested. In the absence of a deed of establishment or enforcement, it shall be sufficient if the contract shall be executed voluntarily following the time that this contract has been established or enforced in such manner existing. The establishment, enforcement of or voluntary compliance with a contract, effected in the format and at the exact time required by the law, shall be considered as a relinquishment of means of evidence and demurrers; which one, otherwise could have filed against the contract; without prejudice, however, to the rights of third parties. (Bw.117, 1327, 1385, 1456, 1807, 1860; RBg.305; Civ.1338)

Article 1893. A donor cannot remedy the defects of a gift which has an invalid format by a deed of establishment; the same gift must be put into a legal format. (Bw.176v., 1682, 1892; Civ.1339)

Article 1894. The establishment, enforcement of or voluntary compliance with a gift, by the heirs or recipients of rights of the donor, which takes place after his death, shall remove their authority to dispute any defects in the format. (Bw.1860, 1892v.; Civ.1340)

### **Chapter III**

#### **Concerning evidence by witnesses**

Article 1895. Evidence by witnesses shall be admitted in all cases which are not excluded by the law. (Bw.1902,1905v.,1927; F.65; Rv.171v., 953; S.38-524\* under Bw. 1456)

Article 1896, 1899, 1900, 1901. Revoked: S.25-525

Article 1897, 1898, 1903. Revoked: S.38-276.

Article 1902. (Amended by S.25-525; 38-276) In cases where the law demands written evidence, notwithstanding the existence of initial written evidence, evidence by witnesses shall be admitted, unless any evidence other than written evidence is not admissible. Written deeds which shall be referred to as initial written evidence shall be all those which derive from those individuals against whom the claim is

filed, or those represented, and which support the legal act that is being appealed. (Bw.264v., 288, 1700, 1871, 1874v.,1878, 1889-4, 1890; K.258; Civ. 1347)

Article 1904. (Amended by S.25-525) Evidence by witnesses shall comply with the following stipulations. (Rv.171v., 953)

Article 1905. The statement of a single witness, in the absence of any other means of evidence, shall not be accepted in court. (Bw. 1908; Rv.183, 189, 204; Sv.376; IR. 169, 300; RBg.306)

Article 1906. If the separate and independent testimonies of several individuals, regarding various facts, due to the circumstances and relationship, substantiate a specific matter, then it shall be at the judges discretion to accept the separate testimonies as appropriate in the circumstances. (Bw.1905, 1908; Sv.376; IR.170, 300; RBg.307)

Article 1907. Each testimony shall be based upon knowledge. Specific meanings or speculations based upon reasoning shall not be regarded as testimonies. (Sv.377; IR.171, 301; RBg.308)

Article 1908. In judging the validity of a testimony the judge shall particularly take into consideration the mutual agreement of the witnesses, the similarity between the testimonies and anything else that is known with regard to the case being disputed, the reasons which could influence the witnesses to present the case in a certain \*522 manner, the lifestyle, morals and the status of the witnesses and in general, anything that could affect the reliability of the witnesses. (Bw. 1906; Sv.378; IR.172, 302; RBg.309)

Article 1909. All individuals competent to be witnesses, are required to submit their testimonies in court. (Sv. 375; IR.299; RBg.665; Sw.224, 522) The following individuals, may be excused from testifying:

1. anyone who is related to any of the parties in a collateral line in the second degree of blood relationship or by marriage; (Bw.297, 1910)
2. anyone who is the spouse of one of the parties in a direct unlimited line, and in the second degree of the collateral line; (Bw.1910)
3. anyone, who due to their status, position or function, is pledged to secrecy, but only to the extent of the information entrusted to them in connection with their above-mentioned status, position or function. (S.76-257 art.11 see also 13-604, and INv. Sw.art. 6-46; 1854-18; Sw.322, 431, 433; Sv.51, 145v.,148, 375, 414; IR.146, 274, 277,380; RBg.174, 577, 579; Octr.18)

Article 1910. The blood relatives and relatives by marriage of one of the parties in a direct line, and the spouse, even after a divorce, shall be deemed to be incompetent as witnesses, and prohibited from being heard. (Bw.1909, 1913v.; BS.13; F.65; Sv.145v., 149, 375; IR.145, 274.; RBg.172v., 577v.; Not.21; Pr.268) (Supplemented S.25-525; 38-622) However, blood relatives and next-of-kin shall not be deemed to be incompetent in the following circumstances:

1. in cases regarding the civil status of parties;
2. in cases relating to support, pursuant to the first book, dealing with the support and education of a minor;
3. during the investigation of the reasons which could lead to revocation or discharge of the parental authority or the guardianship;
4. in cases relating to a labor agreement.

The right to be excused from testifying, as described in the cases in the aforementioned paragraph, shall not apply to the individuals mentioned in article 1909 number 1 and 2. (Civ.251)

Article 1911. The witnesses shall be required, pursuant to their religious beliefs, to swear or pledge that they will speak the truth. (ISR.173; Rv.177, 204; Sv.139; IR.147,265,299;Pr.262; See Eedsreg.pg.389).

Article 1912. Anyone who has not reached the full age of fifteen years, including individuals who, due to mental incapacity, insanity or madness have been put under guardianship, or, the individuals who, pending the lawsuit, are detained upon instruction of the judge, shall not be admitted as witnesses. The judge shall however be authorized to listen to the minors or parties under guardianship, who are \*523 intermittently in possession of their mental capacities, without having to pledge an oath, but these statements shall be regarded as explanations only. The judge shall also not consider that which the unauthorized individuals claim to have heard, seen, and experienced, notwithstanding that such is based upon knowledge; but their statements shall only serve to obtain knowledge, and for the purpose of investigating actual acts which cannot be proven by regular means. (Sv. 149, 375; IR.145, 278, 299; RBg.172v., 580, 665; Pr.285)

Article 1913, 1914. Revoked: S.25-525.

## **Chapter IV**

### **Concerning inferences**

Article 1915. Inferences are conclusions which the law or the judge draws from a known or an unknown actual event that has taken place. They consist of the following two kinds: (Bw.1916v., 1922v.; Civ.1349) legal, and those which are not based upon the law.

Article 1916. Legal inferences are those which, pursuant to a special legal stipulation, are related to certain acts or events. Legal inferences are, among others: (K.75, 539)

1. the acts which are declared invalid by law, due to the fact that, pursuant to their nature and capacity, they are alleged to have been committed in order to evade a legal regulation; (Bw.183v., 911, 1681) 2. the events in which the law declares that the property, or the discharge of a debt, are deduced from certain specific circumstances; (Bw.159, 165, 633, 658v., 662, 664, 831, 1394, 1439, 1769) 3. the authority which the law grants to a legal judgment entered; (Bw.1917v.) 4. the validity which the law grants to the confession or oath of one of the parties. (Bw. 1569, 1602, 1700, 1923v., 1929v.; Rv.825; Civ. 1350)

Article 1917. The authority of the legal judgment entered shall not extend any further than the subject of the judgment. In order to invoke such authority, it shall be required that the case which has been heard shall be the same; that the claim is based upon the same grounds, and is made by and against the same parties having the same relationship. (Bw. 1340, 1409, 1858, 1862; Rv.83, 385,428,436; Civ. 1351)

Article 1918. (amended by S.17-497) An arrest or sentence which has been legally entered by which an individual is punished for a misdemeanor or infringement, shall in a civil dispute be accepted as evidence of the act having been carried out, unless otherwise proven. (AB.28v.; Bw.210, 1365v., 1377, 1917; BS.27; BS.Chin.29; BS.Ind.24;BSCI.28; S.04-279 art.13)

Article 1919. If an individual has been acquitted of a misdemeanor or infringement that he was charged with, the acquittal cannot be relied upon before a civil judge to avoid a claim for compensation. (Ab.28v.; Bw.1365v.,1370v.; Sv.169, 183)

\*526 Article 1920. Sentences, relevant to the status of individuals, passed on those who are legally authorized to dispute the claim, shall apply to all individuals. (Bw.15, 1917; Rv.378)

Article 1921. A valid inference shall release the individual who benefits from such from providing any other evidence. No evidence shall be admitted against a valid inference, in the event that the law, based upon such inference, shall declare certain acts to be invalid or refuse to permit a claim to be filed in court; unless the law permits the counter evidence to be filed, without prejudice to what has been stipulated concerning the legal oath and legal testimony. (Bw.150, 250v., 1394, 1439, 1916-1, 1923, 1929; F.41, 44; Aut.4; Octr.6; Industr.2; Coop.10; Civ.1352)

Article 1922. Inferences which are not based upon the law, shall be considered by and shall be at the discretion of the judge, who, shall only pay attention to those which are significant, accurate, specific, and consistent with one another. Such inferences shall only be noted in circumstances in which the law admits evidence by witnesses, and also due to bad faith or an act or deed of deceit. (Bw.1328, 1341, 1895; K.274; IR.173;RBg.310;Civ.1353)

## **Chapter V**

### **Concerning confessions**

Article 1923. A confession submitted against another party, is either submitted in court or outside court. (Bw. 1916-4, 1925v.,1927, 1982; Sv.283v., 387-4; IR.164, 174v., 307v., 311-4; Civ.1354)

Article 1924. A confession shall not be divided in a manner which would jeopardize the party who submitted it. It shall however be at the judges discretion to divide the confession, if the debtor, for the

purposes of his acquittal, has presented events which have been proven untrue. (Bw.1923; IR.176;RBg.313; Civ.1356)

Article 1925. A legal confession shall serve as complete evidence for the individual who has submitted such either personally or by a representative specifically authorized thereto. (Bw.1916-4, 1921; Rv.230v., 238, 256v.,825;IR.174;RBg.311; Civ.1356)

Article 1926. A legal confession cannot be revoked, unless it has been proven that it was submitted in deviation from events that have taken place. In addition, the legal confession cannot be revoked under pretext of an error in the law. (Bw.1322, 1858v.; civ.1356)

Article 1927. A verbal confession made outside the court, cannot be revoked, other than in those events in which evidence by witnesses is admitted. (Bw.1895v.; Rv.953-3; Civ.1355)

Article 1928. In the case described at the end of the previous article, the judge shall have the option to validate a verbal confession submitted outside the court. (Bw.1906; Sv.387v.; IR.175; RBg.312)

## **Chapter VI**

### **Concerning the legal oath**

Article 1929. The legal oath shall be in two forms:

1. that which arises where one party refers the decision of the case to the oath of the other party; this shall be referred to as decisive oath; (Bw. 1930v., 1973; S.1832-41; IR.156; RBg.314) 2. that which shall be ordered by the judge, in his capacity as such, to one of the parties. (ISR.173;AB.14;Bw.1911, 1934, 1940v., 1944v.; Rv.52, 177; Sv.139; IR.147,155,265; RBg.314; Civ.1357)

Article 1930. A decisive oath may be ordered in respect of a dispute of any nature, with the exception of those in respect of which the parties shall not reach a settlement, or in which the confession cannot be taken into consideration. The decisive oath may also be ordered at every stage of the lawsuit, even if there exists no other means to prove the claim or the exception, in respect of which the oath has been demanded. (Bw.1569, 1602, 1700, 1852, 1921, 1925, 1927, 1941, 1973; Rv.616, 825; IR.156; Civ.1358, 1360)

Article 1931. The oath may only be ordered regarding a case which would have been carried out personally by the individual whose oath shall be decisive. (Bw. 1929-1, 1933, 1973; K.205, 228; F.115v.; IR.156; Civ.1359)

Article 1932. The individual, who has been ordered to swear an oath, and who refuses to take such or returns such, or the individual who has ordered the swearing of the oath, but to whom this has been returned, and who refuses to take the oath, shall be denied his claim or exception. (Bw.1943v.; Rv.52; IR.156; RBg.314; Civ.1361)

Article 1933. If the act, concerning which the oath shall be sworn, is not the act of both parties, but only of the one whose oath is decisive, the oath shall not be returned. (Bw. 1931; IR.166; Civ.1362)

Article 1934. An oath shall be ordered, returned or accepted by the party itself only or by the one authorized thereto. (Bw.1945; IR.157)

Article 1935. The individual who has instructed or returned the oath, cannot revoke the act, if the counter party has declared his willingness to swear the oath. (Bw.1926; Civ.1364)

\*531 Article 1936. If the individual who has been ordered to swear a decisive oath, or the individual who has returned such, has sworn the oath, the counter party shall not be entitled to argue the falsity of the oath. (IR.177; RBg.314; Sw.242; Civ.1363)

Article 1937. The oath sworn shall not provide any evidence other than that which disadvantages or benefits the individuals who have instructed or returned the oath, and for his heirs and rightful parties. (Bw. 1340, 1857; RBg.314; Civ.1365)

Article 1938. Nevertheless, a debtor in a several liability agreement, to whom the oath is ordered by one of the creditors, and who has sworn such, shall not be released other than in respect of the share of the creditor. The oath, sworn by the principal debtor, shall release the guarantors. (Bw.1279, 1424, 1437, 1442, 1847, 1857, 1937; Civ.1365)

Article 1939. The oath sworn by one of the debtors who are severally liable shall benefit the other debtors, and the oath sworn by the guarantor shall benefit the principal debtor, if, in these two events, the oath is ordered or has been returned due to the debt itself, and does not pertain to the several liability of the contract or the guarantee. (Bw.1280v., 1287, 1424, 1437, 1442, 1847, 1857, 1937v.; Civ.1365)

Article 1940. The judge may, in his capacity, order the oath to be sworn by one of the parties, whether to determine the decision of the case or to stipulate a designated amount. (Bw.1569, 1602, 1882, 1942; F.31; Rv.52; IR.155; RBg.314; Civ.1366)

Article 1941. An individual may do so only in the following two circumstances:

1. if the claim or demurrer has not be fully proven; 2. if the claim or demurrer is not totally lacking in evidence. (Bw.1905, 1922; IR.155, 169, 173; Civ.1367)

Article 1942. An oath regarding the value of the goods claimed cannot be ordered by the judge to be sworn by the claimant, if it is possible to determine the value in a different manner. In this regard, the judge shall decide which amount regarding which the plaintiff shall be accepted pursuant to his oath. (Rv.52; IR.155; Civ.1369)

Article 1943. The oath, ordered by the judge to be sworn by one of the parties, shall not be returned by him to the counter party. (Bw.1932; Civ.1368)

Article 1944. The oath shall be sworn before the judge who shall examine the lawsuit. If a valid obstruction renders this impossible, then the court may authorize one of its members to administer the oath, who shall then travel to the residence or domicile \*532 of the individual who shall swear the oath. If, in such event, the residence or domicile is too remotely located or is located outside the legal jurisdiction of the court, then this court may designate the administration of the oath to the judge or head of the local government of the residence or domicile of the individual who is required to swear the oath. (RO.33; Bw.1023; Rv.52; IR.158; Bb.379)

Article 1945. An oath shall be sworn in person. The judge may permit a party to have an oath sworn by proxy appointed pursuant to an authentic deed, for significant reasons. A power of attorney shall, in this regard, specify the oath to be sworn in full and accurately. No oath may be pledged unless in the presence of the counter party who must be properly summoned. (Bw. 1793, 1934; F.115v.; IR.157v.; Bb.379)

## **Chapter VII**

### **Concerning prescription**

#### **Section 1**

##### **Concerning prescription in general**

Article 1946. Prescription is a means of acquiring something or being released from a contract, after the lapse of a specific time period, and pursuant to the requirements stipulated by the law. (Ov.47; Bw.584, 1381, 1963, 1967v.; Sv.401v.; civ. 2219)

Article 1947. An individual cannot relinquish a right acquired by prescription in advance but may relinquish a right acquired by prescription which has already been obtained. (Ab.23; Bw.1063, 1949; Civ.2220)

Article 1948. The relinquishment of a right acquired by prescription shall occur expressly or by implication, the implied relinquishment shall be concluded from an act which implies that the individual has allowed his acquired right to lapse. (Bw. 1359, 1382; Civ.2221)



Article 1949. The individual who is not permitted to transfer, shall not relinquish a right acquired by prescription. (Bw.1330, 1448; Civ.2222)

Article 1950. The judge may not, officially, apply the means of prescription. (Bw. 1454, 1520; Rv.50; Sv.407; IR.371; Civ.2223; S.82-280; 92-159)

Article 1951. At every stage of a suit, an individual may invoke prescription, even at higher appeal. (Rv.136, 249, 323; Civ. 2224)

Article 1952. Creditors or other interested parties may appeal against the relinquishment of the rights acquired by prescription, effected by the debtor who, in a deceitful manner, reduces the rights of the creditor or other parties. (Bw.1341; Civ.2225)

Article 1953. One cannot, by prescription, obtain ownership of goods which are not being traded. (Bw.521v., 537; Civ.2226)

Article 1954. The government, representing the country, the heads of the local government, and the public organizations or institutes shall be subject to the same means of prescription as specific individuals, and may use them in the same manner. (Civ. 2227; Bb.379)

Article 1955. To acquire ownership of property by means of prescription, an individual must have continuous, uninterrupted, open and unequivocal possession. (Bw.529v., \*535 543v., 548, 560, 1957, 1959, 1963, 1978; Civ.2229)

Article 1956. Possession, arising from acts of violence, random acts, or acts of tolerance, cannot result in prescription. (Bw. 557, 1323v., 1963; Civ. 2223)

Article 1957. The current possessor, who proves that he has always possessed the property, shall be presumed to have possessed the property during the period which has lapsed between the two periods; without prejudice to the contrary being proven. (Bw.534v., 560, 566, 1916; Civ.2234)

Article 1958. To comply with requirements regarding the period of limitation for prescription, an individual can add to his own property that which used to belong to the previous owner, from whom the goods have been obtained, regardless of the manner in which this is carried out, either pursuant to a general or specific title, or free of charge or pursuant to an encumbered title. (Bw. 541, 833, 955, 1314, 1318, 1955, 1960; Civ.2235)

Article 1959. Parties, who possess on behalf of another party, including their heirs, shall not acquire anything by prescription, regardless of the length of the time period which has passed. A lessee, keeper, usufructuary, and all others who hold goods on behalf of the owner, cannot acquire such by prescription. (Bw. 535, 540, 556, 756v., 1548v., 1694v.; Civ. 2236)

Article 1960. The individuals, referred to in the previous article, may acquire the property by prescription, if the ownership has changed, either due to a third party, or pursuant to their opposition to the right of the owner. (Bw.535v.,1955, 1961; Civ.2237)

Article 1961. The party, to whom the lessees, keepers and other possessors holding such goods, have transferred the goods, pursuant to a transfer of title of property, may obtain such property by prescription. (Bw. 1955, 1963; Civ. 2239)

Article 1962. The prescribed period shall be computed in days, not hours. Acquisition by prescription shall take place if the last day of the required time period has lapsed. (Bw.1181; K.135v.; Civ. 2260v.)

*Editorial note: The vesting of a right by reason of lapse of time. Negative prescription is the divesting of a right by the same process. Prescription is used here in the sense of positive and negative prescription.*

## **Section 2**

### **Concerning prescription, regarded as a means of acquiring something**

Article 1963. An individual, who in good faith, and pursuant to a legal title, acquires immovable assets, interest, or several other acknowledgments of indebtedness which do not have to be paid to bearer, shall acquire ownership thereof by prescription, after possessing such for a period of twenty years. An individual, who in good faith, possesses something for thirty years, shall acquire ownership thereof, without having to prove title thereto. (Bw.506v., 511-2, 531, 548-2, 550, 584, 610, 613, 695, 699, 1955, 1964v., 1977; Civ. 2262, 2265)

Article 1964. A lawful title rendered invalid due to a defect in the format, shall not form a basis for a twenty year prescription. (Bw.1963; Civ. 2267)

Article 1965. Good faith shall always be presumed and the individual who files a claim alleging bad faith must prove this. (Bw.533, 1328, 1916; Civ.2268)

Article 1966. It shall be sufficient that good faith existed at the time of the acquisition. (Bw. 531, 1958, 1963; Civ. 2269)

### **Section 3**

#### **Concerning prescription, regarded as a means of releasing oneself from an obligation**

Article 1967. All legal claims, either business as well as individual, shall expire after thirty years, and the individual who invokes the expiration shall not be required to submit any title, and an individual cannot object to this expiration if such is based upon bad faith. (Ov. 47; Bw.58, 269, 414, 750, 835, 1039, 1062, 1066, 1068, 1110, 1116, 1381, 1968v., 1973, 1993; K.95, 168a., 169, 228a, 229, 229k, 741v.; Rv.102; S.1832-41; Civ.2262)

Article 1968. (Amended by S.26-335 see also 458 and 565) The following claims shall expire after one year: (Bw. 750, 1139-5, 1147, 1602l, 1976; K. 741; Civ. 2271) legal claims of experts and teachers in art and science with respect to the courses that they teach for a month or a shorter time period; legal claims of hoteliers and restaurateurs, with respect to providing board and lodging; (Bw.1139-6, 1147) legal claims of laborers whose wages are required to be paid every time within three months, with respect to payment of their wages, including the amount of increase of such wages pursuant to article 1602q.

Article 1969. (amended by S.26-335 see also 458 and 565) The following claims shall expire after two years: (Civ. 2272) the legal claims of doctors, healing masters and pharmacists, with respect to their visits, healing services and medicine; (Bw. 1149-3) claims of process servers, with respect to their wages for the notification of deeds and the implementation of their assigned duties; (Rv.99) claims of caretakers of boarding schools, with respect to the tuition and boarding charges of the students, and claims of other teachers in respect of their salaries; (Bw.1149-6) claims of laborers, with the exception of those mentioned in article 1968, with respect to payment of their wages, including a raise in such wages pursuant to article 1602q. (Bw. 1149-4)

Article 1970. The legal claims of attorneys for the payment in respect of their services, of prosecutors for payment of their advances and charges, shall expire after two years, effective as the date upon which the decision is issued upon the lawsuit, or the parties have reached some settlement, or the authorization granted to the prosecutor has been revoked. \*538 With respect to unresolved cases, no compensation may be claimed for advances made and services rendered, which have been pending for more than ten years. (Bb. 3323) The legal claim of notaries for the payment of their advances and charges incurred shall also expire after a period of two years, effective as of the date on which the deeds are drawn up. (Bw.1974; K.745; Rv.99; Civ.2273)

Article 1971. (Amended by S.38-276) The following legal claims shall expire after a time period of five years: (Bw. 750; K. 742; Civ. 2271v.): claims of carpenters, bricklayers and other foremen, for the payment of materials and wages; (Bw.1139-8, 1147, 1604, 1968) claims of shopkeepers for the payment of the goods delivered, to the extent that these legal claims are relevant to their activities and deliveries which are not related to the profession of the debtor. (Bw. 1149-5, 1882)

Article 1972. The expiration, referred to in the aforementioned four articles, shall take place, notwithstanding that one continues with the rendering of material, services and labor. The expiration shall not occur, if a written acknowledgment of indebtedness has been made, or if the expiration has been prevented pursuant to articles 1979 and 1980. (Bw.1973, 1981; Civ. 2274)

Article 1973. Nevertheless, the individuals, against whom expiration is invoked as mentioned in articles 1968, 1969, 1970 and 1971, may require the individual who invokes the expiration to swear that the debt has actually been paid. The oath may be taken from the widows and the heirs, or the guardians of the latter-mentioned if they are minors, in order that they shall declare their unawareness of the debt. (Bw.330, 1882, 1930, 1976; K.747; Civ. 2275)

Article 1974. The judges and prosecutors shall not be accountable for documents filed after a period of five years, following the judgment upon the lawsuits. The process servers shall also be released from all liability therefor after a period of two years, effective as of the implementation of the authorization, or the notification of the deeds, with which they were assigned. (Bw.1969v.; Civ. 2276)

Article 1975. The interest payments from lifelong interests or annuities; (Bw. 1770, 1775) annual interest for the support of one's livelihood; (Bw.321v., 1429-3) rent in respect of houses and property; (Bw. 1139-2, 1140) the interest on loans, and in general, anything that is payable annually, or for shorter stipulated terms; (Bw. 1250, 1515, 1586, 1765v.) shall expire after a period of five years. (Civ. 2277)

Article 1976. The periods of limitation, which are described in article 1968 and subsequent articles, shall apply to minors and individuals under guardianship; \*539 without prejudice to their right to compensation from their guardians or conservators. (Bw. 1987; Octr. 53; Civ. 2278)

Article 1977. With regard to movable assets which do not comprise interest or debts which are not payable to bearer, the possession of such shall constitute absolute ownership. (Amended by S.17-497) Nevertheless, the individual who has lost something, or from whom something has been taken, may, during a period of three years effective as of the date that the loss or theft took place, claim the lost or stolen item as his property from the individual with whom he finds the items, without prejudice to the right of the latter mentioned to demand indemnification from the individual who delivered the items to him, also without prejudice to the stipulations in article 582 (Bw. 471, 509v., 511-2, 550, 555, 574, 613, 1152, 1429-1, 1470, 1702, 1963; K. 314, 555, 568, 749; Rv. 70v., 535v.; s.60-64 see also 92-155; S.1948-266 art. 2; Civ. 2279)

## **Section 4**

### **Concerning causes which shall preclude prescription**

Article 1978. Prescription shall be precluded if the owner, within a period of more than one year, has been denied the enjoyment of a matter, either by the previous owner, or by a third party. (Bw. 545, 558, 565v., 1955; Civ. 2243)

Article 1979. It shall also be precluded by a reminder, summons, and any legal claim, submitted in the required format by an official authorized thereto, on behalf of the rightful party, to the individual who shall be precluded from invoking prescription. (Bw. 1983; Rv.1, 275; F.35; Civ. 2244)

Article 1980. The summons before an unauthorized judge shall also preclude prescription. (Rv.130; Civ. 2246)

Article 1981. Prescription shall, however, not be precluded if the reminder or summons is revoked or declared invalid, or if the plaintiff withdraws his charges, or if the claim is declared void, if, due to the time period, it is declared expired. (Rv.92v., 271v., 273v.; civ. 2247)

Article 1982. A confession, either expressed verbally or pursuant to acts, by the owner or the debtor, regarding the right of the party against whom prescription is invoked, shall also preclude prescription. (Bw. 1390, 1397v., 1766, 1892, 1972; Civ. 2248).

Article 1983. Notification, pursuant to article 1979, which is forwarded to one of the debtors who are severally liable, or his confession, shall preclude prescription against all the other parties, including their heirs. (K.170, 229a.) The notification forwarded to one of the heirs of the debtors who are severally liable, or the confession of the heir, shall not preclude prescription with regard to the other heirs, not even in the event of a mortgaged debt; unless the contract is indivisible. This notification or confession shall only preclude prescription with regard to the other debtors to the extent of the shares of the heirs. To preclude prescription in respect of the entire debt with regard to the other debtors, a notification to all heirs of the deceased debtor or a confession made by all of the heirs shall be required. (Bw. 1280, 1298, 1300-1, 1301; civ. 2249)

\*541 Article 1984. The notification forwarded to the principal debtor, or his confession shall preclude prescription against the guarantor. (Bw. 1845; K. 170, 229a; civ. 2250)

Article 1985. The preclusion of prescription by one of the creditors who are severally liable shall apply to all creditors who are severally liable. (Bw. 1979; Civ. 1119, 1206)

## **Section 5**

### **Concerning the matters which suspend the prescribed period of limitation**

Article 1986. Prescription shall apply to any one, with the exception of those who are excluded by the law. (Bw. 269, 387, 670, 710, 1954, 1987v.; civ. 2251)

Article 1987. The prescribed period of limitation cannot commence running against minors or anyone under guardianship, unless otherwise stipulated by the law. (Bw. 330, 424v., 452, 1522, 1976; K. 170, 229a; Rv. 274, 336; Civ. 2252)

Article 1988. Prescription shall not occur between spouses. (Civ. 2253; K. 170, 229a)

Article 1989. Prescription shall not apply to a woman during her marriage: 1. in the event that the legal claim of the wife cannot be continued, unless she has chosen to either exercise or release her right over the community property; (Bw. 132v.) 2. if the husband has disposed of the personal property of the wife without her approval, he must account for such sale; and in all other cases in which the wife could sue the husband. (Bw.105, 1492v.; Rv.70v., civ.2254)

Article 1990. Prescription shall not apply as follows: in relation to a debt which is subject to a condition, to the extent that such condition has not been satisfied; (Bw.1261, 1263) in relation to a lawsuit for indemnification, to the extent the suit has not been decided upon; (Bw. 1491v.; Rv. 70v.) in relation to a debt which matures on a stipulated date, to the extent that the date has not yet arrived. (Bw. 387, 1268v.; Civ. 2257)

Article 1991. Prescription shall not apply to an heir who has accepted an inheritance under the privilege of an estate description, with regard to his indebtedness in respect of his inheritance. (Bw. 1030, 1032-2, 1050; Rv. 337, 697) Prescription shall apply to an unmanaged inheritance, notwithstanding that there is no trustee. (Bw. 1126v., 1986; Civ. 2258)

Article 1992. Prescription shall apply during the time that the heir is still deliberating upon the inheritance. (Bw. 1023v.; Rv. 337; Civ. 2259)

### **Closing Provisions.**

Article 1993. The prescribed periods of limitation which have commenced prior to the publication of this Civil Code, shall be \*543 regulated in accordance with the laws in force in Indonesia at that time. (Ov. 54; AB.2; S.1829-86; 1832-41; 67-110) Notwithstanding this, the prescribed periods of limitations which have commenced and which according to old laws, shall run for more than thirty years, shall following the publication of this Civil Code, expire after the lapse of thirty years. (Sv. 408; Civ. 2281; S.1850-3)