

# THE CIVIL CODE OF GEORGIA

## BOOK ONE

### GENERAL PROVISIONS OF THE CIVIL CODE

#### GENERAL PROVISIONS

##### Article 1. Concept. Scope of Application

This Code regulates property, family and personal relations of a private nature, based on the equality of persons.

##### Article 2. Civil Legislation

1. The Civil Code, other acts of private law, and interpretations thereof, shall conform to the Constitution of Georgia.

2. If legal norms of the same rank are in conflict, the special and the most recent law shall be applied. If general norms provided in this Code are in conflict with special norms, then the special norms shall be applied.

3. Sub-legislative normative acts shall be applied to regulate civil relations only if they complement the norms of law. If such acts contravene the law, the law shall prevail.

4. Customary norms shall be applied only if they do not contravene universally recognized principles of justice and morality, or the public order.

##### Article 3. Entry of a Civil Law into Force

1. A law and sub-legislative normative acts shall take effect only after their publication in an official organ for general familiarization according to the established rule.

2. Ignorance or misunderstanding of the law shall not be an excuse for not applying the law or for release from the liability stipulated by the law.

3. A law loses force if this is literally pronounced by a new law, or if a former law contravenes a new law, or if a new law encompasses the relation regulated by a former law, or if the relation regulated by a former law no longer exists.

4. A law of a general nature shall not repeal a special law unless such repeal was the direct intention of the legislator.

5. Repeal of a law that repealed a former law shall not reinstate the former law.

##### Article 4. Denial of Justice in Civil Proceedings Not Allowed

1. A court may not refuse to administer justice in civil cases, even if no

legal norm exists or the legal norm is vague.

2. A court may not refuse to apply a law on the grounds that in its opinion a norm of the law is unjust or immoral.

#### Article 5. Analogy of Law and Justice

1. The legal norm regulating the most similar relation [to the one under consideration] shall apply to regulate a relation not literally prescribed by law (analogy of law).

2. In the event that it is impossible to use an analogy of law, then the relation shall be regulated on the grounds of the general principles of justice, as well as in accordance with requirements of fairness, good faith and morality (analogy of justice).

3. Norms regulating special relations (norms on exceptions) may not be applied by analogy.

#### Article 6. Retroactive Force of Laws

Laws and sub-legislative normative acts shall not be retroactive except when literally so

pronounced by law. A law may not be retroactive if it is prejudicial to or disadvantages a person.

#### Article 7. Objects of Private Law

An object of private legal relations may be a material or non-material good, of property or nonproperty value, which has not been excluded from [commercial] circulation by law. 2

#### Article 8. Subjects of Private Law

1. Any natural or legal person may be a subject of private law relations. This rule applies to both entrepreneurial and non-entrepreneurial persons of Georgia and of other countries.

2. Private law relations between state bodies and legal persons of public law, on the one hand, and other persons on the other hand, shall likewise be regulated by civil laws unless these relations, in the interests of the state or the public, are to be regulated by public law.

3. Participants in a legal relationship shall be bound to exercise their rights and duties in good faith.

#### Article 9. Purpose of Civil Laws

Civil laws ensure the freedom of civil circulation [activity] on the territory of Georgia, unless the exercise of such freedom hinders the rights of third persons.

#### Article 10. Independence of Civil Rights from Political Rights. Imperative Norms of Civil

Law

1. The exercise of civil rights shall not depend upon political rights regulated by the Constitution or by other laws of public law.
2. Participants in a civil relation may exercise any action not prohibited by law, including any action not directly foreseen by law.
3. Imperative norms of civil laws protect the freedom of others from the abuse of rights.

#### Actions

that contravene these norms shall be null and void except when the law explicitly defines other effects. Individual interventions [in civil relations] through administrative acts shall be prohibited, unless these acts are applied on the grounds of a specific law.

### TITLE ONE

#### PERSONS

##### CHAPTER ONE

##### NATURAL PERSONS

###### Article 11. Capacity to Have Rights [Passive Capacity]

1. The capacity for right of a natural person the ability to have civil rights and bear duties shall arise from the moment of the person' s birth.
2. The right to inherit shall arise upon conception; the exercise of this right shall depend upon birth.
3. The capacity for right of a natural person shall be terminated by his death. The moment of death shall be the moment at which the brain ceases functioning.
4. A natural person may not be deprived of his capacity for right.

###### Article 12. Legal Capacity [Capacity to Act]

1. The ability of a natural person to acquire and exercise his civil rights and duties in full by his will and action (legal capacity) shall arise upon the attainment of the age of majority.
2. A person of the age of majority an adult is one who has attained the age of eighteen years.
3. A person who has entered into marriage before attainment of the age of eighteen years shall be deemed to have legal capacity.
4. A minor under the age of seven years (an infant) shall be deemed to be a person without legal capacity [a legally incapable person].
5. A person shall also be deemed to be a person without legal capacity when so declared by a court

by reason of his mental retardation or mental illness. A statutory representative (guardian) shall exercise the rights of such a person.

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In other words, imperative norms, by constraining an actor from abusing his rights, protect the freedom of other persons. 3

6. In the event of recuperation or significant improvement in the health of an incapacitated person, a court shall declare him to have legal capacity.

#### Article 13. Limitation of Legal Capacity by Agreement Not Allowed

Limitation of legal capacity shall be allowed only in instances prescribed by law. In no case may the legal capacity of a person be limited by agreement [or by a transaction].

#### Article 14. Limited Legal Capacity

1. A minor from the age of seven to eighteen years is a person with limited legal capacity.

2. An adult over whom a court has established a curatorship shall also be deemed to be a person with limited legal capacity. A person of limited legal capacity and a minor are equal in their legal capacities.

3. Limitation of legal capacity ceases when the grounds for limitation of the legal capacity of the person no longer exist.

#### Article 15. Consent by Statutory Representative in Case of Limited Legal Capacity

A valid declaration of intent by a person with limited legal capacity is subject to the consent of his statutory representative, except when the person of limited legal capacity would acquire a benefit from the transaction.

#### Article 16. Limitation of Legal Capacity by Reason of Use of Alcohol or Narcotic Drugs

1. A court may establish curatorship over an adult who abuses alcohol or narcotic drugs and thereby puts his family in material hardship. He shall be entitled to conduct transactions to dispose of property, or to dispose of wages, pension or other income, only with the consent of his curator, except in the case of petty domestic transactions [which he may do without such consent].

2. Restoration of legal capacity in full shall cause removal of the curatorship.

## Article 17. Right to a Name

1. Every natural person has the right to a name that includes a given name and a surname.
2. Change of name is allowed. Change of name shall require the application of the person stating the grounds for change, to be considered by the appropriate body according to the established rule.
3. A change of name shall not be an excuse for either termination or alteration of the rights and obligations acquired under the former name. The person shall be bound to undertake all necessary actions to notify his creditors and debtors of the change of his name.

## Article 18. Personal Non-Property Rights

1. A person whose right to a name is contested, or whose interests are impaired through unauthorized use of his name, shall be entitled to demand that the wrongdoer cease or refrain from such action.
2. A person is entitled to demand in court the retraction of information that defames his honor, dignity, privacy, personal inviolability or business reputation unless the person who has disseminated such information can prove that it corresponds to the true state of affairs. The same rule applies to the incomplete dissemination of facts, if such dissemination defames the honor, dignity or business reputation of a person.
3. If information defaming the honor, dignity, business reputation or private life of a person has been disseminated in the mass media, then it must be retracted in the same media. If such information is contained in a document issued by an organization, then this document must be corrected and the concerned parties must be informed of the correction.
4. A person whose honor and dignity has been defamed by information disseminated in the mass media shall be entitled to disseminate information in answer to the defamation through the same media of information.
4. A person may likewise exercise the rights described in paragraphs (1) and (2) of this Article when his image (photograph, film, video etc.) has been disseminated without his consent. The consent of the person is not required when photo-taking (video recording etc.)

is in connection with his public notoriety, the office he holds, the requirements of justice or law enforcement, scientific, educational or cultural purposes, or when the photo-taking (video recording etc.) has occurred in public circumstances, or when the person has received remuneration for posing.

6. The protection of the good [i.e. human values such as honor, dignity and privacy] referred to in this article shall be exercised regardless of the culpability of the wrongdoer. And if the violation has been caused by culpable action, a person may claim damages (compensation for harm). Damages may be claimed in the form of the profit that accrued to the wrongdoer. In the case of culpable violation, the injured person may also claim compensation for non-property (moral) damage. Moral damages may be recovered independently from the recovery of property damages.

#### Article 19. Protection of Personal Rights after Death

The rights referred to in Article 18 may also be exercised by a person who, although not the bearer of the name or the right to personal dignity himself, nevertheless has an interest [in it] deserving protection. He may exercise the right to demand such protection of the name and dignity [of the person] which determines the essence of the person and continues to exist as well after death. It shall not be allowed to claim compensation for property damage for defamation of the name, honor, dignity or business reputation of a person after his death.

#### Article 20. Place of Residence

1. The place where a natural person chooses his ordinary dwelling is deemed to be the place of residence of the person. The person may have several places of residence.

2. The place of residence of parents having parental rights is deemed to be the place of residence of a minor, and the place of residence of a guardian is deemed to be the place of residence of the ward.

3. The place of residence of a person is not cancelled if he leaves this place under compulsion, or for performance of a state duty for a certain period of time.

#### Article 21. Person Declared to be Missing

1. A court, on the petition of an interested person, may declare a natural person to be missing if his

whereabouts are unknown and he has not appeared at his own place of residence for two years.

Upon the entry into force of the court's decision, the legal heirs of the missing person shall obtain the power to administer the property of the missing person as property held in trust, including the receipt of profits [benefits] from it. From this property, maintenance shall be paid to the missing person's dependents and debts shall be paid off.

2. If the missing person reappears, or if his whereabouts become known, the court decision on the administration of his property shall be vacated. He shall not be entitled to demand compensation for the benefits received by proper management [of his property during his absence].

#### Article 22. Declaration of Death of a Person

1. A person may be declared dead by the ruling of a court, if for five years there has been no information at his place of residence on his whereabouts, and likewise if he disappeared under circumstances threatening his death, or if his death may be presumed because of some unfortunate accident, and no information to the contrary has been obtained for six months.

2. A member of the armed services or other person who disappeared in connection with wartime operations may be declared dead by a ruling of the court not earlier than two years after the day on which war operations ended.

3. The day of entry into legal force of the court decision declaring the person dead shall be considered to be the day of his death. 5

4. In the cases referred to in paragraphs (1) and (2) of this Article, a court may declare that the day of a person's death is the day of his presumed death.

#### Article 23. Effect of Reappearance of a Person Declared Dead

1. If a person who has been declared dead reappears, or if his whereabouts become known, the court shall vacate its decision regarding the person's death.

2. Regardless of the time of reappearance, the person shall be entitled to recover any remaining property that has been gratuitously transferred to another person following the declaration of his death.

3. A person who has paid to acquire the property of a person that was declared

dead shall be bound

to return this property to him, if it is proved that at the time of acquisition of the property the acquirer knew that the person declared dead was in fact alive.

4. If the property of the person declared dead was transferred to the [state] treasury and subsequently sold by it, then after revocation of the court decision declaring the person dead the proceeds of the sale of his property by the treasury shall be returned to him.

## CHAPTER TWO

### LEGAL PERSONS

#### I. General Provisions

##### Article 24. Concept. Types

1. A legal person is an organized entity, created for the accomplishment of a certain object and having its own property under its ownership, that is independently liable with its own property, acquires rights and duties in its own name, makes transactions and can sue or be sued.

2. A legal person may be organized as a corporation, based on membership, dependent or independent upon the status of its members, and engaged or not engaged in entrepreneurship.

3. Legal persons of public law participate in civil law relations in the same manner as legal persons of private law. The procedure of their creation, organization and functioning shall be regulated by law.

4. The state participates in civil law relations like a legal person of private law. In this respect the powers of the state shall be exercised by its organs (ministries, state departments, etc.), such that they do not constitute [individual] legal persons.

##### Article 25. Capacity for Right [Passive Capacity] of a Legal Person

1. A legal person of public law is entitled to engage in an activity corresponding to the purposes prescribed by law or provided for in its founding documents.

2. A legal person of private law (entrepreneurial or non-entrepreneurial) is entitled to engage in any activity not prohibited by law, regardless of whether or not this activity is provided for in its charter.

3. A legal person may engage in certain kinds of activities, the list of which is determined by law,



only on the basis of a special permit [license]. The right of a legal person to engage in such activity shall arise from the moment the license is received.

4. The capacity for right of a legal person shall arise from the moment of its registration and shall cease to exist from the moment that the completion of its liquidation is registered.

#### Article 26. Name of a Non-entrepreneurial Legal Person

1. A non-entrepreneurial legal person shall have a name that includes the indication of its organizational-juridical form. The firm name of an entrepreneurial legal person shall be regulated by the Law on Entrepreneurs.

2. A person who unlawfully uses the name of another legal person is bound to cease such use on demand of the entitled person and to compensate the damage caused by the unlawful use. 6

3. In the case of defamation of honor, dignity or business reputation of a legal person, the rules of Article 18 shall apply.

#### Article 27. Domicile of a Legal Person

1. The place where the administration of a legal person is situated shall be deemed to be the domicile of the legal person. A legal person may have only one domicile (legal address).

2. Any other residence of a legal person shall be deemed to be the domicile of its branch.

#### Article 28. Branch of a Legal Person

1. A branch of a legal person a separate subdivision situated outside the domicile of the legal person represents and exercises the functions of the legal person in whole or in part.

2. A branch is not a legal person. It functions on the basis of an act [charter, legal document] affirmed by the legal person.

#### Article 29. Entrepreneurial (Commercial) Legal Persons

A legal person whose object is entrepreneurial (commercial) activity must be created in accordance with the Law on Entrepreneurs.

#### Article 30. Non-Entrepreneurial (Non-commercial) Legal Persons

1. A legal person whose objective is not entrepreneurial activity may exist as a union (association) or as a foundation. Entrepreneurial activity that is of an auxiliary nature and serves to accomplish a

common goal does not alter the [fundamental] nature of a non-commercial legal person. The distribution of profits resulting from such activity among members of a union or among contributors to a foundation shall not be allowed.

2. A union is a legal person in which a number of persons set a common goal, and its existence is independent from changes in its membership. At least five founding members shall be required to constitute a union.

3. A foundation is a legal person in which one or more founders transfers a special property to the ownership of an independent subject having no membership, for the accomplishment of a useful, common and public purpose.

## II. Norms Common to Unions and Foundations

### Article 31. Registration of a Union and a Foundation

1. A union shall be subject to registration by a court, and a foundation shall be subject to registration by the Ministry of Justice.

2. The right to demand registration exists when the charter conforms to the provisions of law, and the objectives of the legal person, filed for the registration, do not contravene the law, recognized moral standards or constitutional-juridical principles of Georgia. In the case of a foundation the property shall correspond to the objectives set.

3. An application and charter signed by all founders and all members of the governing board are necessary for registration. The materials necessary for registration of a union shall be filed with the court [having jurisdiction over] the location of the residence of the union.

4. The court shall decide on the registration within one month from the day of filing of the application. If within this term no decision is made, the registration shall be deemed effective. The same rule applies when the registration is to be carried out by the Ministry of Justice.

5. The court's refusal to register [a union] must be grounded on cause and provide for the possibility of appeal and the rule thereof. The appeal against the refusal may be filed with a court.

### Article 32. The Charter of a Union and a Foundation

1. The organization and structure of a union and a foundation shall be regulated by a charter.

2. The charter shall include:
  - a. Objectives of the activity;
  - b. The name [of the organization];
  - c. The domicile (legal address);
  - d. The procedure for property liquidation and distribution;
  - e. The name, surname, date and place of birth, occupation and place of residence of each founder, contributor and member of the governing board of the union or the foundation, procedure for calling board meetings and making decisions at such meetings;
  - f. Authority [powers] of union members.
3. The charter may include other information as well, namely:
  - a. The functions of other bodies of management and control;
  - b. The competence of the [General] Meeting of the union members.
4. The charter of a foundation, in addition to the information referred to in paragraph (2) of this article, shall include:
  - a. The minimum amount and type of contributions;
  - b. Instructions on use of the amount;
5. The charter shall be notarized.

#### Article 33. Registration Data

1. The registration document [record] of a union and a foundation shall include the following information: name and domicile of the legal person, the object of its activity, the date of confirmation of the charter, the identity of the founders, the identity of the members of the governing board, and possible limitations on their representational authority.
2. Registration data shall be published.
3. Any person may examine the records in the register and demand its written extracts.

#### Article 34. Registration of Changes

The governing board shall immediately file changes [to the entity' s data] requiring registration with a court (Ministry of Justice) in notarized form. These alterations shall be entered in the register and published.

#### Article 35. State Supervision Over Activities of Union and Foundation

A court (the Ministry of Justice) shall revoke the registration of a union or a foundation [as the case may be] if it has actually turned to entrepreneurial activity or if accomplishment of the objectives provided for in the charter has become impossible.

## Article 36. Leadership and Representation

1. The right of leadership [direction] is vested in the members of the governing board and, in individual cases, in special representatives, and this simultaneously becomes their duty.
2. Limits on the leadership shall be defined by the charter in accordance with the objectives of a union or a foundation.
3. The charter may provide that one person will exercise all authority individually, or it may establish joint direction by two or more persons.
4. The charter may provide whether the engaging in some activities requires the consent of other controlling bodies [of the entity].

## Article 37. Competence of the Governing Board in Relations with Third Persons

1. The governing board represents a union or a foundation in its relations with third persons. The charter shall regulate whether the persons given representational authority may act individually, jointly between some of them, or jointly between all of them.
2. Representational authority may be limited by the charter. These limitations shall have legal force vis-à-vis third persons only if the limitations have been recorded in the register, except where the third persons knew of these limitations. 8
3. The charter may establish a special representative of a union or a foundation. The charter shall regulate the limits of his representational authority and the form of representation, which shall also be registered.

## Article 38. Compensation for Damage

1. A union or a foundation shall be liable for damages sustained by third persons as a result of culpable action by a member of the governing board, or other agent [representative], in the course of performing his duties.
2. Persons authorized to represent the union or foundation shall conduct the entity's affairs conscientiously [in good faith]. If they fail to perform this duty, they shall be liable before the union or the foundation for the damage caused thereby. The union or foundation may not refuse to demand damages if necessary for the satisfaction of the claims of third persons.
3. A union or a foundation shall not be liable for the obligations of its

members. Likewise, the members shall not be liable for the obligations of the union or the foundation.

### Article 39. Reorganization and Liquidation of Union and Foundation

1. Reorganization (merger, accession, division, spin-off, transformation) of a union or a foundation

shall be carried out according to the procedure prescribed by law.

2. Liquidation of a union or a foundation occurs under the circumstances provided for in the

charter; as a result of accomplishment of the object of the entity; or upon bankruptcy of the entity or revocation of its registration.

3. During liquidation of the entity the current affairs shall be concluded; claims ascertained;

remaining property valued in monetary terms; the [claims of] creditors satisfied; and the remaining property distributed among entitled persons.

4. The persons entitled to the distribution of the property may be defined in the charter.

[Otherwise] court or the Ministry of Justice [as the case may be] shall transfer the remaining

property to one or several unions or foundations that promote the same or similar objectives as

those of the union or the foundation being liquidated. If no such organizations exist, then a decision

may be made on transfer of the remaining property to [another] charitable organization or to the state.

5. Information on the liquidation of the entity shall be made public. The property may be

distributed one year after publication of the liquidation notice.

6. Liquidation is conducted by the governing board of the entity. In extraordinary circumstances, a

court (or the Ministry of Justice) may appoint other liquidators. The liquidators are liable in the same manner as the members of the governing board.

### III. Special Norms on Unions

#### Article 40. Governing Board

1. The Governing Board shall be elected by the [General] Meeting of the members for a term of

four years, unless otherwise provided for in the charter of the entity. After expiration of this term,

the powers of the Governing Board remain effective until the election of a new Board. The charter

of the union shall also establish rules regarding the remuneration of the members of the Governing Board.

2. Decisions on election of members to the Governing Board may be revoked at any time. The charter may provide for significant grounds related to the revocation [of the authority of Board members].

3. If the Governing Board has fewer than the minimum number of members required by the charter, then the court may designate members from the same union [to occupy the vacant slots] during a transitional period. In this case, the members of the Board shall call a General Meeting of the members of the union to make the final decision on Board membership. 9

#### Article 41. General Meeting of the Members of a Union

1. The General Meeting of the members is convened by the Governing Board at least once per year, or when the union's interests so require. A General Meeting may be convened by the written request of one-tenth of the members, which shall indicate the agenda of the meeting.

2. Each member shall be notified of the convening of the Meeting either in writing or by the publication of a notice in the printed periodical of the union no later than two weeks before the Meeting.

3. The Meeting of the members makes decisions on all matters outside the competence of the Governing Board. A decision of the Meeting is valid only when an entry with respect to that matter appeared on the agenda included in the notice at the time of calling the Meeting.

4. A decision of the Meeting is made by a majority of the votes of members present and a decision on alteration of the charter by a majority two-thirds of such votes. A majority of four-fifths of the votes of all members of the union shall be required to alter the purpose of the union. Members who cannot be present at the meeting may submit their votes in writing. Such members shall have equal status to the members present at the meeting [i.e. for purposes of quorum and voting].

#### Article 42. Commissions

The General Meeting of members may establish commissions in accordance with

the charter, and delegate to them the powers of the Meeting during periods between the Meetings, especially for supervising the activities of the union. Only members of the union may be members of such commissions.

#### Article 43. Advisory Bodies

In the process of carrying out the objectives of the union, the General Meeting of the members may establish special advisory boards, if so provided in the charter. A person who is not a member of the union may be a member of such an advisory group.

#### Article 44. Union Membership

1. The Governing Board admits members to the union on the basis of written applications by

interested persons, or in other cases provided for in the charter.

2. Each member is entitled to withdraw from the union. The charter may provide for a certain

period of time for withdrawal, which period may not exceed one year. If a member seeks to leave

the union for a legitimate reason, then there is not a requirement for a period of time for withdrawal.

3. Membership may not be transferred to or inherited by other persons unless otherwise provided for in the charter.

4. In such cases as may be provided for in the charter, or if significant grounds exist, the General

Meeting of the members may expel a member from the union. The expelled member may file an

appeal against the decision to expel him with a court.

5. If a union serves a significant function in meeting the vital social or other needs of a person

interested in joining, then such person is entitled to demand admission to the union, unless his

admission would contravene the fundamental principles of the union.

#### Article 45. Non-registered Union [Unincorporated Association]

1. Matters concerning the organization and structure of a non-registered union [unincorporated

association] are defined by the mutual agreement of its members. A non-registered union shall not

be considered a legal person.

2. Membership fees or property acquired with such fees constitute the common property of the union.

3. A non-registered union may be represented in court or in extrajudicial relations by its members,

or by persons so authorized. 10

4. The claims of creditors may be satisfied from the common property of the [non-registered]

union. In addition, persons who have acted on behalf of the union shall be liable as obligors

[debtors] both individually and jointly.

#### IV. Special Norms on Foundations

##### Article 46. Foundation for Recipients

The objective of a foundation, in addition to the objectives defined in paragraph (3) of Article 30,

may also be the support of certain persons or specifically defined groups of persons. All persons

who are entitled to receive a share from the property of the foundation (recipients) may, subject to

the consent of all members of the Governing Board, dissolve the foundation or alter its objective,

provided the Ministry of Justice agrees as well.

##### Article 47. Obligation to Contribute to a Foundation

1. A founder (founders) shall assume liability, in the form of a notarized document creating the

foundation, to contribute property to the foundation in the amount required to accomplish the

purpose of the foundation. If the property is inadequate, the registration of the foundation shall be refused.

2. Refusal to transfer the [indicated] property to the foundation may occur at any time before

registration of the foundation. Within one month after registration, the property shall be transferred

in full; otherwise the registration shall become invalid.

3. The objectives of the foundation shall be financed from the income derived from its property,

unless otherwise provided for in the charter. If for a certain period of time this income is not

sufficient, then the activity of the foundation shall be reduced or suspended, and the income shall be

added to the property of the foundation.

4. A report on the condition [state] of the property of the foundation shall be prepared annually, in

an appropriate form.

##### Article 48. Supervisory Body

1. The charter may provide for establishment of a Supervisory Body (Board of Trustees), the



members of which are selected by the Founders of the foundation, for the purposes of appointing, recalling, and supervising the Governing Board and special representatives. After the death of the Founders, new members may be added to the composition of the Supervisory Body, by the Recipients or within the limits defined in the charter (rule of “co-optation” ).

2. In all other cases the Ministry of Justice ensures that the foundation is administered according to the law and its charter. The Ministry of Justice may obtain information on the activity of the foundation and examine its documentation.

3. The Supervisory Body (Board of Trustees) may suspend, declare invalid or demand revocation of the decisions and undertakings of the Governing Board if they contravene the law or the foundation’ s charter.

4. The Supervisory Body ensures that the appointment of the Governing Board and other bodies conform to the charter. If the charter fails to regulate these relations, the Supervisory Body may issue additional instructions.

#### Article 49. Alteration of the Object of a Foundation

If the purpose of the foundation cannot be accomplished without Recipients, or if other grounds for the liquidation of the foundation exist, then the Ministry of Justice may, provided the charter does not otherwise address this issue, demand the alteration of the purpose of the foundation instead of liquidation, or the Ministry may, preserving the similarity with the initial purpose, carry out the

The Georgian drafter coined the term *destinaterebi* (Cf. French *destinataires*), which does not easily translate into English. We have avoided “beneficiaries” because that term has broader applicability than the very specific class of persons addressed here. 11 merger of the foundation with other foundations; and if any of the Founders is alive, his consent thereto shall be required.

#### TITLE TWO

#### TRANSACTIONS

#### CHAPTER ONE

#### GENERAL NORMS

## Article 50. Concept

A transaction is a unilateral, bilateral or multilateral declaration of intent aimed at creating, changing or terminating legal relations.

## Article 51. Validity of Unilateral Declaration of Intent

1. A declaration of intent that requires acceptance by the other party is considered effective [“real”] from the moment it reaches the other party.
2. A declaration of intent is not considered to be effective [or actual] if the other party rejects it in advance or contemporaneously.
3. The validity of the declaration of intent may remain unaffected by the death of the party to the transaction or by the loss of his legal capacity, if these events occurred after the declaration of intent.

## Article 52. Interpretation of the Declaration of Intent

In interpreting the declaration of intent, the intention shall be ascertained as a result of reasonable deliberation, and not only from the literal meaning of its wording.

## Article 53. Non-existence of a Transaction when its Content Cannot be Ascertained

A transaction shall not exist when its content cannot be ascertained from its form of expression or from other circumstances.

## Article 54. Unlawful and Immoral Transactions

A transaction, that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, is void.

## Article 55. Voidness of a Transaction by Reason of Abuse of Power

1. A transaction may be deemed void if the performance stipulated by the transaction is clearly disproportionate to the consideration in exchange for this performance, and the transaction has been made solely because one of the parties to the contract maliciously abused his market power or exploited the hardship or inexperience (naivete) of the other party.
2. A transaction that has been made by the abuse of influence of one party over the other party, when their relations are based on exceptional confidence, is void.

## Article 56. Sham and Fraudulent Transactions

1. A transaction that has been made only for the sake of appearances, without the intent to create legal consequences corresponding to its terms, is void (sham transaction).
2. If, by making a sham transaction, the parties intended to conceal another

transaction, then the rules applicable to concealed transactions shall apply (fraudulent transaction).

It appears that the “party to the transaction” referred to is the declarant, even though it is hardly likely that the declarant could have declared his intent after death. Because a declaration of intent is valid only when it reaches the target recipient, then it could not be valid if the target recipient died after the declaration but before the receipt. Accordingly, a declaration of intent remains valid even if the declarant dies or becomes legally incapacitated after making it. 12

#### Article 57. Voidness of a Transaction when the Declaration of Intent is not Serious

1. A declaration of intent that has been made not seriously (humorously), under the presumption that the non-seriousness of the declaration would be recognized, is void.
2. A recipient of a declaration of intent shall be compensated for damages resulting from the fact that he trusted the seriousness of the declaration, provided he did not know and could not have know of its non-seriousness.

#### Article 58. Voidness of a Transaction For Lack of Legal Capacity or Mental Disorder

1. A declaration of intent is void when made by a minor (lacking legal capacity) or by a person who has been declared legally incapable by a court.
2. A declaration of intent made during a loss of consciousness or temporary mental disorder may be deemed void.
3. A declaration of intent made by a mentally ill person is void when the declaration is inconsistent with a correct perception of the reality of the situation, even if the court has not declared the person legally incapable.

#### Article 59. Transaction Made Without Observance of the Form

1. A transaction is void when it is made without observance of the form provided for by law or in the contract, and, likewise, a transaction is void when made without permission, if permission is required for the transaction.
2. If a voidable transaction is rescinded, then it is void from the moment of its execution.

Rescission is declared to the other party to the contract.

3. An interested person holds the right of rescission.

#### Article 60. Conversion of Transaction

If a void transaction satisfies the requirements established for another transaction, then the latter transaction shall be considered valid, provided that the parties, upon detecting that the [first] transaction is void, wish it [the second transaction] to be valid.

#### Article 61. Significance of Confirmation when a Transaction is Void

1. An indisputably void (absolutely null) transaction is deemed void from the moment of its making.

2. If a person [who has made] an indisputably void transaction confirms it, then his action [in confirming it] is considered as the making of the transaction anew.

3. If the person having the right to rescind confirms the transaction, he thereby loses the right to rescind.

4. If the parties confirm an indisputably void bilateral transaction, then they are bound, when in doubt, to transfer to each other everything that would have accrued to them if the transaction had been valid initially.

5. The confirmation shall be valid only if the contract or the transaction does not contravene the principles of morality and the requirements of public order.

#### Article 62. Voidness of a Part of a Transaction

Voidness of a part of a transaction shall not cause the voidness of other parts thereof, if it is likely that the transaction would have been made even without the void part. 13

### CHAPTER TWO

#### LEGAL CAPACITY AS A CONDITION FOR VALIDITY OF TRANSACTIONS

#### Article 63. Transaction Made by a Minor

1. If a minor makes a bilateral transaction (contract) without the required consent of his statutory representative [“legal representative”], then the validity of the transaction depends upon whether the representative subsequently approves it or not, except when the minor acquires a benefit by the transaction.

2. If a minor becomes a person with legal capacity, he decides himself the validity of his own declaration of intent.

#### Article 64. Repudiation of a Transaction Made by a Minor

1. Prior to the [statutory representative’s] approval of a contract made by a minor, the other party

is entitled to repudiate the contract.

2. If the other party knew of the minority of the person, then he may repudiate the contract only if the minor deceived him by claiming that consent from the statutory representative had been received.

#### Article 65. Emancipation of a Minor

1. A contract entered into by a minor without the consent of his statutory representative is deemed to be valid if the minor has performed his part of the contract with means given to him, for this purpose or for his free disposal, by the representative or, with the latter's consent, by a third party.

2. If the statutory representative gives the right to independently manage an enterprise to a minor who has attained sixteen years of age, then the minor thereby acquires full legal capacity in relations routine for this field of activity. This rule applies to the establishment and the liquidation of the enterprise, as well as to the commencement and completion of labor relations.

3. The statutory representative may give consent for management of the enterprise only with the concurrence of the guardianship and curatorship agency.

#### Article 66. Voidness of a Transaction Made Without the Required Consent of the Representative

A unilateral transaction made by a minor without the required consent of the statutory representative is void. Such a transaction is likewise void if there has been consent by the statutory representative, but the minor failed to present a written document confirming it, and for this reason the other party repudiates the transaction without delay. Such repudiation shall not be allowed if

the other party has been informed of the statutory representative's consent.

#### Article 67. Obligation of Permission Prior to Limitation of Legal Capacity

A transaction made prior to the limitation of legal capacity requires permission [of the statutory representative] if it is established that the grounds for which legal capacity has been limited

obviously existed at the time of making of the transaction.

### CHAPTER THREE

### FORM OF TRANSACTION

## Article 68. Significance of Form for the Validity of a Transaction

The validity of a transaction requires the observance of the form prescribed by law. If no such form is prescribed, the parties may themselves determine it.

See German Civil Code § 110. 14

## Article 69. Types of Form

1. In the case of a simple written form of a contract, the signatures of the parties to the transaction shall be sufficient for the validity of the transaction.

2. Renewal, reproduction or imprinting of a signature by mechanical means is allowed in cases

where it is accepted as custom, namely in the affixing of signatures on securities issued in large numbers.

3. If the form of a transaction requires notarial authentication, then the authentication is made by a notary, a judge or other person prescribed by law.

## Article 70. Entrusting Signature to Another Person

A person who, as a result of illiteracy, physical defect or illness, cannot sign a transaction in his

own signature, may entrust the signature on the transaction to another. The signature of the latter

shall be officially authenticated. In addition, the reason shall be indicated for which the person

making the transaction was unable to affix his own signature.

## Article 71. Making A Transaction by Drawing Up Several Documents

[Counterparts]

If a transaction is made by drawing up several documents of the same content, it is sufficient that

each party affixes his signature to that copy of the document which is intended for the [other]

relevant party.

## CHAPTER FOUR

### VOIDABLE TRANSACTIONS

#### I. Transactions Made by Mistake

##### Article 72. Concept

A transaction may become voidable if the declaration of intent has been made on the basis of a substantial mistake.

##### Article 73. Types of Substantial Mistake

A mistake is deemed substantial when:

a. A person intended to make a different transaction than that to which he gave his consent;

b. A person was mistaken about the content of the transaction that he intended to make;

c. The circumstances, which the parties considered to be the grounds for the transaction

according to principles of good faith, do not exist.

#### Article 74. Mistake with Respect to the Identity of a Contracting Party

1. Mistake with respect to the identity of a contracting party is deemed substantial only when the

identity of the contracting party itself or consideration of its personal characteristics is the principal

foundation for making the transaction.

2. Mistake with respect to basic characteristics of a thing is deemed substantial only when these

characteristics are significant in determining the value of the thing.

#### Article 75. Mistake with Respect to a Right

Mistake with respect to a right is deemed substantial only when that right has been the sole and

principal foundation for making the transaction.

Compare German Civil Code § 126[2] counterparts.

“Material” mistake is closer to the Anglo-American understanding, but not as close to the Georgian word used, which

translates name accurately as “substantial.” 15

#### Article 76. Mistake with Respect to a Motive of a Transaction

Mistake with respect to a motive of a transaction shall not be deemed substantial, except when

motive was the subject of the agreement.

#### Article 77. Consent of a Contracting Party in Transactions Made by Mistake

A declaration of intent made by mistake shall not be voidable if the other party agrees to perform

the transaction according to the wish of the party that intends to make the transaction voidable.

#### Article 78. Petty Mistakes

Petty mistakes in computations or in a written declaration of intent give rise to the right only to

correct the mistake, and not to rescind.

#### Article 79. Validity of Rescission

1. Rescission shall be declared within one month from the moment at which the grounds for the rescission were detected.

2. If a transaction has become voidable and the mistake has been caused by the negligence of the

person entitled to rescind, then he shall be bound to compensate the other party for the harm caused

as a result of the voidness of the transaction. The obligation to compensate shall not arise if the

other party knew of the mistake, or it was unknown to him due to his

negligence.

#### Article 80. Mistake Caused by an Intermediary

A declaration of intent that has been wrongly communicated by a person employed as an intermediary may become voidable on the same conditions as a transaction made by mistake according to Article 73.

### II. Transactions Made by Deceit

#### Article 81. Concept

1. If a person has been deceived for the purpose of inducing him to make a transaction, then he is entitled to demand voidance of the transaction. Voidance shall occur when it is evident that the transaction would not have been made without the deceit.
2. If one party keeps silent with respect to circumstances, which if the other part had known them he would not have declared his intent to enter into the transaction, then the deceived party may demand voidance of the transaction. The obligation to disclose circumstances with respect to a transaction exists only when the other party expected it in good faith.

#### Article 82. Transaction rendered Void by Reason of Deceit

When rendering a transaction void, it is of no importance whether the party, by communicating the wrong information, intended to gain some advantage or to inflict injury on the other party.

#### Article 83. Deceit by a Third Person

1. In the event that a third party has committed the deceit, the demand for voidance of the transaction may be made if the party benefiting from the transaction knew or ought to have known of the deceit.
2. If both parties to the transaction have acted deceitfully, then neither of them is entitled to demand voidance of the transaction or compensation for damages on the grounds of deceit.

#### Article 84. Limitation Period for Rescission

A transaction made by deceit is voidable within one year. The period shall be computed from the moment at which the party entitled to rescind detected the existence of the grounds for rescission. 16

### III. Transactions Made by Duress

#### Article 85. Concept

The use of duress (violence or threats) for the purpose of making a transaction shall entitle the



person subjected to the duress to demand avoidance of the transaction, even when a third person has exercised the duress.

#### Article 86. Nature of Duress

1. Voidness of a transaction is justified by such duress that by its nature may influence a person and inspire a fear of real injury to his person or property.

2. In assessing the nature of duress, the age, sex and life circumstances of persons are taken into consideration.

#### Article 87. Duress Directed against the Near Relatives of a Person

Duress likewise constitutes grounds for voidness of a transaction when it is directed against the spouse, other family members or near relatives of one of the parties to the transaction.

#### Article 88. Duress by Lawful Means

Actions exercised neither for illegal purposes nor by using illegal means shall not be deemed to be duress under Articles 85-87, except in those cases when the means [of influencing the person] and the purpose [of the influence] do not coincide.

#### Article 89. Limitation Period for Rescission

A transaction made by duress is voidable within one year from the moment at which the duress ended.

### CHAPTER FIVE

### CONDITIONAL TRANSACTIONS

#### Article 90. Concept

A transaction is deemed conditional when it depends upon a future or uncertain event, so that the performance of the transaction is either postponed until the occurrence of the contingency, or the termination of the transaction is timed to coincide with the occurrence of the contingency.

#### Article 91. Voidness of Unlawful and Immoral Condition

A condition that contravenes the provisions of law or the principles of morality, or the performance of which is impossible, shall be void. A transaction that depends upon such a condition shall be void in full.

#### Article 92. Condition Dependent upon Will

A condition is deemed to be dependent upon the will when its occurrence or non-occurrence depends only upon the parties to a transaction. A transaction made on

condition of will is void.

#### Article 93. Positive Condition

1. When a transaction is made on the condition that some event will occur within a certain period of time, then the condition will be deemed legally ineffective if this period of time has elapsed and the event has not occurred.

2. If no period of time is fixed, then the condition may be fulfilled at any time. The condition may be considered invalid when it is obvious that the occurrence of the event is already impossible. 17

#### Article 94. Negative Condition

1. When a transaction is made on the condition that some event will not occur within a certain period of time, then the condition is deemed fulfilled if this period of time has elapsed without occurrence of the event. The condition is also deemed fulfilled when prior to the complete lapse of the period, it is obvious that the event will not occur.

2. If no period of time is fixed, then the condition is deemed fulfilled only when it is obvious that the event will not occur.

#### Article 95. Influencing the Occurrence of the Condition Not Allowed

1. A person who has made a transaction contingent upon a certain condition has no right to perform, prior to the occurrence of the condition, any action that may hinder the performance of his obligation.

2. If the condition occurs at a certain time, and the person has already performed such action, then he is bound to compensate the other party for the damage caused thereby.

#### Article 96. Transaction on a Condition of Postponement

A transaction on the condition of postponement is deemed to be made if the creation of rights and duties stipulated by the transaction depends upon a future or uncertain event, or upon an event that has already occurred but is yet unknown to the parties.

#### Article 97. Transaction on a Condition Subsequent

A transaction on the basis of a condition subsequent is deemed to be made when the occurrence of this condition causes termination of the transaction, and the state of affairs that existed prior to making of the transaction is restored.

#### Article 98. Significance of Good Faith With Respect to Occurrence of the Condition

1. If the party for whom the occurrence of the condition is unfavorable intentionally delays its occurrence in bad faith, then the condition shall be deemed to have occurred.
2. If the party for whom the occurrence of the condition is favorable intentionally promotes its occurrence in bad faith, then the condition shall not be deemed to have occurred.

## CHAPTER SIX

### CONSENT IN TRANSACTIONS

#### Article 99. Concept

1. If the validity of a transaction depends upon the consent of a third person, both the consent and the rejection thereof may be declared to either party to the transaction.
2. The consent need not be in the form prescribed for the transaction.
3. If a transaction the validity of which depends upon the consent of a third person has been made with the consent of that person, then the 2nd and 3rd sentences of Article 66 shall apply accordingly.

#### Article 100. Consent Granted in Advance (Permission)

Consent granted in advance (permission) may be revoked prior to the making of a transaction unless otherwise agreed by the parties. Both parties shall be notified of the revocation of the consent (permission).

This form of conditional agreement is only marginally different from a transaction based on a positive condition (Arts. 90, 93) and is no less valid.

See German Civil Code § 158(2).

See German Civil Code § 182.

Compare German Civil Code § 183 (revocation may be declared to either party).  
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#### Article 101. Subsequent Consent (Approval)

Subsequent consent (approval) shall be retroactive to the moment of the making of the transaction, unless otherwise established.

#### Article 102. Disposition of a Thing by an Unauthorized Person

1. Disposition of a thing by an unauthorized person is valid provided it is done with the prior consent of the authorized person.
2. The disposition becomes valid if [subsequently] approved by the authorized person.

## CHAPTER SEVEN

### AGENCY IN TRANSACTIONS

#### Article 103. Concept

1. A transaction may be made through an agent [or “representative” ] as well. The authority of an agent may arise either by operation of law or out of a mandate [power of attorney].

2. This rule shall not apply when, proceeding from the nature of a transaction, it must be performed [ “entered into” ] by a particular person, or whenever the law prohibits the making of a transaction through an agent.

#### Article 104. Agency and the Effects of a Transaction on an Addressee

1. A transaction made by an agent within the scope of his authority, and for and on behalf of the person represented by him [the principal], shall give rise only to the rights and obligations of the principal.

2. When a transaction is made for and on behalf of another person, then the other party to the transaction may not resort to the absence of the agent’ s authority, if the principal has created such circumstances that the other party to the transaction believed in the existence of such authority in good faith.

3. If, when making a transaction, an agent failed to indicate his authority of agency, then the transaction shall have legal consequences for the principal, only if the other party ought to have presumed the existence of the agency [from the circumstances]. The same rule shall apply when for the other party it does not matter with whom he makes the transaction.

#### Article 105. Limited Legal Capacity of an Agent

A transaction made by an agent is valid even if the agent was a person with limited legal capacity.

#### Article 106. Defect of Declaration of Intent in Agency

1. When a transaction is voidable by reason of a defect in the declaration of intent, the declaration of intent of the principal shall prevail.

2. If the defect in the declaration of intent relates to circumstances determined by the principal in advance, then this defect may give rise to the right to rescind only if the defect was caused by the principal.

#### Article 107. Authority of Agency

1. Authority (power of attorney) is conferred by a declaration of intent made towards the person who is given the power of attorney, or towards a third person with respect to whom the agency will be exercised.

Compare German Civil Code § 185(1): "Disposition affecting an object which is made by a person without title, if made with the approval of the person entitled, is valid."

Compare German Civil Code § 185(2). Disposition is valid if ratified by the person entitled.

Compare German Civil Code § 166. 19

2. The declaration of intent [for conferring authority on an agent] need not be in the form prescribed for making the transaction to which the power of attorney relates. This rule shall not apply when a special form [for the power of attorney] is predetermined.

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Article 108. Obligation of Notification Upon Altering the Authority

Third persons shall be notified of alterations to the authorization and its revocation. In case of nonperformance of this requirement, such alterations and revocation of authority shall not be valid in

the face of third persons, except when [such persons] knew or ought to have known of the

alterations or revocation when making the transaction.

Article 109. Grounds for Termination of Authority

Representational authority is extinguished by:

- a. The expiration of the term for which the authority was conferred;
- b. Renunciation of the authority by the [agent];
- c. The revocation of the authority by the person who conferred it;
- d. The death of the person who conferred the authority or the occurrence of his legal

incapacity, unless otherwise provided for by agreement;

e. Performance [of the authorized transaction].

Article 110. Obligation of Agent upon Extinguishment of Authority

Upon extinguishment of his authority, an agent shall return the instrument of authority to the person

who conferred it. He has no right to keep the instrument.

Article 111. Making a Transaction Without Representational Authority

1. If a person without representational authority makes a transaction for and on behalf of another person, the validity of this transaction depends upon the [ratification] of the principal.

2. If the other party demands [ratification] from the principal, then only he [the other party] need

be notified of the ratification. The ratification may be given within two weeks from [receipt of] a demand [for it]; otherwise the demand for ratification shall be deemed to be rejected.

#### Article 112. Right to Repudiate a Contract

Prior to ratification of the contract [by the principal], the other party is entitled to repudiate the contract, except when this party knew of the deficiency in the representational authority at the time the contract was entered into. Renunciation of the contract may be declared also towards the agent.

#### Article 113. Agent' s Obligation when there is a Defect in Representational Authority

1. If a person who makes a transaction as an agent fails to prove his representational authority, then he shall be bound, at the option of the other party, either to perform the obligation assumed or to compensate him, if the principal refuses to ratify the contract.
2. If the agent did not know of the defect in his authority, then he shall be bound to compensate only that damage that the other party sustained in relying upon the authority.
3. The agent shall not be liable if the other party knew or ought to have known of the defect in his representational authority. Likewise, the agent shall not be liable if his legal capacity was limited, except when he acted with the consent of his legal [statutory] representative. Compare German Civil Code § 167.  
Compare German Civil Code § 177.

See German Civil Code § 178.

See German Civil Code § 179. 20

#### Article 114. Making of a Transaction with One' s Own Self Disallowed

Unless otherwise provided for by an agreement, an agent may not make a transaction in the name of the principal and with himself, either in his own name or as an agent of a third party, except when the transaction already exists for the performance of some obligation.

### TITLE THREE

#### EXERCISE OF RIGHTS

#### Article 115. Abuse of Rights Disallowed

A civil right shall be exercised lawfully. Exercise of a right exclusively

with the intention to inflict damage on another shall not be allowed.

#### Article 116. Damage Inflicted Within the Limits of Necessary Self-Defense

1. An action exercised within the limits of necessary self-defense shall not be unlawful and the damage caused thereby may not be recovered.

2. Self-defense shall be deemed to be necessary if it is required to repel a real and illegal assault against the person defending himself, or against others.

#### Article 117. Damage Caused by Extreme Necessity

1. Damage caused to eliminate a danger that in the given circumstances could not be eliminated by other means, and provided that the damage inflicted is less significant than the damage avoided, shall be compensated by the [one who initiated the danger].

2. Upon consideration of the factual circumstances in which the damage was inflicted, the liability for compensation of the damage may be imposed on the third person in whose interests the harmdoer acted, or both this third person and the harm-doer may be excused from liability in whole or in part.

#### Article 118. Self-help

If assistance from competent bodies cannot be obtained on time, and without swift intervention there is a danger that a right cannot be exercised, or its exercise will be essentially complicated, then the action of a person who for the purpose of self-help seizes, destroys or damages a thing, or who for the same purpose captures an obligor who may escape, or stops the actions of an obligor that are contrary to an action that he [the obligor] ought to have performed, shall not be deemed unlawful.

#### Article 119. Limits of Self-help

1. Self-help may not exceed the limits [of action] that are necessary to eliminate the danger.
2. In the case of seizure of a thing it shall be required to immediately make a declaration on the [appropriation and] attachment of the thing.
3. A captured obligor shall be handed over to the appropriate authorities immediately.

The meaning of the last clause is better understood when compared to the German Civil Code version: "An agent may not without leave enter into a legal transaction in the name of his principal with himself in his own name, or as

agent of a third party, unless the legal transaction consists exclusively in the fulfillment of an obligation.” § 181.

Literally, “...by the one who inflicted the damage” in the original. See § 1001 of this Code. Compare German Civil Code § 228.

See German Civil Code § 229. While the structure of the English translation of the German Civil Code is different,

the content of all the versions is the same. 21

Article 120. Obligation to Compensate Damage

A person who has exercised the actions provided for under Article 118 based upon an erroneous

assumption that it was necessary to avoid an unlawful action shall be bound to compensate the other

party for the damage thereby arisen.

TITLE FOUR

PERIODS OF TIME

CHAPTER ONE

COMPUTATION OF PERIODS OF TIME

Article 121. Scope of the Rules for Computation of Periods of Time

The rules prescribed in this chapter apply to the periods of time fixed in laws, court decisions and

transactions.

Article 122. Point of Time Defining the Start of a Period of Time

If a period of time begins to run from an event or a point of time occurring during the course of a

day, then in computing the period the day in which the event or the point of time occurs is not

counted.

Article 123. End of a Period of Time

1. A period of time expressed in days shall end upon the expiration of the last day of the period.

2. A period of time expressed in weeks, months or periods including several months year, halfyear, quarter ends upon the expiration of that day of the last week or of the last month which

corresponds [in name or number] to the day in which the event or point of time occurs.

3. If a period of time expressed in months lacks a specified day in which the period ends, then the period shall end upon the expiration of the last day of the last month of the period.

Article 124. Concepts

1. A half-year denotes a period of time of six months, a quarter denotes a period of time of three

months computed from the beginning of a year, and a half-month a period of



time of fifteen days.

2. If a period of time consists of one or more full months and a half-month, then the fifteen days shall be computed at the end of the period.

Article 125. Computation of a Period of Time in the Event of its Extension

If a period of time is extended, the new period of time shall be computed from the end of the expired period of time.

Article 126. Computation of a Period of Time by Months

1. If a period of time is expressed in months or years in such a manner that [they need not run consecutively] then a month shall be computed as thirty days, and a year as three hundred and sixtyfive days.

2. The first day of a month is deemed to be the beginning of the month, the fifteenth day of a month the middle of the month, and the last day of a month the end of the month.

Compare German Civil Code § 231, which makes it clear that the liability is strict, without regard to lack of negligence on the actor's part.

See German Civil Code § 188(2).

This clause is best understood in light of the German Civil Code version. If, using the method in Art. 123(2), the expiration of a period expressed in months would occur on a day that does not exist in that month (e.g., September 31), then the end of the period is the expiration of the last day of that month (i.e. September 30).

Literally translated the Georgian makes no sense in English. The translation here is taken from the German Civil Code, § 191. 22

Article 127. Days Off and Holidays

If an action is to be performed on a certain day, and that day or the last day of the time period falls on a non-business day or on a day declared to be an official holiday, or on another day off at the place of the performance of the action, then the next succeeding business day shall be used instead of [the designated] day.

CHAPTER TWO

PRESCRIPTION

[STATUTE OF LIMITATIONS]

Article 128. Concept; Types

1. A period of limitation shall apply to the right to demand from another person that he perform a certain action or that he refrain from an action.

2. A period of limitation shall not apply to:
  - a. Personal non-property rights, unless otherwise prescribed by law;
  - b. Demands of depositors for deposits made with a bank or other credit institutions.

3. The general period of limitation is ten years.

#### Article 129. Limitation Period on Claims Arising out of a Contract

1. The period of limitation on contractual claims is three years, and the period with respect to contractual claims regarding immovable things six years.
2. The period of limitation on claims arising out of obligations subject to periodic performance is three years.
3. In individual cases, other periods of limitation may be fixed by law.

#### Article 130. Beginning of the Limitation Period

The period of limitation begins to run from the moment at which the claim arises. The claim shall be deemed to have arisen from the moment at which the person detected or ought to have detected the violation of the right.

#### Article 131. Origination of a Claim

If the origination of a claim depends upon an action of a creditor, then the period of limitation shall begin to run from the moment at which the creditor could have taken this action.

#### Article 132. Suspension of the Running of the Limitation Period

The running of the limitation period is suspended:

- a. If performance of the obligation is postponed by [state] executive authorities (moratorium);
- b. If the filing of a lawsuit is prevented by extraordinary and, under given circumstances, unavoidable force majeure;
- c. If the creditor or the debtor is in a unit of the Armed Forces that has been put in a war status;
- d. By virtue of other causes in the instances prescribed by law.

#### Article 133. Suspension of the Running of the Limitation Period During Marriage

The running of the limitation period is suspended between spouses as long as the marriage exists.

The same rule applies to claims between parents and children until the attainment of majority, as well as to claims between guardians (curators) and their wards during the whole period of guardianship (curatorship).

#### Article 134. Suspension of the Running of the Limitation Period Due to Legal

## Incapacity

If a claim has been either brought by or directed against a person without legal capacity or a person with limited legal capacity who has no statutory representative, then the limitation period shall be 23 deemed suspended until the person acquires full legal capacity or until a statutory representative is designated.

## Article 135. Time During which the Running of the Limitation Period is Suspended

The time during which the running of the limitation period is suspended shall not be counted in computing the limitation period.

## Article 136. The Moment of Suspension of the Running of Limitation Period

1. The running of the limitation period shall be suspended on the condition that the circumstances under Article 132 arose or continued to exist within the last six months of the limitation period or, if this period is less than six months, then anytime during the limitation period.

2. From the day of termination of the circumstances that caused the suspension of the limitation period, the limitation period shall continue to run for another six months or, if the limitation period itself is less than six months, then for the limitation period.

## Article 137. Interruption of the Running of the Limitation Period

The running of the limitation period shall be interrupted if the obligor acknowledges the existence of the claim before the entitled person by paying an advance or an amount of interest, by delivering a guaranty, or otherwise.

## Article 138. Interruption of the Running of a Limitation Period by Bringing an Action

The running of the limitation period shall be interrupted if the entitled person files a lawsuit for satisfaction of the claim or for its ascertainment [declaratory judgement], or tries to satisfy the claim by some other means such as by filing a declaration of the existence of the claim with a state body or with a court, or by [taking action to execute the claim or judgement].

Articles 139 and 140 shall apply accordingly.

## Article 139. Duration of Interruption of the Running of a Limitation Period

1. Interruption of the running of a limitation period on the grounds of the filing of a lawsuit shall

continue until the court decision [on that lawsuit] takes effect, or until the litigation is otherwise completed.

2. If the litigation is interrupted as a result of an agreement between the parties or by reason of the impossibility of its further continuation, then the running of the limitation period shall be interrupted [sic] along with the agreement of parties, or upon completion of the last proceedings of the court. If one of the parties continues the litigation again, then the new limitation period that has begun to run after the interruption of the legal proceedings shall be interrupted in the same manner as the running of a limitation period is interrupted by the initial filing of a lawsuit.

#### Article 140. Renunciation of a Lawsuit

1. The filing of a lawsuit shall not interrupt the running of the limitation period if the claimant renounces the lawsuit or if the lawsuit is left without consideration by virtue of a court decision that has entered into legal force.

2. If the entitled person files a new lawsuit within six months, then the limitation period shall be deemed interrupted as of the time of filing of the first lawsuit.

#### Article 141. Computation of the Running of Limitation Period Anew

If the running of the limitation period is interrupted, then the time elapsed before the termination shall not be counted and the period shall begin to run anew.

See German Civil Code § 209.

Where marked "sic," the clause contains an editorial error. The second sentence makes it clear that in the prior sentence, the running of the limitation period is resumed by the suspension of litigation, and the period is interrupted [ "tolled" in common law] if the litigation is resumed. See also German Civil Code § 211. 24

#### Article 142. Limitation Period on Claim Confirmed by a Court Decision

1. The period of limitation on a claim confirmed by a court decision that has entered into legal force is ten years, even if the claim is subject to a lesser limitation.

2. If the court's confirmation of the claim relates to periodically repeated actions to be performed in the future, then the limitation under the second paragraph of Article 129 shall apply thereto.

#### 143. Limitation Period on Claims in Rem

If a thing with respect to which a claim in rem exists is transferred by succession of title to the possession of a third person, then the limitation period elapsed during possession by the predecessor in title shall also apply to the successor in title [i.e., be counted in favor of the successor in title.].

#### Article 144. The Right of an Obligor upon the Lapse of Limitation Period

1. Upon the lapse of the limitation period, the obligor is entitled to refuse to perform the action.
2. If the obligor has performed the obligation after the lapse of the limitation period, then he has no right to revoke the performance, even if at the time of performance he did not know that the limitation period had expired.
3. The same rule applies to the means of acknowledgement and security of a debtor.

#### Article 145. Prescription Period on Additional Demand

The prescription period on additional claims is deemed to expire simultaneously upon the lapse of the prescription period on the principal claim, even if the prescription period on the additional claims has not lapsed yet.

#### Article 146. Alteration of the Prescription period by Agreement of the Parties Not Allowed

Neither prescription periods nor their rule of computation may be altered by an agreement of the parties.

The translation is literal. The English translation of the German Civil Code counterpart is perhaps sufficiently close

to these words to be accepted as a proper translation of the meaning: "The same applies to a contractual acknowledgement and to the giving of security of the person bound." §

222 (2). 25

BOOK TWO

LAW OF THINGS ( PROPERTY)

TITLE ONE

PROPERTY

#### Article 147. Concept

Property, according to this Code, is every thing, as well as any intangible property benefit, which may be possessed, used and disposed of by natural and legal persons, and which may be acquired without restriction, unless this is prohibited by law or contravenes moral standards.

#### Article 148. Types of Things

A thing may be either movable or immovable.

#### Article 149. Immovable Things Defined

Immovable things include a tract of land with its subsoil minerals, the plants growing on the land, and buildings and other structures firmly attached to the land.

#### Article 150. Essential Component Parts of a Thing

1. A component part of a thing that cannot be severed without either destroying the whole thing or this part, or extinguishing the purpose thereof (an essential component part of a thing), may

individually be an object of a right only in the instances prescribed by law.

2. Essential component parts of a tract of land include buildings, structures and things firmly attached to the land and not intended for temporary use, that may be stipulated by contract as well.

#### Article 151. Appurtenance

1. An appurtenance is a movable thing which, although not being a component part of the principal thing, is intended to serve the principal thing and is connected to it by common economic purpose

and thereby is linked in space to the principal thing and, according to established understanding, is deemed to be an appurtenance.

2. A thing that is attached to land and that may be severed therefrom without losing or substantially damaging its commodity value is also deemed to be an appurtenance.

#### Article 152. Concept of Intangible Property

Claims and rights that may be transferred to other persons, or that are intended either for bringing a material benefit to their possessor, or for entitling the latter to claim something from other persons, constitute intangible property.

#### Article 153. Accessory and Limited Rights

1. A right that is connected to another right in such a manner that it cannot exist without the latter right is an accessory right.

2. A limited right is one which is derived from a broader right and which encumbers the broader right.

#### Article 154. The Fruit of a Thing and a Right

1. The fruit of a thing is income, accrual and/or advantage derived from this thing.

2. The fruit of a right is income and/or advantage which is received as a

result of the exercise of  
this right.

Although the main title of this book is the “Law of Things,” and “things” as defined are only tangible (see Art. 147), the body encompasses also intangible property—rights and claims (Art. 152) in its definition of property (see again Art. 147). A better title for the book would be “The Law of Property (Tangible and Intangible).” 26

3. Income and advantage, the derivation of which is ensured by a thing or a right through a legal

relation, also constitute the fruit of the thing or of the right.

4. Entitlement [or authorization to use] a thing or a right allows one to receive the fruit of such

thing or right within the scope and duration of such entitlement.

5. If a person is obligated to return the fruit, then he may claim compensation for the expenses

incurred with respect to the fruit, provided that such expenses result from proper economic

management and do not exceed the value of the fruit.

## TITLE TWO

### POSSESSION

Article 155. Concept. Types

1. Possession arises through the intentional acquisition of actual control [enjoyment] of a thing.

2. A person who, although exercising actual control of a thing, nevertheless is doing this in favor

of another person from whom he has received the possessory interest, shall not be deemed to be the

possessor. Only the person who conferred the possessory interest shall be deemed to be the

possessor.

3. If a person possesses a thing by virtue of a legal relation that either entitles him to possess the

thing for a certain period of time or obliges him to possess the thing, then this person shall be

deemed to be a direct possessor, and the one who conferred the possessory interest or laid on him

the obligation shall be deemed to be an indirect possessor.

4. If one thing is jointly possessed by a number of persons, then these persons shall be deemed to

be joint possessors.

5. If parts of one thing are possessed by a number of persons, then these persons shall be deemed

to be the possessors of the individual parts.

Article 156. Termination of Possession

Possession is deemed terminated if the possessor cedes the thing forever or otherwise loses actual control of the thing.

#### Article 157. Transfer of Possession to Heirs

Possession is transferred to heirs in the same form in which it was held by the decedent (a testator or an intestate).

#### Article 158. Presumption of Ownership

1. The possessor of a thing is presumed to be its owner.

2. This rule shall not apply in cases when the nature of the ownership relation is identified through

the Public Register. Also, the presumption of ownership shall not apply to the previous possessor if

he lost this thing or it was stolen or otherwise dispossessed from him. The presumption of

ownership operates in favor of the previous possessor only during the period of his possession.

#### Article 159. Possessor in Good Faith

A possessor is in good faith if he possesses a thing lawfully or if he may be deemed to be an entitled

person on the grounds of the kind of prudent examination required in business relations.

#### Article 160. Claim by the Possessor in Good Faith to Return a Thing back from Illegal Possession

Possession

If a possessor in good faith is dispossessed, then within a three-year period he may revendicate the

thing from the new possessor.

This rule shall not apply when the new possessor has the better

Revendication is a civil law term for recovery of property, analogous to the common law action of replevin. 27

right to possession of the thing. The right to revendicate the possession may also be applied against

the person having the better right to the thing if he acquired it by duress or deceit.

#### Article 161. Claim by the Possessor in Good Faith for Putting an End to Illegal Obstacles

If a possessor in good faith is not dispossessed, but he is otherwise obstructed in the exercise of his

possession, then he may, as if he were the owner, demand that the obstruction be ended. In

addition, he may claim damages sustained because of the disturbance of his possession. This rule of

compensation for damages shall likewise apply when it is impossible to demand



that the disturbance  
[obstruction] be ended.

#### Article 162. Rights of a Lawful Possessor

1. In no case may demand be made of a lawful possessor to return thing. During lawful possession, the fruits of a thing and of a right belong to him.
2. This rule also applies to relations between direct and indirect possessors.

#### Article 163. Duty of Non-entitled Possessor in Good Faith

1. A possessor in good faith who did not have the right to the possession initially or who lost this right is obligated to return the thing to the entitled person. Until the entitled person exercises this right, the fruit of the thing or of the right shall belong to the possessor.
2. The possessor in good faith may claim from the entitled person reimbursement for those improvements and expenses which the possessor incurred during possession of the thing in good faith, and which have not been compensated by the use of the thing or by the fruit derived from it. The value of fruit not derived due to the possessor's fault shall be deducted [from the amount that he may claim from the entitled person for compensation]. The same rule [i.e., the possessor's right to compensation] applies to such improvements that enhanced the value of the thing, provided the enhanced value still exists at the moment of the return of the thing.
3. The possessor in good faith may refuse to return the thing until his claims are satisfied.

#### Article 164. Duties of the Possessor in Bad Faith

A possessor in bad faith must return to the entitled person both the thing and the benefit derived, i.e., the fruit of the thing or of the right. The possessor is bound to compensate [the entitled person for] the fruit that the entitled person does not receive owing to the fault of the wrongful possessor. [The wrongful possessor] may claim reimbursement for the improvements he made and the expenses he incurred with respect to the thing only if, at the moment of return of the thing, they resulted in the enrichment of the entitled person. Other claims against the possessor in bad faith shall remain unaltered.

#### Article 165. Acquisitive Prescription of Movable Things

1. If a person uninterruptedly possesses a movable thing for five years as his

own thing, he shall obtain the right of ownership to it (acquisitive prescription).

2. Acquisitive prescription of a movable thing is not allowed if the acquirer possessed the thing in bad faith or if he subsequently learned that the thing did not belong to him.

#### Article 166. Presumption of Uninterrupted Possession of a Thing

If a person possessed a thing at the beginning and at the end of a certain period of time, it shall be presumed that he possessed the thing during the middle interval of the period as well.

#### Article 167. Acquisitive Prescription of Immovable Things

If a person is recorded in the Public Register as the owner of a tract of land or of other immovable property, while he did not in fact acquire the right of ownership thereof, he shall obtain the right of ownership provided the registration has existed for fifteen years, and during this period the person possessed the property as his own. 28

#### Article 168. Termination of Possession of a Thing by Complaint [Claim] of the Owner

Possession of a thing is terminated if the owner asserts a justified complaint [claim] against the possessor.

#### Article 169. Right of Preemption in Acquisition of a Thing

A possessor who has possessed and used a thing on a lawful basis for more than ten years shall have the preemptive [priority] right to acquire this thing unless otherwise prescribed by law.

### TITLE THREE

#### OWNERSHIP

##### CHAPTER ONE

##### CONTENT OF OWNERSHIP

#### Article 170. Concept. Content of the Right of Ownership

1. An owner may, within the limits of legal or other, namely contractual restraints, freely possess and use the property (thing), exclude others from using this property, and dispose of it unless [the exercise of such rights] would violate the rights of neighbors or of other third persons, or unless such actions constitute abuse of the right [of ownership].

2. Use of the property in such a way that damage is inflicted only on others, so that the priority of the owner's interest is not evident and the necessity of his action is not justified, shall be deemed to

be abuse of the right [of ownership].

3. A person's right to use also includes the possibility of not using the property. If nonuse or nonmaintenance of the thing is prejudicial to the public interest, then the law may prescribe an obligation for use or maintenance and storage of the thing. In this case the owner shall be bound either to perform the obligation by himself or to transfer the thing, in exchange for appropriate consideration, to the use of another person.

Article 171. Right of Ownership to the Essential Component Part of a Thing  
The right of ownership of a thing shall likewise extend to the essential component parts of the thing.

Article 172. Revendication of a Thing from Illegal Possession and Demand for Putting an End to the Disturbance [of Ownership]

1. The owner may revendicate the thing from its possessor, except when the possessor had the right to the possess it.

2. If encroachment on or other disturbance of the right of ownership occurs without seizure or dispossession of the thing, then the owner may demand that the disturber put an end to such action.

If the disturbance continues, the owner may demand putting an end to the action by filing a lawsuit in court.

Article 173. Common Property

1. Common (joint and shared) property shall arise by virtue of law or on the grounds of a transaction. Each co-owner may assert a claim against third persons with respect to the property under common ownership. Each co-owner is entitled to revendicate the thing only in favor of all co-owners.

2. A thing under common ownership, subject to the agreement of the co-owners, may be pledged or otherwise encumbered with a right in favor of and in the interests of one of the co-owners.

3. Expenses for maintenance and storage of a thing under common ownership are borne equally by the co-owners, unless otherwise provided for by law or the contract.

4. Each co-owner has a preemptive [priority] right to the acquisition of any share of the common property.

## CHAPTER TWO

## LAW OF NEIGHBORING TENEMENTS

### Article 174. Concept. Duty of Mutual Respect

The owners of neighboring tracts of land or other immovable properties are bound, in addition to the rights and duties prescribed by law, to hold each other in respect. All such tracts of land or other immovable properties between which a reciprocal nuisance may arise shall be deemed to be neighboring ones.

### Article 175. Obligation to Tolerate Neighboring Nuisances

1. The owner of a tract of land or other immovable property may not prohibit gas, steam, smell, soot, smoke, noise, heat, vibrations or other similar incidents from invading his property from a neighboring tract provided that they do not obstruct the owner in the use of his tract or impair his rights significantly.
2. The same rule applies in such case when the nuisance is substantial, but is caused by an ordinary use of the other tract of land or immovable property and cannot be abated through such undertakings as are deemed to be regular economic activities for such kind of users.
3. If the owner is [hereby] bound to tolerate such a nuisance, he may demand from the owner of the influencing tract of land the appropriate monetary compensation, where the nuisance exceeds the use regarded as ordinary at the given place and is beyond economically permissible limits.

### Article 176. Unallowable Encroachment

The owner of a tract of land may demand the prohibition of erection and utilization of such buildings on neighboring tracts that unallowably encroach on the right to use his tract of land and [such encroachment] is evident beforehand [foreseeable].

### Article 177. Claim for Elimination of Danger

If a tract of land is endangered by the collapse of a building from a neighboring tract, the owner may demand that the neighbor undertake necessary measures to eliminate the danger. It shall not be allowed to change the direction of or to manipulate watercourses and underground streams running through several tracts of land in such a manner that may cause lessening of the amount of the water

and/or the deterioration of its quality. It shall not be allowed to interfere with the natural flow of rivers.

#### Article 178. Right of the Owner of a Neighboring Tract to the Fruit

1. Fruit of a tree or bush that falls onto a neighboring tract of land shall be deemed to be the fruit of [the tract that it falls on].

2. The owner of a tract of land may cut those branches or roots of a tree or a bush that extend over or upon of his tract of land.

#### Article 179. Monetary Compensation for the Obligation of Tolerance

1. If the owner of a tract of land in the course of construction unintentionally encroaches on a neighboring tract of land, then the owner of the neighboring tract shall tolerate this, except when the latter made a declaration against the encroachment in advance or promptly upon detecting it.

2. The encroaching neighbor is obligated to pay monetary compensation [to the encroached neighbor] that shall be paid annually in advance.

#### Article 180. Necessary Right of Way

1. If a tract of land lacks the access to public roads, electricity, oil, gas and water supply lines that are necessary for its adequate use, then the owner may claim from a neighbor to tolerate the use of his tract by the owner for the purpose of providing the necessary access. The neighbors on whose tracts the necessary right of way or transmission line passes shall be given monetary compensation which, by agreement of the parties, may be made as a lump-sum payment.

2. The obligation to tolerate the necessary right of way or transmission line shall not arise if the already existing access to the tract of land was discontinued by the voluntary action of the owner.

#### Article 181. Duty of Fixing Boundaries

1. The owner of a tract of land may demand from the owner of a neighboring tract that he participate in fixing firm boundary markers, or in restoring already existing but missing or damaged boundary markers. The expense for fixing boundaries is borne equally between the neighbors unless otherwise stipulated by either mutual agreement or other legal relation.

2. If exact boundary lines cannot be determined, then the actual possession of the neighbors shall prevail in the determination. If actual possession cannot be exactly

determined, then the disputed land shall be divided in equal parts between the tracts of land. If such division results in an unjust outcome, then a court shall determine the boundary lines on the petition of one of the parties.

#### Article 182. Right to Use A Boundary Structure

1. When two tracts of land are separated by a fence or other structure used as a boundary, it is presumed that the owners of the tracts of land have equal right to use this structure unless the exterior of the structure expressly indicates that it is under the ownership of one of the neighbors solely.

2. If both neighbors are entitled to the joint use of the boundary structure, then each of them shall use the structure in such a manner as not to obstruct the other neighbor's use.

3. The expenses for maintenance and keeping of the structure shall be borne equally between the neighbors.

4. As long as one of the neighbors has an interest in the existence of the boundary structure, it may not be demolished or altered without the consent of [that] neighbor.

### CHAPTER THREE

#### ACQUIRING AND LOSS OF OWNERSHIP

##### I. Acquiring Ownership of Immovable Things

#### Article 183. Grounds for Acquiring Ownership of Immovable Things

1. Acquiring ownership of an immovable thing shall require a notarized document and registration of the acquirer in the Public Register. Both the alienator and the acquirer may file the application for registration.

2. The document shall precisely specify the grounds for acquiring the immovable thing. If one of the parties participates through an agent, then the document shall precisely specify this.

#### Article 184. Abandonment of the Right of Ownership of an Immovable Thing

Relinquishment of the right of ownership of an immovable thing or other right [related to the thing]

requires the declaration of the entitled person on the relinquishment of this right and the registration

thereof in the Public Register. The declaration shall be filed with the [agency that maintains] the

Public Register. Only after such filing shall the declaration on the

relinquishment of the right enter into binding force.

#### Article 185. Protection of Acquirer's Interests

Proceeding from the interests of an acquirer, an alienator is deemed to be an owner if he is so registered in the Public Register, except when the acquirer knew that the alienator was not the

#### owner. II. Acquiring Ownership of Movable Things

##### Article 186. Grounds for Acquiring Ownership of Movable Things

1. The transfer of ownership of a movable thing shall require transfer of the thing by the owner to the acquirer on the grounds of a valid right.

2. The following shall be deemed to constitute transfer of a thing: handing over of the thing to the acquirer into direct possession; transfer of indirect possession by a contract under which the previous owner may remain the direct possessor; granting, by the owner to the acquirer, of the right to claim possession from a third person.

##### Article 187. Acquirer in Good Faith

1. An acquirer shall become the owner of a thing even if the alienator was not the owner, but the acquirer is in good faith with respect to this fact. The acquirer shall not be deemed to be in good faith if he knew or ought to have known that the alienator was not the owner. Such good faith must exist prior to the transfer of the thing.

2. The acquirer of movable things cannot be in good faith if the owner lost these things, or they were stolen, or the owner was otherwise dispossessed of them against his will, or if the acquirer received the things for free. These restrictions shall not apply to money, securities and/or to things alienated at auction.

##### Article 188. Conditional Ownership

1. If an alienator conditioned the transfer of ownership to an acquirer upon the prior payment of the price of a thing, then it is presumed that the ownership shall be transferred to the acquirer only after payment of the price in full. If the acquirer delays the payment of the price, and the alienator repudiates the contract, then the parties shall return the performances already rendered bilaterally.

2. The condition defined in paragraph (1) shall also be deemed fulfilled if the alienator is satisfied

in any manner other than by payment of the price, or if the acquirer relies upon the limitation period on the claim.

#### Article 189. Transfer of Property through Securities

If, instead of the transfer of a thing, the transfer of a security [i.e., negotiable instrument or commercial paper] is required for the transfer of ownership to the acquirer, then the ownership shall be deemed to be transferred from the moment at which the alienator transfers the security to the acquirer.

#### Article 190. Acquiring Ownership of an Unowned Movable Thing

1. If a person takes into his possession an unowned movable thing, he acquires ownership of the thing unless the appropriation of it is prohibited by law, or unless the appropriation is prejudicial to the rights of another person who was entitled to appropriate the thing.
2. A movable thing shall be deemed unowned if the previous owner, having intended to relinquish ownership, has abandoned possession of the thing.

#### Article 191. Found Things

1. The finder of a lost thing shall immediately declare that he has found it to the person who lost the thing, the owner, the entitled person or, if the identities of the foregoing are unknown, to the police or other local agency, and hand the thing over to them.
2. One year after making the declaration the finder shall acquire ownership of the find, except when the owner has become known to him or when the right of the owner to the thing has been declared to the police. All other rights to this thing shall be extinguished simultaneously upon the acquisition of the right of ownership to the thing.
3. If the entitled person recovers the thing, the finder may demand from him a reward (finder's fee) in the amount of up to five percent of the value of the thing. In addition, the finder may demand<sup>32</sup> from the entitled person or from the appropriate agency compensation for the expenses of storage of the property.
4. If the finder relinquishes ownership, the competent agency may sell the thing after one year at an auction and receive the profit or, if the thing is of low value, gratuitously alienate or destroy it.



5. The one-year period shall not apply when animals, highly perishable items or things for which the storage cost is high are found, and the sum received through their alienation shall be returned to the owner.

#### Article 192. Treasure Trove

If a thing is found that has been buried for such a long time that its owner cannot be established (treasure trove), then the right of ownership of the treasure trove shall go in two equal shares to the finder and the owner of the thing [or place] in which the treasure trove was found.

#### Article 193. Acquiring Ownership of Essential Component Part of a Tract of Land

When a movable thing is attached to a tract of land in such a manner that it has become an essential component part of this tract, the owner of the tract of land, according to paragraph (2) of Article 150, shall simultaneously be the owner of this thing.

#### Article 194. Co-ownership of the Thing Created by the Merger of Movable Things

1. If movable things are attached to each other in such a manner that they have become essential component parts of a new integrated thing, or if the movable things have merged, the previous owners shall become the co-owners of this new thing. The shares shall be determined according to the values of the things at the time of their merger.

2. If one of the things, according to established understanding, is deemed to be the principal thing, then its owner shall acquire ownership of the appurtenance as well [See Article 151].

#### Article 195. Co-ownership of a New Movable Thing Created by Processing of Material

When a new movable thing is created by processing or altering some material, then the manufacturer and the owner of the material shall become co-owners of the new thing. The shares shall be determined according to the value of the material and the costs of manufacturing, unless otherwise stipulated by agreement.

#### Article 196. Extinguishment of Rights upon the Transfer of Ownership

If ownership is transferred under Articles 193–195, all other existing rights to the thing shall be extinguished.

## Article 197. Claim for Damages Against the New Owner

A person who loses his ownership under Articles 193–195 or whose right is otherwise impaired may claim compensation for damage from the person who has become the owner. Claim for restoration of the initial state of affairs shall not be allowed.

## III. Acquiring Ownership of Rights and Claims

### Article 198. Concept. Content

1. The possessor of a claim or a right that can be assigned or pledged may transfer it to the ownership of another person. The claims and rights are transferred to the new person in the same state in which they existed with the former possessor.
2. The former possessor is obligated to hand over all documents in his possession with respect to the claims and rights, as well as all information that is required for use of these claims and rights, to the new possessor. 33
3. The former possessor is likewise bound to hand over to the acquirer, at his request, a duly authenticated document with regard to the assignment of these claims and rights. The expenses for authentication of this document are borne by the new possessor.

### Article 199. Assignment of Claim

1. The possessor of a claim (creditor) may assign the claim to a third person without the consent of the debtor, unless to do so would contravene either the essence of the obligation, the agreement with the debtor, or law (assignment of claim). An agreement with the debtor on the inadmissibility of assignment of a claim may be made only if the debtor has a legitimate interest [in prohibiting assignment of the claim].
2. Assignment of a claim is effected by a contract concluded between the possessor of the claim and a third party. In such cases [following assignment], the third person shall stand in the place of the original possessor.

### Article 200. Right of the Debtor in the Event of Assignment of a Claim

Until the debtor is notified of the assignment of the claim, he is entitled to give performance of the obligation to the original possessor of the claim.

### Article 201. Transfer of the Means of Security upon Assignment of Claim

1. By assignment of a claim, both the means of security therefor and other

rights in connection

with the claim shall be transferred to the new possessor.

2. The debtor may assert against the new possessor all those defenses that he had against the original possessor at the time he received notification of the assignment of the claim.

#### Article 202. Order of Priority of Possessors of Claim

If a possessor of a claim has agreed on the assignment of one and the same claim with a number of persons, then the person with whom the possessor of the claim entered into relations first shall be entitled [to the claim] before the debtor. If this cannot be determined, then priority shall be given to the person of whom the debtor was notified earlier.

#### Article 203. Transfer of Debt

1. A third person may also assume a debt by agreement concluded with the possessor of the claim (transfer of debt). In such case [after assumption] the third person shall stand in the place of the original debtor.

2. The original debtor may disagree with this agreement between the possessor of the claim and the third person and pay the debt himself.

#### Article 204. Consent by the Possessor of a Claim upon Transfer of Debt

If a debtor and a third person enter into an agreement on the transfer of a debt, then the validity of the transfer shall depend upon the consent of the possessor of the claim.

#### Article 205. Rights of the New Debtor

The new debtor may assert against the possessor of the claim all defenses arising from the relations that existed between the possessor of the claim and the original debtor. He may not offset the claims that belonged to the original debtor.

#### Article 206. Termination of Means of Security upon Transfer of Debt

Immediately upon the transfer of a debt any guaranty [suretyship] or lien securing the debt shall be terminated if the guarantor or the pledgor refuses to continue this relationship.

#### Article 207. Assignment of Claim by Virtue of Law 34

The rules with respect to acquisition of ownership of rights and claims shall apply accordingly to the assignment of claims by virtue of law or on the grounds of a decision made by a court or by a competent state body.

### CHAPTER FOUR

## APARTMENT OWNERSHIP IN MULTI-APARTMENT BUILDINGS [CONDOMINIUMS]

### I. General Provisions

#### Article 208. Concept

1. In a multi-apartment building, there is a right of ownership of an apartment (ownership of apartment) and of the part of the building that is not used for dwelling (ownership of non-residential area).
2. Ownership of the apartment, as well as ownership of the non-residential area, is deemed to be individual ownership.
3. The tract of land, parts of the building, structures and equipment not designated for individual ownership shall be under the common ownership of the apartment owners. The share in common ownership is determined according to the number of apartments.
4. Individual ownership may exist only for separate apartments and for other separate parts of the building. Automobile parking lots are deemed separate if their boundaries are outlined as a result of longtime use.

#### Article 209. Preemptive Right to Purchase Apartment

1. Tenants who have lived in an apartment for more than three years shall have the preemptive [first priority] right to purchase the apartment. They shall apply to the last owner of the apartment with a declaration on the exercising of this right.
2. If a person purchases a rented apartment, he shall stand in the place of the landlord [in relation to the tenant].

#### Article 210. Grounds for Acquiring Ownership of an Apartment

Acquisition and termination of the right of ownership of an apartment shall require a notarized transaction and its registration in the Public Register.

#### Article 211. Subject of Individual Ownership

1. An area defined under paragraph (2) of Article 208, as well as those component parts of this area that may be altered, detached or attached in such a manner as to avoid alteration of the exterior of the building or the unjustifiable encroachment on either the common property or the right of another apartment owner arising from his individual ownership, is an object of individual ownership.

2. The parts of the building that are required for the stability and safety of the building, as well as structures and equipment under the common ownership of the apartment owners, may not be the objects of individual ownership even if they are located in areas under individual ownership.

#### Article 212. Determination of Shares in Common Property

1. The share of an apartment owner in common property is determined according to the ratio that the area under his individual ownership bears to the total area under individual ownership.

2. In case of liquidation of an apartment owners' association, the shares of the owners in common shall be determined in accordance with paragraph (1) of this Article.

#### Article 213. Alienation of Individual Property Without the Corresponding Share of Common

##### Property Not Allowed

1. Individual property may not be alienated, pledged or otherwise encumbered without regard to the corresponding share of the common property. 35

2. An apartment owner simultaneously is a shareholder in the common property.

#### Article 214. Registration of Ownership of Apartment in the Public Register

1. For each apartment ownership a separate sheet shall be filled out in the Public Register.

2. A construction certificate verified by the construction agency, plan of the building, and the location and dimensions of the parts of the building under common ownership shall be attached to the materials of registration of the apartment's ownership in the Public Register.

## II. Relations among Apartment Owners

#### Article 215. Registration of Agreements in the Public Register

1. Relations among apartment owners shall be regulated by this Code.

Agreements by which the apartment owners regulate their relations differently than by the norms of this Code, as well as alteration or termination of such agreements, shall be valid before third persons only if these agreements are registered in the Public Register.

2. A decision that is subject to a majority of votes as prescribed by this Code or by agreement of the apartment owners, shall be binding when made even against those owners who did not participate in the voting or who voted against the decision.

#### Article 216. Apartment Owners' Association Defined

The totality of individual owners constitutes an association of apartment owners, which is not a legal person.

#### Article 217. Claim for Dissolution of Apartment Owners' Association Disallowed

An owner may not demand dissolution of the apartment owners' association. Such a demand is allowed only if the building is partially or entirely collapsing.

#### Article 218. Rights of Apartment Owners

1. An apartment owner may use the parts of the building under his ownership at his own discretion and exclude any influence on it from other persons, unless to do so would violate the law or the rights of such other persons.

2. Each apartment owner, under Articles 219 and 220, is entitled to use the common property. In the case of some other use of the common property each apartment owner shall be given a corresponding share pursuant to the rules of Article 212.

3. The matters referred to in paragraphs (1) and (2) of this Article shall be specified in detail in the regulations of the apartment owners' association, which under paragraph (4) of Article 224 is submitted by the chairman of the association and approved by the General Meeting of the apartment owners.

#### Article 219. Duties of Apartment Owners

1. An apartment owner shall:

a. Maintain and use the parts of the building under individual ownership, as well as the common property, so as not to violate the rules of joint habitation of the owners or to cause them damage.

b. Take care that persons who are employed in his enterprise located in the building, or to whom he transfers for use the tract of land or parts of the building under common ownership, observe the rules under subparagraph (a);

c. Tolerate nuisances affecting the parts of the building under his individual ownership and the common ownership, provided these nuisances conform to the provisions defined in subparagraphs (a) and (b); 36

d. Allow authorized persons to enter into those parts of the building under

individual

ownership and to use those parts, if required for restoring the common property to proper condition and for doing current repairs. The damage thereby arisen shall be compensated;

e. Tolerate those measures that are necessary for the arrangement of communication and supply systems. An owner for whose benefit such measures are taken is bound to compensate the damage thereby arisen.

2. In case of collapse of the building, where the damage is not secured by insurance or by other means, the liability to participate in restoration and reconstruction of the building may not be put on individual owners. In such case the association is dissolved.

#### Article 220. Right to Use Common Property

1. Each apartment owner may use the common property proportionately to his share.

2. Regardless of the location of his apartment in the building, each apartment owner shall be liable before other apartment owners to bear the expenses for the common property proportionately to his share, in particular, the expenses for keeping the building in proper condition, performing current repairs, and administration and joint use of common property.

3. An apartment owner who has not voted for measures that are not in connection with keeping the building in proper condition and current repair shall not be bound to compensate for expenses resulting from such measures. Concurrently, he has no right to demand the benefits resulting from such measures.

4. A share is determined pursuant to Article 212.

#### Article 221. Determination of Shares upon Dissolution of the Association

Upon dissolution of the association, the share of a co-owner is determined proportionately to the value of his apartment at the time of the dissolution of the association. If the value of the share in the common property has changed as a result of measures not supported by the apartment owner, then such change shall not be taken into consideration when assessing the value of his share.

#### Article 222. Imposition of Obligation to Alienate Apartment

1. If an apartment owner has breached his duties before other apartment owners in such a gross

manner that the association with him cannot be continued any longer, then the other apartment

owners may demand from him alienation of his apartment.

2. In particular, the precondition defined in paragraph (1) exists when an apartment owner, in spite

of written notice, grossly breaches the duties under Article 219.

3. A decision with respect to the demand under paragraph (1) of this Article shall require a twothirds' majority of the votes cast by the persons having voting rights.

Article 223. Administration Bodies in Apartment Owners' Association

Common property shall be administered by apartment owners under Articles 224-228 and by the

chairman of the apartment owners' association under Articles 229-231, and in the case of creating

an advisory council, the administration shall be carried out pursuant to Article 232.

Article 224. Administration of Common Property

1. Apartment owners shall jointly administer common property unless otherwise stipulated by this

Code or by agreement of the apartment owners.

2. An apartment owner is entitled to undertake, without the consent of the other apartment owners,

necessary measures to avoid damage that directly endangers the common property. This owner has

the right to claim compensation for the expenses incurred by him [in doing so].

3. Each apartment owner may demand that [management] activities be carried out in accordance

with the agreements and decisions made, or, if they do not exist, in the common interests of the

apartment owners. 37

4. In particular, proper management in the common interest of the apartment owners includes the

following:

a. Approval of the regulations and bylaws of the apartment owners' association;

b. The proper maintenance and repair of common property, if necessary, in order to keep the building suitable for residence;

c. The proper insurance of common property;

d. The collection of funds for proper maintenance of the building;

e. The adoption of economic plans;

f. The implementation of all measures that are required for the arrangement of

communications and supply systems for the benefit of the apartment owners.



## Article 225. Joint Competence of Apartment Owners

Apartment owners jointly resolve such matters as: drawing up economic and financial plans, restoration of the building in full or in part, approval of the bylaws, election and dismissal of the chairman of the association, and determination of the amount of expenses for maintenance of the building.

## Article 226. Meeting of Apartment Owners

1. Apartment owners make decisions at a meeting of the apartment owners.
2. For a decision to be valid, its subject has to have been declared by at the time of invitation to the meeting.
3. A decision may be made without a meeting as well if the apartment owners give their written consent to the decision.

## Article 227. Calling the Meeting of Apartment Owners

1. The chairman of the association shall call the meeting of apartment owners at least once a year.
2. The chairman of the association shall also call the meeting of apartment owners upon the request of more than one-fourth of the apartment owners. If the chairman is absent or evades his duty of calling the meeting, then one of the apartment owners may call the meeting as well.
3. A meeting shall be held within one week from the day of the written notice calling the meeting; in case of urgency the meeting shall be held immediately.
4. The chairman of the association presides over the meeting of apartment owners unless otherwise decided by the meeting.
5. Resolutions of the meeting are recorded in the minutes to be kept by the chairman of the meeting. Each apartment owner is entitled to examine the minutes.

## Article 228. The Meeting's Competence to Make Decisions

1. Each owner shall have one vote in making decisions. If an apartment belongs to a number of owners, they may exercise a voting right only jointly.
2. The meeting is competent to make decisions if attended by more than half of the apartment owners.
3. If under paragraph (2) of this Article the meeting is not competent to make decisions, then the chairman may call a new meeting with the same agenda. This meeting shall be

competent to make decisions regardless of the number of participants, which is to be stated upon the calling of the meeting.

4. Unless otherwise stipulated by this Code or by the regulations of the apartment owners' association, the decisions are made by a simple majority.

#### Article 229. Rights and Duties of the Chairman of the Apartment Owners' Association

1. The chairman of the apartment owners' association is entitled and obligated to:

a. Implement the decisions of the meeting of apartment owners and take care that the regulations are observed; 38

b. Undertake necessary measures for proper maintenance and current repair of the common property;

c. Undertake measures that are required to observe some period of time or to avoid a negative legal effect;

d. Dispose of the common funds.

2. The chairman, on behalf of all apartment owners, is entitled to:

a. Demand, receive and pay amounts to cover expenses incurred, debts and mortgage interest, provided they relate to the common affairs of the apartment owners;

b. Carry out the settlement of accounts and perform obligations and other monetary transactions in connection with the current administration of the common property;

c. Enter into contracts and submit necessary documentation, provided this relates to the interests of the apartment owners;

d. Appear in court or in other bodies, if so authorized by the apartment owners.

3. The chairman is obligated to keep the funds of the apartment owners separately from his property.

4. The chairman, where necessary, acts by mandate conferred upon him by the apartment owners, which specifies the scope of his authority.

#### Article 230. Economic Plan

1. The chairman shall draft an economic plan prior to the beginning of each calendar year.

2. The economic plan shall include:

a. Expected revenues and outlays with respect to administration of the common

property;

b. The obligation to cover expenses proportionately to the shares of the apartment owners.

3. Each apartment owner is entitled to perform measures for the proper maintenance and current repair of the building, either himself or through a third person. In such cases the chairman takes into account this work, assesses it and enters it into the economic plan. The [required] contribution of the apartment owner for covering expenses shall be reduced according to the work performed.

4. The apartment owners are obligated, on demand of the chairman, to make a certain advance payment for securing the approved economic plan. In the event of difficulties regarding the payments, the chairman may use the appropriate bank credits.

5. The making of the decision concerning the economic plan entitles the chairman to procure a loan as well.

6. The chairman shall present a financial report at the end of each calendar year.

7. Apartment owners may claim from the chairman an accounting of the work performed at any time.

#### Article 231. Duty to Repair Dwelling

1. Each apartment owner is liable before the other apartment owners to bear expenses for the maintenance of common property, the current repair of the building and administration, as well as other expenses.

2. The expenses and payments defined in paragraph (1) of this Article shall be paid in an amount corresponding to the share of each apartment owner.

3. Unless otherwise stipulated, the expenses determined for a current year shall be paid in twelve equal installments. If the collection of funds for proper maintenance of the building is not provided for, then the chairman may demand payment of these amounts in advance, prior to making the announcement on the repair of building.

#### Article 232. Advisory Council

1. The apartment owners may create an advisory council by a simple majority of votes. The council consists of two members and a chairman.

2. The advisory council assists the chairman in doing his job. 39
3. The advisory council shall examine the financial and economic plans; the results of implementation of the economic plan; the report, accounts and estimate of expenses prior to their consideration on the meeting of the apartment owners, and shall make the corresponding conclusion.

## CHAPTER FIVE

### LIMITED USE OF PROPERTY BELONGING TO ANOTHER PERSON

#### I. Right to Build [Hereditary Building Right]

##### Article 233. Concept

1. A tract of land may be transferred to the use of another person for a fixed period of time in such a manner as to grant him the hereditary and transferable right to erect on or beneath this tract some construction, as well as the right to alienate, inherit, lend or lease such right (right to build).
2. The right to build may extend to that part of the tract of land that is not necessary for the structure but provides the opportunity to use the construction better.
3. The duration of the right to build is fixed by agreement of the parties, and it may not exceed fifty-nine years.

##### Article 234. Grounds Giving Rise to the Right to Build

1. The rules governing acquisition of immovable things shall apply accordingly to the creation and acquisition of a right to build.
2. A construction erected on the basis of the right to build shall be deemed to be an essential component part of this right.

##### Article 235. Alienation of the Right to Build

If by agreement of the parties the consent of the owner of the tract of land is required for alienation or leasing of the right to build, the owner may refuse to grant such consent only if there are sufficient grounds to do so.

##### Article 236. Payment for the Right to Build

1. The possessor of the right to build may be bound by contract to pay compensation [for the right]. This right of the owner of the tract of land [to receive compensation] shall be inseparable from the right of ownership to the tract of land.
2. The right to build may be unilaterally terminated by the owner only for non-payment of the

compensation for a period of two years.

3. The parties may predetermine the compensation for the right to build for a ten-year period. If economic conditions substantially change, then the parties are bound to agree on the compensation anew.

#### Article 237. Registration of the Right to Build

The right to build is entered in the Public Register only as a first-ranking right among the property rights of non-owners. This order may not be altered.

#### Article 238. Termination of the Right to Build

1. Termination of the right to build shall require consent of the owner.
2. The right to build shall not be terminated by collapse of the construction erected on the tract of land.

#### Article 239. Termination of a Paid-for Right to Build

In Roman and civil law, known as a “superficies.”

i.e., the right to build ranks before the rights of all other lienholders. 40

1. When the right to build has been paid for, then after expiration of the term of the right, the owner of the tract of land shall pay to the holder of the right adequate compensation for the construction erected on the tract of land. Any sum that fails to amount to at least two-thirds of the value of the construction shall not be deemed adequate.
2. The owner of the tract of land may, instead of paying compensation, prolong the right of the holder for the presumed period of additional existence of the construction. If the holder of the right declines the extension, then he thereby loses the right to claim the compensation as well.
3. The holder of the right to build has no right to remove the construction or its component parts after expiration of the term of the right to build.

#### Article 240. Registration of the Claim for Compensation in the Public Register

1. At the termination of the right to build, the right to demand compensation arising from the structure shall take the place of the right to build in the Public Register, replacing it in the same order.
2. If, upon expiration of its term, the right to build is still encumbered with a mortgage, then the mortgagee shall have a lien upon the holder's claim for compensation against

the owner.

Article 241. Succession in Title at the Termination of the Right to Build  
At the termination of the right to build the owner of the tract of land shall become a party to any lease or rental agreement concluded by the holder of the right.

## II. Usufruct

### Article 242. Concept

An immovable thing may be transferred to the use of another person in such a manner as to grant to him the right to use this thing as if he were the owner, and to exclude third persons from its use; unlike the owner, however, he has no right to alienate, mortgage or transfer this thing by inheritance (a usufruct). The leasing or renting out of this thing shall require the consent of the owner. After the usufruct is extinguished, the owner shall [substitute the holder of the usufruct] in the existing relations of lease or rental [made with third parties].

### Article 243. Legal Regulation of Creation of a Usufruct

The same rules that govern the acquisition of immovable things shall apply to the creation of a usufruct.

### Article 244. Kinds of Usufructs

1. A usufruct is either subject to payment or free of the requirement that it be paid for.
2. A usufruct may exist either for a certain period of time or for the life of its beneficiary (usufructuary). The usufruct shall be extinguished by the death of the natural person or liquidation of the legal person in whose favor the usufruct was established.

### Article 245. Usufructuary's Rights and Duties

1. Prior to the commencement of a usufruct the parties may inventory the condition of the things transferable under the usufruct.
2. The usufructuary may not alter the object of use without the consent of the owner.
3. The usufructuary is entitled to those fruits and benefits of the thing as well that are not derived from ordinary economic use of the thing. In such case he is bound to compensate the owner for the damage caused to the thing as a result of such use.

That is, the holder of the right's claim to compensation becomes a lien replacing the right to build in the Public Register. 41

4. The usufructuary is not liable for natural wear and tear to the thing. He

shall cover the current

expenses, make repairs to the thing, as well as take care of the normal economic maintenance of the thing.

5. The usufructuary is bound to insure the thing properly for the duration of the usufruct.

6. If the thing has perished or it has been damaged, or unexpected expenses have arisen for its maintenance, the usufructuary shall immediately notify the owner. He shall tolerate the measures

that the owner undertakes in order to cure the situation. The owner is not obligated to undertake the appropriate measures. If the usufructuary himself undertakes these measures, then at the end of the usufruct he may remove from the thing the objects attached to it by him as a result of such measures, or he may demand from the owner proper compensation for these objects.

7. If the usufructuary, within the limits of normal economic activities, alienates individual objects, then objects acquired by him must take the place of the alienated objects.

#### Article 246. Termination of Usufruct

1. Upon the end of a usufruct the usufructuary is bound to return the thing to the owner.

2. A usufruct is extinguished when both the usufruct and the ownership are in the hands of the same person.

### III. Servitude

#### Article 247. Concept

1. A tract of land or other immovable property may be used (encumbered) for the benefit of the owner of another tract of land or other immovable property in such a manner as to either grant this owner the right to use the encumbered [property] in particular instances, or to prohibit the exercise of certain actions on this [property], or to preclude the exercise of some rights of the owner of the encumbered [property] with respect to the other [property] (servitude).

2. The compensation [for the encumbrance] may be determined in the form of periodic payments.

#### Article 248. Servitude; Requirements

1. Servitude may exist only when it creates a benefit for the entitled person in using his tract of land.

2. The entitled person, in exercising the servitude, shall protect the interests of the owner of the used (encumbered) tract of land.

#### Article 249. Obligation of Maintenance of Construction

If the proper exercise of the servitude involves the usage of a construction situated on the encumbered tract of land, then the entitled person shall be bound to maintain this construction. At the same time, the parties may agree that the obligation of maintenance of the construction be imposed on the owner of the encumbered tract of land, if this is required in the interests of the entitled person.

#### Article 250. Effect of Division of a Tract of Land

If the tract of land of the entitled person is divided, then the servitude remains for the benefit of each portion separately. In such case the exercise of the servitude is allowed only if it does not worsen the situation of the owner of the encumbered tract of land.

#### Article 251. A Part Free of the Servitude as a Result of Division

The concept definition of servitude begins by encompassing servitudes over, and for the benefit of, tracts of land

“and other immovable property” such as a building. Even within article 247, and in subsequent articles the drafter switches to referring only to “tracts of land.” While in articles following 247 we have left the limited reference to

“tracts of land” as it is, we believe the servitude provisions apply to all immovable property, including buildings. 42

If the encumbered tract of land is divided, and the servitude was laid only upon one part of the

whole tract, then the part of the tract of land with respect to which the servitude was not due shall

remain free of the servitude after the division as well.

#### Article 252. Protection of the Rights of the Entitled Person

If the entitled person is obstructed in the exercise of his rights, he has the same right to avoid the obstruction as if he were a possessor in good faith.

#### Article 253. Personal Servitude

1. An immovable thing may be encumbered with a servitude for the benefit of a specific person

according to the provisions of Article 247. Such an encumbrance may be expressed in such a

manner that the entitled person, who may not be the owner, may use a building or a part of the

building for the habitation of himself or together with his family.



2. A personal servitude limited in the manner defined in paragraph (1) of this Article may not be transferred to another person.

## CHAPTER SIX

### TITLE TO PROPERTY AS SECURITY FOR A CLAIM

#### I. Security Interest

##### Article 254. Concept

1. Movable things and intangible property that are transferable to another person may be used as security for a claim in such a manner that the secured creditor is entitled to priority over other creditors in the satisfaction of his claim at the expense of the collateral.

2. A security interest may attach to secure payment of future or contingent claims, if these claims can be determined at the time of the creation of the security interest.

##### Article 255. Procedure for Granting a Security Interest in Movable Things and Securities

1. A security interest in movable things and, where necessary, negotiable securities, as well as other intangible property, shall be granted pursuant to the procedure prescribed for the acquisition of ownership of such property. If, in relation to the property, a claim exists towards a third person, then creation of the security interest shall require that the third person be notified of the pledging of the thing.

2. The debtor and the secured creditor may notarize the security agreement. In this case the security interest is created upon its registration in the Public Register, so that the transfer of the collateral into the possession of the secured party and the making of a declaration to other creditors [i.e., as previous clause] is not obligatory. The document shall indicate the identities of the debtor, any possible third debtor [i.e., guarantor] and the secured party, as well as the extent of the secured claim, the interest on the claim, and the period of time for satisfaction of the claim.

##### Article 256. Substitution

If a claim is pledged as collateral, and the debtor performs the obligation [underlying the claim] prior to the expiration of the security interest, then the performance shall replace the claim [as the object of collateral the security interest will be attached to the

performance given, instead of to the claim that has been satisfied].

The exclusion of an owner may refer to the owner of the building, as in such case the servitude would merge with the greater property right of ownership, and it may refer to ownership of a neighboring immovable property, as in such case the servitude should be attached to the property, not the person.

The terminology used here follows as closely as possible that used in the Uniform Commercial Code, Article 9-105.

The concepts are strongly analogous.

We have translated the second sentence literally, but it would make for more sense if translated as "If a third party has a claim in relation to the property, then the third person must be notified of the creation of the security interest." 43

#### Article 257. Rights of a Pledgee in Good Faith

If the object of a security interest (collateral) is transferred to another person by transfer of a document, and the debtor, at the time of creation of the security interest, possesses this thing (or holds this right) without being entitled to pledge it, then the secured creditor shall be deemed to be an acquirer in good faith, provided he does not know and could not have known [that the debtor did not have the right to pledge the collateral]. This good faith of the secured creditor grants him priority [in the collateral] over a third person.

#### Article 258. Scope of a Security Interest

A security interest secures a claim and other additional claims in connection therewith.

#### Article 259. Rights of Third Persons

1. If the person who gives a security interest in the collateral is not, at the same time, the debtor with respect to the claim [obligation] secured by the security interest, then he may still assert against the secured creditor any counterclaim to which the personal debtor is entitled; in the first place, these shall be counterclaims arising out of offsetting monetary obligations and defenses against the claim.

2. If the claim is secured by the property of the debtor [and] of third persons, then such third persons may demand that the creditors' claims be satisfied out of the debtor's property before their property is used for satisfaction of the claims. The same rule shall apply to the entitled person when

the claim is secured by various pieces of property of the debtor, and this entitled person has a security interest in some of them only.

#### Article 260. Extension of the Security Interest to All Property Values Included in the Collateral

A security interest extends to all property values [i.e., all aspects of value] that are inherent in ownership of the object of the security interest (collateral).

#### Article 261. Pledge By Transfer of Possession

1. If a lien is secured [perfected] by transfer of the collateral into the possession of a pledgee, then the pledgee is obligated to keep it properly. He is entitled to receive [from the collateral] the interest that accrues on the secured claim. He may also claim from the pledgor compensation for

necessary expenses incurred with respect to [maintenance of] the collateral.

2. If the pledgee fails to perform the duty put on him, the pledgor may claim transfer of the collateral to a third person.

3. If there is a danger that the pledged object may perish or its value may substantially decrease, then the pledgor may demand that the object be returned, and may offer to the pledgee another kind of security. The pledgee shall immediately notify the pledgor of the danger of perishing of the pledged object or substantial reduction of its value, and fix a period of time for the pledgor to offer another kind of security. If the pledgor fails to offer another kind of security within this period,

then the pledgee may sell the original collateral. The rules governing realization of collateral shall apply to such sale. The sum received through the sale shall replace the collateral. Until the period of the pledge is expired, this sum shall be kept, with the accrued interest.

#### Article 262. Debtor's Duty in the Case of Registration of the Security Interest

1. If a security interest is registered, the debtor shall be bound to keep and properly maintain the collateral. He is entitled, as before, to derive benefit from the collateral. The second sentence means, in other words, that the holder of a security interest in some of the debtor's property

(creditor 1) may demand that another secured creditor (creditor 2) satisfy his claim first out of property of the debtor not

subject to creditor 1' s security interest. The rule appears to apply without regard to whose security interest attached first. 44

2. If there is a possibility that the debtor may fail to perform his obligation [to maintain the collateral], then the secured creditor may demand that the collateral be transferred to him. In the case of a pledged claim being registered [as collateral], then the secured creditor is entitled to notify the third-party debtor [that the secured creditor has taken direct possession of the claim]. From the moment of the notification, the [third party] debtor is obligated to pay the claim of the [secured creditor] when it becomes due.

#### Article 263. Subsequent Pledging of the Collateral

Subsequent pledging of the collateral by the debtor shall require the prior consent of the [first] secured creditor.

#### Article 264. Making a Transaction with the Collateral

The prior consent of the secured creditor shall be required for making a transaction with the collateral.

#### Article 265. Repeated Pledging of an Object

One and the same object may be pledged repeatedly. The order of priority shall be determined according to the moment of pledging.

#### Article 266. Protection of the Rights of the Secured Creditor

If a secured creditor is obstructed in the exercise of his rights, he may use the same rights against the obstructing party as if he [secured creditor] were the owner [of the collateral].

#### Article 267. Transfer of the Right to Obtain Security to a New Creditor

1. The transfer of a claim to another person shall also transfer the right to obtain security [for the claim] to this person (new creditor).

2. Any third person whose legal status may be aggravated as a result of alienation of the collateral shall be entitled to pay the [underlying] claim and thereby take over the security interest.

3. The collateral may not be transferred to another person without transferring the corresponding claim. If the transfer of the collateral is excluded upon the transfer of the claim, the security interest shall be extinguished as well.

#### Article 268. Security Interest Extinguished

A security interest is extinguished simultaneously with the extinguishment of the claim that it secures.

#### Article 269. Security Interest Extinguished by Waiver of [Right to] the Collateral

1. A security interest is extinguished when the secured creditor declares to the debtor or to the

owner of the collateral that he waives [his right to] the collateral.

2. The lien secured by transfer of possession [pledge] of the collateral shall be extinguished when

possession is returned to the pledgor.

#### Article 270. Security Interest Extinguished by Reason of Transfer of the Collateral into

Ownership of the Secured Creditor

A secured creditor may take possession of the collateral from the debtor if he has reason to believe that the debtor is

not properly maintaining the collateral. The rule applies as well when the collateral is the right of the debtor to receive

payment or performance on a claim against a third party [the third party debtor]. If the secured creditor “takes

possession” of the debtor’s claim against the third party debtor, the secured creditor may notify the third party debtor

thereof, and the third party debtor will be obligated to give performance of the pledged claim directly to the secured

creditor. A security interest is extinguished when the collateral is transferred into the ownership of the

secured creditor. This rule shall not apply when the rights of a third person are encumbered with

the claim for securing of which the lien is attached.

#### Article 271. Obligation of Pledgee [Lienholder] Upon Extinguishment of the Security Interest

When the security interest is extinguished, the pledgee shall be bound to return the object

[collateral] in his possession to the pledgor or to the owner.

#### Article 272. Satisfaction of Secured Creditor

1. The secured creditor shall be satisfied through either the sale or other proper realization of the collateral.

2. The secured creditor is entitled to realize the collateral when the monetary claim becomes due in

full or in part.

#### Article 273. Voidness of Agreement on the Immediate Transfer of the Right of Ownership to

the Secured Creditor

An agreement by which ownership of the collateral is immediately transferred to the secured creditor if his claim is not satisfied or the satisfaction failed to occur on time, shall be void.

#### Article 274. Right of Realization of the Collateral

A secured creditor has the right to realize the collateral only if this is necessary for satisfaction of his claim.

#### Article 275. Right of Realization of Object Given Repeatedly as Security

If one object is given as security several times, only the secured creditor whose security interest has first priority in the object shall have the right to realization of it. If the first-ranking secured creditor waives this right, then the next-ranking secured creditors shall assume the right to realize the object.

#### Article 276. Transfer of Collateral to the Person Having the Right of Realization

1. Collateral shall be transferred to the secured creditor who has the right to realize it.

2. If realization of the claim [collateral] depends upon [the prior] performance of some legal action, then the secured creditor may demand that the debtor perform this action. If the debtor fails to do so within two weeks, then the secured creditor shall be entitled to perform this action, on behalf of the debtor, towards third persons.

Article 277. Obligation to Give Notice of Possible Realization of the Object  
The secured creditor is obligated to notify the debtor in advance of the possible realization of the object, and, in addition, to indicate the amount of the claim by reason of which the sale is to be executed. The realization may not be effected before the lapse of two weeks from the notification.

#### Article 278. Realization of the Collateral at Auction

1. The realization shall be executed through the sale of the collateral at auction.

2. If the collateral has a commodity exchange or market price, then the secured creditor may entrust its sale to a special trading institution.

We have translated the second sentence from Georgian as it is, but the provision is unclear. The German Civil Code version says that ownership of the right of pledge (security interest) and the collateral by the same person extinguishes the security interest unless the claim which is secured by the collateral is encumbered with the rights (claims) of a third

person. German Civil Code § 1256(1).

“Agreement” here means provision of a contract; not the contract as a whole. Only the invalid provision would be voided. 46

Article 279. Realization of the Collateral at a Price Lower than the Value of the Material Not

Allowed

Collateral may not be alienated at a price lower than the value of its material content. At the request of the debtor, prior to the sale, an independent expert shall determine this price.

Article 280. Other Procedures of Realization

The owner and the secured creditor may agree on another procedure for realization of the collateral, different from the procedures defined in this Chapter. If a third person has an interest in the collateral and it would be extinguished as a result of alienation of the collateral, then the alienation shall require the consent of this third person. If the parties fail to reach agreement, then a court shall decide [on disposition of the collateral].

Article 281. Participation of the Secured Creditor and the Owner in an Auction

The secured creditor and the owner [debtor] may jointly participate in the auction. The owner's bid may be rejected unless he pays in cash.

Article 282. Obligation to Pay in Cash at an Auction

The collateral may be sold only on the condition that the buyer pays the price in cash. Otherwise he shall lose the right [of purchase]. If the sale is carried out without such a condition, then the purchase price shall be deemed to have been accepted by the secured creditor.

Article 283. Effects of Lawful Alienation of the Collateral

1. Lawful alienation and transfer of the collateral shall pass the property unencumbered to the ownership of the acquirer.

2. If an object, as collateral, is alienated in such a way that the seller has no security interest in it, or if the realization is not necessary for satisfaction of the claim, then the acquirer in good faith shall acquire ownership of the property without encumbrance all the same.

Article 284. Rule for Realization of a Claim

Realization of a claim is effected through payment by the [third party or primary] debtor in favor of

the creditor.

#### Article 285. Proceeds of Realization

Inasmuch as the proceeds derived from the realization of the collateral are intended to satisfy the secured creditors, the claim shall be deemed to be satisfied by the owner [debtor] in favor of the creditor. Otherwise, the proceeds shall replace the collateral [i.e., the security interest shall attach to the proceeds.]

#### II. Mortgage

##### Article 286. Concept

1. An immovable thing may be used (encumbered) for securing a claim in such a manner as to grant to the creditor the right to receive satisfaction out of this thing and to have priority over other creditors in receiving such satisfaction (mortgage).
2. A mortgage may likewise be used to secure future or contingent claims if these claims can be determined at the time of creation of the mortgage. Similarly, the maximum extent to which the claim is to be satisfied out of the thing may be determined. This amount shall be determined by its entry in the Public Register.
3. A claim secured by a mortgage may be replaced by another claim. Such substitution shall require an agreement between the owner and the creditor (mortgagee), and registration of this agreement in the Public Register. 47

##### Article 287. Blanket Mortgage

If a claim is secured by a mortgage upon a number of immovable things (blanket mortgage), then each of these things shall be used to satisfy the claim in common. The creditor may satisfy the claim by any of these things at his discretion.

##### Article 288. Owner's Mortgage

If the claim secured by the mortgage either has not arisen or is extinguished or is transferred to the owner of the immovable thing, then the mortgage is also transferred to the owner (owner's mortgage).

##### Article 289. Registration of Mortgage

1. A mortgage is created by its registration in the Public Register. The registration is carried out pursuant to an established procedure, by the presentation of the [required] notarized documents by



the owner of the immovable thing and by the mortgagee. The documents shall indicate the identities of the owner of the immovable thing, the mortgagee and any third party debtor, as well as the extent of the secured claim, the interest thereon and the period of time for performance.

2. A mortgage may also be created so that the right of the creditor arising from the mortgage is determined only according to the content of the claim, and the creditor, in such case, may not rely upon the registration to prove the existence of the claim. Such a mortgage is entered in the register as a guaranteed (secured) mortgage. Mortgages of large sums may only be guaranteed mortgages.

#### Article 290. Encumbering an Immovable Thing Repeatedly with Mortgages

1. One and the same immovable thing may be mortgaged several times. The order of priority of

the mortgages shall be determined according to the time of their creation.

2. If the owner of an immovable thing assumes an obligation to another person to terminate the

mortgage once it is, along with the ownership, in the hands of the same person, then this obligation

to terminate may be registered in the Public Register.

#### Article 291. Right of an Owner Who is Not Personally the Debtor with Respect to the Claim

##### Secured by the Mortgage

1. If the owner of an immovable thing is not personally the debtor with respect to the claim

secured by the mortgage, then he may still assert against the mortgagee any counterclaim to which

only the personal debtor is otherwise entitled; specifically, these are any counterclaims [that the debtor has] arising out of offsetting monetary obligations and defenses against the claim.

2. If the time of performance of a claim depends upon the dissolution of a legal relationship, then

the dissolution shall be deemed valid only if it is declared by the owner to the creditor or by the creditor to the owner.

#### Article 292. Right of the Owner upon Satisfaction of the Creditor

1. The owner of an immovable thing [pledged as collateral] is entitled to satisfy the creditor when

the performance of the claim is due, or when the debtor is entitled to perform the corresponding

action.

2. If the owner of the collateral is not personally the debtor, then he shall assume ownership of the claim against the debtor if he satisfies the creditor's claim against the debtor [i.e., - subrogation].

3. Upon satisfaction of the creditor the owner [of the collateral] may demand any documents that are required for making an appropriate entry in the Public Register for termination of the mortgage.

#### Article 293. Extension of Mortgage to the Fruit of an Immovable Thing

1. A mortgage extends to the fruit of an immovable thing as well, unless the fruit is derived through normal economic activities, or until [the fruit] is alienated. Again, this provision applies when the owner of the collateral and the debtor are not the same person. 48

2. By virtue of the mortgage, both the interest accrued on the claim and the court costs shall be covered out of the immovable thing.

#### Article 294. Obligation to Maintain the Mortgaged Thing

1. The owner is bound to preserve the actual value of the mortgaged thing. If due to a worsening of the circumstances [surrounding preservation of the thing] the existence of the mortgage is endangered, then the creditor may fix a period of time to the owner for elimination of the danger.

2. If the [mortgaged] thing is insured, the insurer may pay the proceeds of the insurance to the insured party after a worsening of the circumstances [surrounding preservation of the thing] only when the creditor has been informed of the fact of the damage to the mortgaged thing. The creditor may prevent the payment of the proceeds if he has reason to believe that the proceeds [to the owner/debtor] will not be used for restoration of the thing.

3. If it is found that the owner fails to perform his duty [to preserve the thing], the creditor may demand transfer of the thing into his care. A court shall make the decision with respect to such claim.

4. An agreement by which the owner assumes an obligation before the creditor not to use or otherwise encumber the immovable thing shall be void.

The validity of such transactions with

respect to third persons may not be subject to the consent of the creditor.

#### Article 295. Transfer of the Mortgage and the Claim Underlying it to Another

Person

A mortgage and the claim underlying it may be transferred to another person only simultaneously and both together. Simultaneously with the transfer of the claim the mortgage is also transferred to the new creditor. Transfer of the claim shall be deemed valid only when the notarized document on creation of the mortgage is handed over to the new creditor, and he is registered in the Public Register as the new creditor.

Article 296. Debtor's Obligation Before the New Creditor

If, after the transfer of the claim to a new creditor, the debtor pays the former creditor, this payment shall not excuse him from his obligation before the new creditor, even when he knew nothing about the transfer.

Article 297. Presumption of Accuracy of the Entry in the Public Register Upon Passing of the

Mortgage and the Claim to the New Creditor

The mortgage and the claim are transferred to the new creditor in the same state in which they were in the hands of the former creditor. The entry registered in the Public Register, proceeding from the interests of the [new] creditor, shall be deemed accurate. In this case the debtor may not assert that the claim is non-existent. This rule shall not apply when the new creditor knew of the wrong entry in the Public Register.

Article 298. Rights of a Third Person

1. Any third person whose position would be aggravated as a result of realization of the mortgage shall be entitled to pay the claim himself and thereby take over the mortgage. Upon satisfaction of the creditor he may demand a duly authenticated document [memorializing payment of the claim] and may demand his registration as the [new] mortgagee.

2. If one who is personally the debtor satisfies the creditor, the mortgage is passed to him in such a manner that he may demand compensation from the owner [of the collateral]. Again, agreement here refers to a provision of a contract, so only the provision would be invalidated, not the whole contract.

The rule charges the debtor with responsibility to know, through the public registry, that the claim and mortgage have

been transferred to a new creditor.

Compare § 1164 of the German Civil Code. The personal debtor who satisfies the creditor assumes the mortgage in the collateral put up by the owner and may demand "indemnification" from the owner. These articles regarding a 49

#### Article 299. Renunciation of the Claim or Mortgage by the Creditor

1. If a creditor renounces the claim or the mortgage, the owner shall become the mortgagee. The

renunciation shall take legal effect upon its registration in the Public Register.

2. If the creditor renounces the mortgage but not the claim, then the personal debtor is discharged

all the same provided that he [the personal debtor] could have received the compensation from the mortgage [under art. 298-(2)].

3. If the owner has a right to rescind [the mortgage], which excludes the long-term use of the

mortgage, then he may demand that the creditor renounce the mortgage.

#### Article 300. Claim for Realization of the Thing Encumbered with Mortgage

1. If the debtor delays satisfaction of the claim secured by the mortgage, then the mortgagee shall

be entitled to claim realization of the immovable thing.

2. The realization is effected according to the procedure defined in this Chapter and the norms of

the Civil Procedure Code. The norms of the Civil Procedure Code shall apply as special norms.

#### Article 301. Foreclosure Sale at Auction

1. Foreclosure sale at auction, on the application of the creditor, is executed by a court that shall

designate a specialist (expert) [for conducting the auction].

2. The court decision shall be made public. In addition, the court shall be bound to notify the

entitled persons entered in the Public Register of the prospective auction.

#### Article 302. Other Forms of Realization of Immovable Property

1. A court may, on the joint application of the owner and the creditor, establish a form of realization other than auction. Prior to rendering such a decision the court shall hear the parties.

2. An agreement by which the ownership of the immovable thing is immediately transferred to the creditor if he is not satisfied or the satisfaction failed to occur in time, shall be void.

#### Article 303. Debtor's Rights to a Realized Dwelling-House

1. The debtor shall lose the right to retain the fruit of the thing as of the time of rendering the

decision on the sale of the thing at auction.

2. If the debtor lives alone or with his family in a building or in a part of a building which is encumbered with a mortgage, then he is entitled to stay therein as a tenant [after realization] and is obligated to pay rent at the market rate to the acquirer of the property.

#### Article 304. Avoidance of Holding of an Auction

1. An owner or a third person whose rights may be impaired as a result of an auction shall have the right to avoid the auction by satisfying the claim prior to the holding of the auction.

2. The filing of the owner's petition with a court may suspend the holding of the auction, but not for longer than six months, if the entitled person [owner] deems that the auction may be avoided by such suspension. The same rule applies when the suspension is acceptable either proceeding from the owner's personal and economic relations or according to the nature of the debt. The application shall not be allowed if the suspension will cause disproportionately negative effects to the creditor.

#### Article 305. Participation of the Creditor, the Debtor and the Owner in the Auction

The creditor, the debtor and the owner are entitled to participate themselves in the auction, during which the debtor and the creditor shall present security as deemed appropriate by the expert.

personal debtor who is not the same person as the owner of the collateral generally assume that the owner has some obligation to the debtor which he is performing by pledging his property to secure the debtor's debt.

See German Civil Code, § 1165.

Again, "agreement" here refers to a provision of a contract, not the contract as a whole. 50

#### Article 306. Auction Held a Second Time

If, during the first auction, no bid reaches the amount of seventy percent of the value of the thing as assessed by the expert, then the auction shall be held a second time. The second auction shall be announced in the same form in which the first one was announced. In addition, it must be indicated [in the notice] that the auction is being held a second time. The lowest price offered during the

second auction must at least cover the litigation expenses and the claims of the creditor, otherwise the auction shall be deemed as not held. The expenses of the auction shall be borne by the owner.

#### Article 307. Mortgage Extinguished as a Result of Realization of the Thing

1. The buyer of the thing at the auction is obligated to deliver the amount of the purchase price to the expert who carried out the foreclosure execution; the amount of expenses in connection with the execution shall be deducted therefrom.

2. The buyer shall be the owner of the thing only upon payment of the price.

3. All mortgages and rights with which the thing was encumbered and which were registered later

than the mortgage of the creditor carrying out the foreclosure execution shall be extinguished as a

result of the transfer of ownership. Limited rights to the thing [i.e., mortgages, servitudes]

registered earlier [than the mortgage of the creditor carrying out the foreclosure] shall remain

unaltered.

4. The new owner shall become a participant in rental and lease relations that exist at the moment

of the transfer of ownership.

By the transfer of ownership to the new owner, the former owner is considered to be a lessee, in accordance with market conditions.

#### Article 308. Procedure for Distribution of the Proceeds of Realization of a Thing

1. If the entitled person is registered as the sole mortgagee, or if the proceeds derived from the

auction, less the expenses, cover the claims of all mortgagees, then the expert, after reexamining the

expenses, shall distribute the amount of the purchase price among the creditors; and the remainder

shall be given to the person whose thing was sold.

2. If the amount of the purchase price fails to satisfy all claims secured by the mortgage, then the

expert shall reexamine the expenses, deposit the remaining amount [after payment of expenses] into

a special account, draw up a plan for distribution of the proceeds according to the order of priority

[of mortgages] entered in the Public Register, and submit this plan to the court. The court shall

approve this plan and instruct the experts to carry out the distribution in accordance with it.

#### Article 309. Joint Liability of the State for Improperly Held Auction

If the officially designated expert fails to perform the duties laid on him with respect to the holding of the auction, then the state shall, along with the state expert, be jointly liable before the participants for the damage caused.

#### Article 310. Compulsory Administration of the Thing (Sequestration)

1. On the application of the mortgagee entitled to foreclosure execution, a court, in lieu of compulsory alienation at auction, may establish compulsory administration of the thing

(sequestration). In such case the court shall designate the sequestrator or convey the administrative function to the owner.

2. Prior to rendering a decision, the court shall hear the persons registered in the Public Register whose rights may be impaired by the sequestration.

3. Sequestration may be established only when it is expected that the income derived through the sequestration will exceed the current expenses of it.

4. If the debtor lives alone or with his family in a building or in a part of a building on which the sequestration is established, he shall be obligated to pay rent according to market rates from the commencement of the sequestration.

That is, he replaces the previous owner in relation to any lessees on the property.

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This rule applies if the owner himself was occupying the property. 51

5. The sequestrator shall receive the fruit of the thing and, at the end of a year and after deducting all expenses including the sequestration expenses, he shall distribute the fruit [income] in accordance with the distribution plan drawn up by him and approved by the court.

6. The sequestration shall be extinguished when the creditor is satisfied or when it is evident that the creditor cannot be satisfied through the sequestration.

#### TITLE FOUR

##### PUBLIC REGISTER

#### Article 311. Purpose of the Public Register

1. The Public Register shall be available for inspection by any interested person. The rights of ownership of immovable things and other rights in things shall be entered in the Public Register.

Rights to use, security interests and other rights in movable things may also be registered in the Public Register.

2. A separate law shall govern the procedure for organization of the Register.

#### Article 312. Presumption of Veracity and Completeness of Entries in the Public Register

1. The presumption of veracity and completeness shall operate with respect to the Public Register,

i.e. an entry in the Public Register shall be deemed to be accurate until its inaccuracy is proven.

2. In favor of a person who acquires some right from another person on the grounds of a transaction while this right was entered in the Public Register in the name of the alienator, the entry in the Public Register shall be deemed to be accurate except when a complaint has been lodged

against this entry, or when the acquirer knew of the inaccuracy of the entry.

#### Article 313. Demand for Consent to the Rectification of an Entry

1. If a right is entered in the Public Register in the name of a person who no longer owns such

right, then the person whose rights and legal status have been impaired by the registration may

demand the consent to the rectification of the entry from that person whose right is affected by the rectification.

2. In order to determine the owner, a complaint may be lodged on the grounds of inaccuracy of the entry in the Register. Upon lodging of the complaint the inaccuracy of the entry shall be presumed.

#### Article 314. Rights Registered in the Register; Order of Priority

1. The order of priority of rights registered in the Register shall be determined according to the time of registration. The date of filing of the application for registration shall be deemed to be the date of registration.

2. The order of priority may afterwards be altered. This shall require an agreement on rectification among those persons who substitute each other and the registration of the alteration in the Register.

3. Upon the registration of a right the owner may set a condition that some right be registered prior to the other right. This condition shall also be registered.

#### Article 315. Preliminary Entry in the Public Register

1. A preliminary entry may be made in the Register in order to secure a claim



for registration of a right in a thing that is subject to registration. Such a preliminary entry is allowed to secure a future or contingent claim.

2. A registration made after recording of the preliminary entry shall in no way affect the person secured by the registration of the preliminary entry, unless this subsequent registration impairs or extinguishes his claim.

3. The registration of the preliminary entry is made in order to establish the possessor [of a claim to be registered], on the basis of the permission of the person who owns the thing subject to registration and to which this entry relates. 52

4. If a person to whose thing the preliminary entry relates has the right to [contest the claim], and this contest excludes exercise of the claim secured by the preliminary entry for a long period of time, then this person may demand from the creditor cancellation of the preliminary entry.

5. If the acquisition of some right is void for the person in whose favor the preliminary entry was made, then he may demand from the [person who does acquire] the right consent to such registration as will be required for effecting the claim secured by the preliminary entry. 53

## BOOK THREE

### LAW OF OBLIGATIONS

#### GENERAL PART

#### GENERAL PROVISIONS ON OBLIGATIONS

##### Article 316. Concept

1. By virtue of an obligation the obligee is entitled to claim performance of a certain action from the obligor. Refraining from action may constitute performance as well.

2. With regard to its content and nature, an obligation may bind each party to act in accordance with extraordinary diligence as to the rights and property of the other party.

##### Article 317. Grounds Giving Rise to an Obligation

1. An obligation shall arise from the contract between the parties, except when the obligation arises from tort (delict), unjust enrichment or other grounds prescribed by law.

2. An obligation with regard to the duties under Article 316 may also arise from the grounds of

drawing up of the contract.

3. A party in a negotiation may require from the other party reimbursement for expenses he has incurred for concluding a contract that, nevertheless, has not been concluded by reason of the other party's culpable action.

#### Article 318. Obligation to Disclose Information

The right to receive some information may arise from an obligation. Disclosure of the information shall be ensured within the time that it retains significance for determining the content of the obligation and the contracting party can disclose this information without impairing his rights. The recipient of the information shall reimburse the obligor for the expenses of the disclosure.

### TITLE ONE

### CONTRACT LAW

#### PART ONE

#### CHAPTER ONE

#### GENERAL PROVISIONS

#### Article 319. Freedom of Contract. Obligation to Enter into a Contract

1. Subjects of private law are free to enter into contracts and determine their content within the scope of the law. They may also conclude contracts that are not prescribed by law, but do not contravene it. If, for the protection of the essential interests of society or a person, the validity of the contract depends upon the permission of the state, then a separate law shall govern this issue.

2. If one of the parties to a contract dominates the market, then it shall be bound by the obligation to enter into a contract in this field of activity. This party may not unjustifiably offer unequal (unfair) contractual terms to the contracting party.

3. Persons who acquire or use property and services either for non-commercial purposes or for meeting their vital needs may not be unjustifiably denied from entering into a contract, provided that the other party to the contract is acting within the scope of its business.

#### Article 320. Voidness of a Contract for Future Property

A contract by which one party undertakes the obligation to either transfer all of its future property or a part thereof to another person or encumber it with a usufruct shall be

void, except where the contract has been concluded for particular items of future property. 54

Article 321. Contract for Transfer of [Existing] Property  
A contract by which one party undertakes the obligation to either transfer all of its present property or a part thereof to another person or encumber it with a usufruct shall be subject to notarization, except for a contract that has been concluded for particular things of the present property.

Article 322. Voidness of a Contract for Estate

1. A contract concluded by other persons with respect to the estate of a person during his lifetime is void. The same rule applies to a contract concluded during a person's lifetime for either a forced portion [legitime] of his estate and/or for a testamentary obligation [ "legacy" ].

2. The rule of paragraph (1) of this Article shall not apply to a contract entered into among the expectant heirs at law for the hereditary or forced portion of one of them.

Article 323. Rule for Alienation of an Immovable Thing

A contract by which one party undertakes the obligation to transfer ownership of an immovable thing to another person or to acquire it shall be subject to notarization.

Article 324. Scope of a Contract for Encumbrance of a Thing

If a person undertakes the obligation to alienate or encumber his own property, then this obligation shall also extend to an appurtenance thereof, unless otherwise stipulated in the contract.

Article 325. Definition of the Terms of an Obligation on a Fair Basis

1. If the terms for performance of an obligation are to be defined by one of the parties to the contract or by a third person, then it shall be presumed when in doubt that such a definition shall be constructed on a fair basis.

2. If a party considers the terms to be unfair, or that their definition is being delayed, a court shall make a decision on the issue.

Article 326. Application of the Rules on Contractual Obligations to Non-Contractual Obligations

The rules on contractual obligations shall likewise apply to non-contractual obligations unless otherwise following from the nature of an obligation.

CHAPTER TWO

ENTERING INTO A CONTRACT

## Article 327. Agreement on the Essential Terms of a Contract

1. A contract is considered entered into if the parties have agreed on all of its essential terms in the form stipulated for such an agreement.
2. Essential terms of the contract shall be those on which an agreement must be reached at the request of one of the parties, or those considered by law to be essential.
3. A contract may give rise to the obligation to conclude a future contract. The form stipulated for the [main] contract applies to the preliminary contract as well.

## Article 328. Form of a Contract

1. If a specific form has been prescribed by law for the validity of a contract, or if the parties have determined such a form for the contract, then the contract shall have binding force only if it meets the requirements of this form.
2. If the parties have agreed on a written form, the contract may be concluded by drawing up of one document signed by the parties. A telegraph notice, telecopy or exchange of letters are likewise sufficient for observance of the form.

See Book Six, Law of Inheritance, § § 1371-1397.

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See generally Title II of this Book, "Statutory Obligations." 55

## Article 329. The Making of an Offer

1. A proposal for concluding a contract (offer) constitutes an offer if in this proposal, addressed to one or more persons, the proposal-maker (offeror) signifies his intention to be bound by the proposal in the case of consent (acceptance).
2. A proposal addressed to an unspecified circle of persons is an invitation to make an offer unless otherwise conspicuously signified in the proposal.

## Article 330. Making Offer to Present and Absent Persons

1. A reply to an offer made to a present person shall be deemed to have been received immediately.
2. An offer made to an absent person must be accepted within a reasonable period of time in which the offeror may expect the reply.

## Article 331. Acceptance

If the offeror has fixed a period of time for acceptance, then the offer must be accepted within this time.

## Article 332. Late Acceptance

If the offeror receives a late acceptance, yet the notice of acceptance shows that it was sent out in due time, then the acceptance is deemed to be late only if the offeror so informs the offeree immediately.

#### Article 333. New Offer

1. A late acceptance shall be deemed to be a new offer.
2. When a reply indicates consent to conclude the contract but contains terms other than those specified in the offer, then such a reply is deemed to be a rejection of the offer and to constitute a new offer.

#### Article 334. Presumption of Consent of an Offeror

If in business relations the acceptance has been given with modifications, the contract shall be considered concluded provided that the offeree was entitled to presume consent [to the modifications] from the offeror and the latter did not object immediately [to the modifications].

#### Article 335. Silence as a Form of Acceptance

1. If a businessperson who performs business operations for other persons receives an offer for performance of such a business operation from a person with whom he has had a business relationship, he is bound to reply to this offer within a reasonable period of time; [otherwise] silence of the businessperson shall amount to acceptance. The same rule applies when the businessperson receives such an offer from a person from whom he has been requesting an order to perform such a business operation.
2. Even if the businessperson rejects the offer but the goods have already been shipped, then he, in order to avoid harm [to the offeror], is bound to temporarily preserve the goods at the expense of the offeror in a manner to avoid their deterioration.

#### Article 336. Contract Concluded in the Street

A contract concluded in the street, in front of a house or in like place between a consumer and a person conducting sales within his trade, is valid only if the consumer has not rejected the contract in writing within a week, unless the contract is performed [immediately] upon its conclusion.

#### Article 337. Interpretation of Particular Expressions in a Contract

If particular expressions in a contract may be interpreted differently, then

preference shall be given to the version that is commonly used at the place of residence of the parties to the contract. If the parties reside in different places, then the interpretation according to the offeree's place of residence shall prevail.

Article 338. Mutually Exclusive and Ambiguous Expressions in a Contract  
In case of mutually exclusive and ambiguous expressions in a contract, preference shall be given to the expression that most closely accords with the overall content of the contract.

Article 339. Traditions and Usages of Trade  
When determining the rights and duties of the parties to a contract, regard is to be given to the traditions and usages of trade.

Article 340. Interpretation of Mixed [Complex] Contracts  
When interpreting a mixed contract, regard is to be given to the legal regulations that apply to those contracts that most closely accord with and correspond to the essence of the performance [of the mixed contract]

Article 341. Acknowledgment of the Existence of a Debt

1. A contract which acknowledges the existence of a debt must be in writing. If another form is stipulated for creation of the obligational relation [i.e. the debt] that is being acknowledged, then the acknowledgement shall also require this form.

2. If the existence of a debt is acknowledged on the grounds of a mutual settlement (payment) or a settlement through negotiation, then observance of the form is not required.

### CHAPTER THREE

#### STANDARD CONTRACT TERMS

Article 342. Concept

1. Standard contract terms are provisions prepared in advance for repeated use that one party (the offeror) proposes to the other party, and which stipulate rules that deviate from, or supplement, norms prescribed by law.

2. If the parties have determined the contract terms in detail, such terms shall not be deemed to be standard contract terms.

3. The terms agreed upon by the parties individually shall prevail over standard contract terms.

Article 343. When Standard Contract Terms Become an Integral Part of a

## Contract

1. Standard contract terms become an integral part of a contract only when:

- a. the offeror, at the [time and] place of conclusion of the contract, has made an explicit notation referring to these terms and
- b. the other party to the contract was able to observe the content of these terms and, if he agrees to them, to accept them.

2. If the other party to the contract is a businessperson, then standard contract terms become an integral part of the contract if this was to be expected by him when acting with the due diligence required in business relations.

### Article 344. Uncommon Provisions in Standard Contract Terms

Provisions contained in standard contract terms that are of such an uncommon character that the other party could not have expected them shall not become an integral part of the contract.

### Article 345. Interpretation of Unclear Provisions In Favor of Other Party

The clause seems to be saying that where a single contract deals with multiple issues, such as lease of one thing and sale of another, or perhaps lease and sale of the same thing, then interpretation of the contract should follow the rules of the Civil Code regarding such type of contracts individually, i.e. for contracts of sale and contracts of lease. 57

If the text of standard contract terms is unclear, then an interpretation in favor of the other party [offeree] is preferred.

### Article 346. Voidness of Terms Contravening Principles of Trust and Good Faith

A term among standard contract terms is void, notwithstanding its inclusion in the contract, if it disadvantages the other party to the contract and is irreconcilable with the principles of trust and good faith. In addition, regard is to be given to the circumstances in which this term has been included in the contract, to the mutual interest of the parties, etc.

### Article 347. Voidness of Standard Contract Terms

When the offeror uses standard contract terms towards natural persons who are not conducting entrepreneurial activities, then the following provisions thereof shall be void:

- a. A provision by which the offeror fixes unreasonably long or obviously insufficient periods of time for accepting or refusing to accept an offer, or for performance of

certain actions

(periods of time for acceptance and performance);

b. A provision by which the offeror, contrary to provisions prescribed by law, reserves for

himself unreasonably long or insufficiently determined periods of time for performance of

his obligations (periods of time before which breach is deemed to occur);

c. A provision which gives the offeror the right to repudiate his obligation without a reason

which is justified and named in the contract (reservation for repudiation of the contract);

d. A provision which gives the offeror the right to modify, or to deviate from, the promised

performance, if agreement on such a thing is unacceptable to the other party to the contract

(reservation for amending the contract);

e. A provision which gives the offeror the right to demand from the other party to the contract

an unreasonably high reimbursement for expenses incurred (unreasonably high compensation for incurred expenses).

#### Article 348. Other Grounds for Voidness of Standard Contract Terms

When an offeror uses standard contract terms towards natural persons who are not conducting

entrepreneurial activities, the following provisions of such terms shall likewise be deemed void:

a. A provision which stipulates a price increase in an unreasonably short period of time (shortterm price increase);

b. A provision which excludes or restricts:

the right to refuse performance, which [otherwise] accrues to the [offeree, or party to a

contract] under this law,

or,

the right of the [offeree] to suspend performance until the other party performs his

binding obligation (right to refuse performance);

c. A provision by which the [offeree] is deprived of his right to set off with a claim that is

undisputed or has been recognized by a court of law (prohibition of setoff of counterclaims);

d. A provision by which the offeror is freed from his statutory obligation to warn the other

party or to fix a period of time for performance of the obligation [for cure of default]

(warning on performance of an obligation, fixing a period [for cure])



;

e. Agreement on the amount [that the offeror may] claim for damages when the stipulated

amount exceeds the [actual] damage (exceeding claim for damages);

f. A provision which excludes or limits the liability for damage caused by a grossly negligent

breach of obligation by the offeror or by his agent (liability for negligence);

g. A provision by which, in case of breach of the main obligation by the offeror:

the other party to the contract is deprived of, or restricted in his right to repudiate the contract,

In context, the provision makes most sense if we understand it to mean that the offeror cannot free himself of the duty

to warn the offeree that the offeree is in default and to give him additional time to perform to cure the default. 58

or,

the other party to the contract is deprived of or, contrary to sub-paragraph (f) of this

article, restricted in his right to demand damages for non-performance of the contract

(breach of the principal obligation);

h. A provision which, in case of partial performance of the obligation by the offeror, excludes

the right of the other contractual party to claim damages for non-performance of the entire

contract, or to repudiate the contract if partial performance of the contract is of no interest to

this party (losing of interest in the event of partial performance of the obligation);

i. Any provisions that, contrary to rules prescribed by law, limit the liability of the offeror for

defects of "things" while supplying newly produced goods and performing works.

#### CHAPTER FOUR

#### CONTRACT FOR THE BENEFIT OF A THIRD PERSON

##### Article 349. Concept

Both the creditor and a third person may demand performance of a contract which has been

concluded for the benefit of the third person, unless otherwise prescribed by law or stipulated in the

contract, or unless otherwise following from the essence of the obligation.

##### Article 350. Interpretation of a Contract Concluded for the Benefit of a Third Person

1. In the absence of a special stipulation, the circumstances of the matter, namely, the purpose of the contract, shall determine:
  - a. whether the third person is to acquire the right [to demand performance] or not;
  - b. whether this right is effective at once [unconditionally] or is subject to certain preconditions;
  - c. whether the parties to the contract are entitled to revoke or modify the right accrued to the third person without his consent.
2. The party that has made a stipulation in the contract for the benefit of a third person shall retain the right to substitute the third person named in the contract regardless of the [other] contracting party' s consent.

#### Article 351. Third Person' s Renunciation of the Right Acquired Under Contract

If a third person renounces the right acquired under a contract, then [his] creditor may demand performance of the obligation himself, unless otherwise following from the contract or from the essence of the obligation.

#### CHAPTER FIVE

#### AVOIDANCE OF A CONTRACT

#### Article 352. Effects of Avoidance of a Contract

1. If one of the parties to the contract, in the circumstances under Article 405, repudiates the contract, the performances and benefits [already] derived shall be returned to the parties (restitution in kind).
2. Instead of restitution in kind, the obligor shall be obligated to pay monetary compensation if:
  - a. Given the nature of the acquired [performance, benefit] it cannot be returned;
  - b. The party has used, alienated, encumbered, transformed or altered the received object;
  - c. The received thing has deteriorated or perished; wear and tear resulting from its proper use shall not be taken into account [i.e., shall not exclude return of the thing].
3. If a return performance has been stipulated in the contract, then monetary compensation may not be substituted for such performance.

Inclusion of the word "things" indicates that the offeror may not waive liability for defects in goods supplied or in

materials used in performing works, but leaves open the possibility that he may waive liability for defects in

workmanship in performing works. Cf. § 148. 59

4. The obligation of monetary compensation shall not arise if:

a. The defect of the thing, which gives rise to the right to repudiate the contract, was

ascertained upon its transformation or alteration;

b. The thing deteriorated or perished through the creditor's [obligee's] fault;

c. The thing deteriorated or perished while in the custody of an authorized person, [and] he

treated it with the same care as his own thing; [but] whatever remains shall be returned.

5. Pursuant to Article 394, the creditor [obligee] may claim damages for breach of the [obligor's]

obligation [to perform] under paragraph (1) of this article.

Article 353. Liability of the Obligor [When] Not Deriving Benefit Because of Breach of the

Rules for Proper Use of the Thing

1. If the obligor has not derived the benefit [of the thing] owing to breach of the rules for proper

use of the thing, when he should have been able to derive the benefit, he shall be bound to

compensate the creditor [obligee] for the damage caused by not deriving the benefit.

2. If the obligor returns the thing, pays reimbursement in money or, under sub-paragraphs (a) and

(b) of paragraph (4) of Article 352, no claim for damages arises, then he shall be reimbursed for

unavoidable expenses. Other expenses shall be reimbursed only if the creditor has benefited from

them.

Article 354. Performance of Obligations Arising from Avoidance of a Contract

The parties shall be bound to simultaneously perform obligations arising from the avoidance of a

contract.

Article 355. Obligation of Notice of Avoidance of a Contract

Avoidance of a contract is exercised by notice to the other party.

Article 356. Time Limits for Avoidance of a Contract

If no time limit is fixed for avoidance of a contract, then the other party to the contract may fix such

a period of time for the person entitled to avoid the contract. The period of time shall be reasonable.

The right to avoid the contract is extinguished unless notice of avoidance is

given before the period  
of time lapses.

#### Article 357. Avoidance of a Contract by a Number of Persons

If a number of persons participate in one or another of the contractual parties, then the right to avoid the contract shall be exercised jointly by all participants of the party who avoids the contract, by giving the notice of avoidance to all participants of the other party. If the right to avoid the contract is extinguished for one of the persons [belonging to a party] entitled [to avoid the contract], then this right shall be extinguished for all of the persons [in that party.]

#### Article 358. Avoidance of a Contract Not Allowed

Avoidance of a contract shall not be allowed on the grounds of non-performance of an obligation if the obligor could have performed the obligation through a setoff, and after avoidance he immediately declares a setoff against the obligation.

#### Article 359. Avoidance of a Contract by the Creditor

If a contract has been concluded with the stipulation that the obligor, under the contract, shall forfeit his rights in case of non-performance of his obligations, then the creditor [obligee] shall be entitled to avoid the contract in the event that such non-performance occurs.

#### Article 360. Mistake in the Basis of a Settlement

1. A contract by which a dispute or uncertainty between the parties is settled through mutual compromises (settlement) is void if, proceeding from the content of the contract, this settlement relies on grounds not relevant to the true state of affairs, and the dispute or uncertainty would not have occurred had the parties known the true state of affairs.

2. Uncertainty may exist when performance of some requirement is in doubt.

### TITLE TWO

## PERFORMANCE OF OBLIGATIONS

### CHAPTER ONE

#### GENERAL PROVISIONS

#### Article 361. Presumption of Existence of Obligation

1. Each performance implies the existence of an [underlying] obligation.
2. The obligation must be performed duly, in good faith, and at the time and place determined.

#### Article 362. Place of Performance of Obligation

If the place of performance is neither fixed nor determinable from the essence of the obligational relation, then delivery of the object must be effected as follows:

- a. In the case of an individually [specifically] defined object at the place where it was located at the moment the obligation originated;
- b. In the case of an object defined by generic characteristics at the obligor's place of business; and if no such place exists, then at his place of residence (legal address).

#### Article 363. Change in Domicile of Obligor or Creditor [Obligee]

1. If prior to the performance of an obligation the place of residence or the domicile of the enterprise of the obligor changes and the obligee thereby incurs additional expense, then the obligor shall compensate the creditor for such expenses.
2. If prior to the performance of the obligation the place of residence or legal address of the obligee changes and thereby the expenses increase or the [obligor's] performance is endangered, then both the compensation for increased expenses and the risk of [non-performance] with respect to delivery of the object shall be put on the obligee.

#### Article 364. Earlier Performance

The obligor is entitled to perform the obligation earlier than the time period fixed, unless the creditor rejects the [early] performance on legitimate grounds.

#### Article 365. Performance of the Obligation When No Period of Time for the Performance is Fixed

If a period of time for performance of the obligation is neither fixed nor determinable from other circumstances, the creditor may claim its performance at any time, and the obligor may perform it immediately.

#### Article 366. Demand for Earlier Performance Not Allowed

If a period of time [for performance] is fixed, then it shall be presumed when in doubt that the obligee may not demand performance before [the expiration of] this period of time, and the obligor may perform the obligation earlier than this period of time.

#### Article 367. Right to Demand Performance of the Obligation Immediately

If for the performance of an obligation some period of time is fixed in favor of the obligor, then the obligee may claim performance immediately if the obligor has become insolvent, has reduced the promised security, or has failed to submit it at all.

## Article 368. Performance of Obligation in the Case of a Conditional Transaction

The Georgian word for good faith may also be translated as

“conscientiously.” Here, both meanings are appropriate. 61

If the validity of a transaction depends upon the occurrence of some condition, then the obligation

shall be due from the day of occurrence of this condition.

## Article 369. Refusal to Perform the Obligation

The person who is obligated [to perform] under a bilateral contract may refuse to perform the

obligation until the counter-performance is rendered, except when he has been obligated to perform

his obligation [before such counter-performance is rendered].

## Article 370. Consumer Credit

1. In cases of consumer credit the beneficiary of the credit [i.e. the buyer] may refuse to repay the

credit if the buyer has a counterclaim against the seller proceeding from the purchase contract that

would entitle him to repudiate the performance of his obligation [i.e. the obligation to pay for the

goods].

2. The contract of sale together with the contract of credit shall constitute an interrelated

transaction if the credit serves to finance the purchase price and both contracts are regarded as an

economic whole. An economic whole shall be deemed to exist when the seller has participated with

the issuer of the credit in the preparation or conclusion of the contract of credit.

## Article 371. Performance of the Obligation by a Third Person

1. Unless it follows from the law, the contract or the nature of the obligation that the obligor must

perform the obligation personally, a third person may perform the obligation as well.

2. The obligee may reject the performance offered by a third person if the obligor is against it.

## Article 372. Satisfaction of the Creditor by the Third Person [Subrogation]

If the creditor forcibly executes against a thing belonging to the obligor, then any person at risk of

losing his right in the thing by the forced execution shall be entitled to satisfy the creditor. When the

third person satisfies the creditor, the right to demand [against the debtor-obligor] shall be passed to

this person.

## Article 373. Acceptance of Performance by an Unauthorized Person

1. The obligor is bound to give performance of the obligation to the creditor or to the person who is authorized by law or by a court judgment to accept the performance.
2. If an unauthorized person has accepted performance of the obligation, then the obligation shall be deemed to have been performed if the creditor [obligee] gave his consent thereto or received profit [benefit] from the performance.

55

#### Article 374. Alternative Obligations

If one obligation is to be performed from among several obligations (alternative obligations), then the obligor shall have the right to choose from among them, unless otherwise following from the contract, the law or the essence of the obligation.

#### Article 375. Choosing Obligations to be Performed

If it occurs that the obligor may repudiate one obligation out of the two due obligations, then the obligation to perform the other action shall remain effective.

#### Article 376. The Rule for Choosing Alternative Obligations

Under Article 374, the choosing from among alternative obligations is effected by making a declaration to the other party to the contract or by effecting the performance. The chosen obligation shall be deemed to be the obligation due from the beginning. Logically, the clause must refer to post-facto consent, because if the creditor gave prior consent then the recipient of the performance would not have been “unauthorized at the time of the transaction.” 62

#### Article 377. Choosing More Than Two Obligations to be Performed

The rules of Articles 374–376 shall likewise apply when [the obligor may choose from among more than two alternative performances in satisfying the obligation].

#### Article 378. Performance of an Obligation in Installments

The obligor has the right to perform the obligation in installments (performance of obligation in installments) if the creditor so agrees.

#### Article 379. Right of the Creditor to Accept Other Performance

The creditor shall not be obligated to accept a performance other than the one determined in the contract. This rule shall likewise apply when the performance is highly valuable.

#### Article 380. Quality of Performance of an Obligation

If the quality of performance is not specified in detail in the contract, then the obligor shall be bound to perform the work of at least average quality and to hand over the thing of average quality.

#### Article 381. Performance of Obligation In the Case of an Individually Defined Object

If an individually defined thing constitutes the subject of the contract, then the obligee shall not be obligated to accept another thing, even if the latter is of higher value.

#### Article 382. Performance of Obligation in the Case of a Generic Thing

If the subject of the performance is a thing that may be substituted (generic thing), then the obligor must always perform the obligation.

### CHAPTER TWO

#### PERFORMANCE OF MONETARY OBLIGATIONS

##### Article 383. Concept

Monetary obligations are expressed in the national currency. Parties may establish a monetary obligation in foreign currency unless it is prohibited by law.

##### Article 384. Procedure for Fixing an Annual Rate of Interest

If by law or by contract the obligation is an interest-bearing one, then the maximum amount of the annual rate of interest shall be fixed by special normative act.

##### Article 385. Procedure for Demanding Return of Payment Made Without Obligation

Whatever has been paid without an obligation [requiring the payment] may be claimed back under the rules regulating unjust enrichment.

##### Article 386. Place of Performance of Monetary Obligation

1. When the place of performance is in doubt, a monetary obligation must be performed at the

creditor's domicile (place of residence or legal address).

2. If the creditor has a banking account intended for [receiving] transfers of funds in that place or

in that country where the payment is to be effected, then the debtor may perform his monetary obligation by transfer to this account, except when the creditor is against this.

##### Article 387. Order of Payment of Monetary Obligation

1. If the debtor is liable before the creditor for several like performances arising out of various

obligations, and what has been performed is not enough to pay all the debts, then the obligation

chosen by the debtor for satisfaction at the time of performance shall be paid off; and if the debtor



does not choose, then that debt shall be paid off which was the first to fall due. 63

2. If the dates on which claims mature occur simultaneously, then the claim which is the most burdensome for the debtor shall be performed first.

3. If the claims are equally burdensome, then the claim for which the least security exists shall be performed first.

#### Article 388. Priority of Covering Court Costs

Payment by the debtor that is not sufficient to pay off all the debt due shall discharge first any court costs, then the principal (debt), and finally the interest.

#### Article 389. Payment of Monetary Obligations in Case of a Change in the Exchange Rate of the Currency

If, prior to the date of maturity of the payment, the currency (rate of exchange) appreciates or depreciates, or if the currency has been changed, the debtor shall be bound to make payment

according to the rate of exchange that existed at the time of the creation of the obligation. In the case of a change in the currency, the exchange relations shall be based on the rate of exchange that existed between these currencies on the day of the change in currency.

### CHAPTER THREE

#### CREDITOR [OBLIGEE] IN DEFAULT

##### Article 390. Concept

1. The creditor [obligee] shall be deemed to be in default if he fails to accept the performance offered to him when it is due.

2. When some action of the obligee is required for the performance of the [debtor' s] obligation, he shall be deemed to be in default if he fails to perform this action.

##### Article 391. Obligation of the Obligee to Compensate Damage

The obligee must compensate the damage sustained by the obligor because of the obligee' s fault in not accepting performed obligation when it was due.

##### Article 392. Liability of the Obligor when the Obligee is in Default

When the obligee is in default, the obligor shall be liable for non-performance of the obligation only

if the performance turned out to be impossible because of the intentional [misconduct] or gross negligence of the obligor.

##### Article 393. Obligee in Default; Effects

If an obligee is in default, then, regardless of his fault:

- a. He shall be obligated to compensate the obligor against additional expenses incurred for the storage of the object of the contract;
- b. He shall bear the risk of accidental deterioration or perishing of the thing;
- c. He shall no longer be entitled to receive interest on a monetary obligation.

## TITLE THREE

### BREACH OF OBLIGATION

#### CHAPTER ONE

##### GENERAL PROVISIONS

#### Article 394. Claim for Damages In Case of Breach of an Obligation

1. In case of breach of an obligation by the obligor, the obligee may claim damages arising from the breach. This rule shall not apply when the obligor is not responsible for breach of the obligation.
2. In case the obligor exceeds the time for his performance, the obligee may fix [an additional] period of time for the obligor to perform the obligation. If the obligor fails to perform the obligation within this time period as well, then the obligee shall be entitled to demand damages instead of performance of the obligation.
3. Fixing an additional period of time is not required when it is evident that such a period will not yield any result, or when extraordinary circumstances exist which, taking into account the interests of both parties, justify the immediate application of the claim for damages.

#### Article 395. Preliminary Agreement on Release from Liability for Damages Not Allowed

1. An obligor shall be liable only for damage inflicted by intentional or negligent action, unless otherwise foreseen and otherwise following from the essence of the obligation.
2. A preliminary agreement of the parties on releasing the obligor from liability for damages in case of intentional breach of an obligation shall not be allowed.

#### Article 396. Liability of the Obligor for the Action of His Representative

The obligor shall be liable for the actions of his legal representative and of those persons whom he employs for performance of his obligations to the same extent as for his own culpable action.

#### Article 397. Liability of an Obligor Upon Receiving the Object of Performance From Another

Person

The obligor shall be liable for his performance even when he was to receive the object of his performance from another person and could not receive it, unless otherwise provided for in the contract or by other circumstances.

#### Article 398. Adaptation of a Contract to Changed Circumstances

1. If the circumstances that constituted the grounds for execution of the contract have evidently changed after execution of the contract, and the parties, had they taken these changes into account, would not have executed the contract or would have executed it with different contents, then it may be demanded to adapt the contract to the changed circumstances. Otherwise, taking into account individual circumstances, a party to the contract may not be required to strictly observe the unchanged contract.

2. It is the same as a change in circumstances when the understandings, which constituted the grounds for execution of the contract, have turned out to be wrong.

3. In the first instance, the parties should try to adapt the contract to the changed circumstances. If such adaptation is impossible, or if the other party does not agree on it, then the party whose interest has been harmed may repudiate the contract.

#### Article 399. Repudiation of a Long-term Relationship of Obligation

1. Any party to the contract may, on legitimate grounds, repudiate a long-term relationship of obligation without observing the time period fixed for termination of the contract. The grounds are legitimate when, taking into account the specific situation, including force majeure and the mutual interests of the parties, the party [seeking to terminate] the contract cannot be required [expected] to continue the contractual relationship until lapse of the agreed period of time, or until expiration of the period of time fixed for termination of the contract.

2. If the grounds also constitute a breach of the contractual obligations, then repudiation of the contract is allowed only after expiration of the period of time fixed for elimination of the deficiencies or after an unsuccessful warning [to cure the breach]. Paragraph (2) of Article 405

shall apply accordingly.

3. The entitled person may repudiate the contract within a reasonable period of time after the grounds for termination of the contract have become known to him.

4. If, as a result of termination of the contract, the already given performance is no longer of any interest to the entitled person, then the termination of the contract may be extended to this already given performance as well. In order to secure the return of the already given performance, articles 352-354 shall apply accordingly. 65

5. Article 407 shall apply accordingly to the claim for damages [arising out of this article].

## CHAPTER TWO

### OBLIGOR EXCEEDING THE TIME PERIOD FOR PERFORMANCE

#### Article 400. Concept

The obligor shall be deemed to have exceeded the time period for performance of the obligation, if:

a. He has not performed the obligation within the time period fixed for his performance;

b. Even after warning by the obligee, following the date of maturity of the promised

performance, he fails to perform the obligation.

#### Article 401. Impossibility of Performing of Obligation

Exceeding of the time period for performance shall not be deemed to have occurred if the obligation

was not performed due to circumstances that were not caused through the obligor' s fault.

#### Article 402. Obligor' s Liability

In cases where the obligor has exceeded the time for performance, he is liable for any negligence.

He shall be liable even for an accident, unless he proves that the damage would have occurred even

in the event of the timely performance of the obligation.

#### Article 403. Payment of Interest on Interest Not Allowed

1. An obligor who has exceeded the time for payment of a sum of money shall be obligated to pay

for the period of delay a rate of interest prescribed by law, provided that the obligee, proceeding from other grounds, may not claim more.

2. Payment of interest on interest shall not be allowed.

#### Article 404. Obligee' s Right to Claim Damages

The obligee shall have the right to claim damages caused by the obligor' s exceeding of the time period for performance.

## CHAPTER THREE

### BREACH OF OBLIGATION DURING THE TERM OF A BILATERAL CONTRACT

#### Article 405. Fixing Additional Period of Time In Case of Breach of Obligation

1. If one of the parties to a bilateral contract breaches an obligation arising from the contract, then the other party to the contract may repudiate the contract after the unavailing lapse of an additional period of time fixed by him for performance of the obligation. If, proceeding from the nature of the breach of obligation, an additional period of time for performance is not afforded to the breaching party, then a warning shall be equivalent to the fixing of an additional period of time. If the obligation has been breached only in part, then the obligee may repudiate the contract only if the performance of the remaining part of the obligation is no longer of interest to him.

2. Fixing an additional period of time or issuing a warning is not required when:

- a. It is obvious that it will yield no results;
- b. The obligation has not been performed within the time period fixed under the contract, and the creditor has tied in the contract the continuation of the relation to the timely performance of the obligation [i.e. stipulated that time is of the essence];
- c. Proceeding from specific grounds and taking into account the mutual interests of the parties, the immediate termination of the contract is justified.

3. The contract may not be repudiated if:

- a. The breach of the obligation is insignificant [not material];  
Meaning is obscure, but it may mean that the obligor is liable for any negligence that caused the delay. 66
- b. The requirements of paragraph (2) of Article 316 have been violated and, in spite of that, the obligee may be required to leave the contract in force;
- c. The obligee himself is fully or principally liable for the breach of the obligation;
- d. There is a counterclaim against the [obligee' s] claim of breach, which the obligor has already asserted or will assert immediately after [the obligee' s] repudiation of the contract.

4. The obligee is entitled to repudiate the contract prior to the date when [the obligor' s] performance is due, if it is obvious that grounds for repudiation will occur.

5. The obligor is entitled to determine for the obligee a reasonable period for repudiation of the contract.

#### Article 406. Right to Receive Counter-performance

1. If under a bilateral contract the obligor has the right to repudiate his obligation and the circumstance that gives him this right has been caused through the obligee's fault, then the obligor shall retain the right to receive counter-performance.

2. This rule shall not apply if the grounds for the counter-performance arose at a time when the obligee was delaying receipt of the [obligor's] performance.

#### Article 407. Compensation for Damages in the Case of Avoidance of the Contract

1. At the time of withdrawing from the contract, the obligee may demand compensation for damages caused by the non-performance of the contract.

2. This rule shall not apply when the grounds for the obligee's withdrawal from the contract did not arise through the fault of the obligor.

### TITLE FOUR

#### DUTY TO COMPENSATE DAMAGES

#### Article 408. Duty to Restore the Original State of Affairs

1. A person who is obligated to compensate for damages must restore the state of affairs that would have existed if the circumstance giving rise to the duty to compensate had not occurred.

2. If, as a result of bodily injury or harm inflicted to the health of a person, his ability to work has been lost or reduced, or if his needs increase, then the injured person shall be compensated for such damage by the payment of monthly allowances.

3. The victim is entitled to demand the payment of expenses for medical care in advance. The same rule also applies when professional retraining becomes necessary.

4. The victim may demand compensation instead of allowances, if significant grounds exist therefor.

#### Article 409. Impossibility of Restoration of the Original State of Affairs

If the compensation for damages is impossible by restoration of the original state of affairs, or if

such restoration would require [unreasonably] high expenditures, then the obligee [claimant] may be given monetary compensation.

The Georgian text does not clearly indicate whether the obligee may repudiate

before his own performance or the obligor's performance is due. The German Civil Code in its analogous article makes it clear, however, that the obligee is not required to give his performance or wait for the obligor's performance if it is clear that one of the accepted grounds for repudiation will occur.

The clause is equally obscure in the Georgian original. One must infer into it that the obligee was justifiably delaying receipt of performance from the obligor, and therefore the obligor has neither a right to repudiate nor a right to expect "counter-performance."

Note that 408(2)-(4) generally apply to tort damages. See art. 326. 67 Article 410. Preliminary Renunciation of the Right to Damages Not Allowed Renunciation by preliminary agreement of the right to damages for breach of an obligation is not allowed.

#### Article 411. Damages for Lost Profit

Damages shall be compensated not only for the loss of property actually incurred, but also for lost profit. Profit is deemed to be lost if the person did not receive it, but would have received it if the obligation had been duly performed.

#### Article 412. Damages to which the Obligation for Compensation Applies

The duty to compensate applies only to damages that the debtor could have foreseen and that are the direct consequence of the action causing the damages.

#### Article 413. Compensation for Non-property Damages

1. Monetary compensation for non-property damages may be claimed only in the cases precisely prescribed by law, in the form of a reasonable and fair compensation.

2. In cases of bodily injury or harm inflicted on a person's health, the victim may claim damages for non-property damage as well.

#### Article 414. Calculation of Damages

The interest that the creditor had in due performance of the obligation must be taken into account in calculating damages. The time and place for performance of the contract must [also] be taken into account in calculating damages.

#### Article 415. Fault of the Victim in Incurring Damages

1. If an action of the victim also contributed to the occurrence of the damages, then the duty to compensate and the amount of compensation shall depend on which party's fault was more

responsible for causing the damages.

2. This rule shall likewise apply when the fault of the victim is seen in having failed to take action to avoid or reduce harm.

## TITLE FIVE

### ADDITIONAL MEASURES FOR SECURING A CLAIM

#### [ADDITIONAL REMEDIES]

#### Article 416. Kinds of Additional Measures for Securing the Performance of an Obligation

The parties, in order to secure the performance of an obligation, may also determine under the contract additional means for doing so: by penalty, earnest money or a debtor's guaranty.

#### CHAPTER ONE

##### PENALTY

#### Article 417. Concept

Penalty: an amount of money [pre] determined by agreement of the parties to be paid by the obligor in case of non-performance or improper performance of an obligation.

#### Article 418. Form of Determining the Penalty

1. The parties to the contract are free to determine a penalty that may exceed the possible damages.

2. An agreement on a penalty must be made in written form.

See previous footnote.

See previous footnote. 68

#### Article 419. Demanding the Payment of a Penalty and the Performance of the Obligation

##### Simultaneously Is Not Allowed

1. An obligee may not demand simultaneously the payment of a penalty and the performance of the obligation, unless the penalty has been stipulated to apply in those cases where the obligor has failed to perform the obligations on time.

2. The obligee is always entitled to claim compensation for damages.

#### Article 420. Reduction of Penalty by the Court

A court, taking into account the circumstances of the case, may reduce a disproportionately high penalty.

#### CHAPTER TWO

##### EARNEST MONEY

#### Article 421. Concept

Earnest money is a sum of money paid by one party to a contract to the other party as evidence of the execution of the contract.

#### Article 422. Counting Earnest Money Towards Payment of an Obligation



Earnest money is counted towards the payment account stipulated by the obligation, and if it is not counted towards this payment, then it shall be returned after performance of the obligation.

#### Article 423. Counting Earnest Money Towards Compensation for Damages

1. If the party who gave the earnest money breaches the obligation put on it, then the earnest money shall remain with the party who received it. In addition, the earnest money shall be counted towards any compensation for damages.

2. If non-performance of the obligation is caused by the fault of the party who received the earnest money, then this party must return to the other party double the amount of the earnest money. In addition, the party who gave the earnest money may demand compensation for any damages.

### CHAPTER THREE

#### DEBTOR' S GUARANTEE

##### Article 424. Concept

A debtor' s guaranty is an undertaking to perform an unconditional action or an action that is beyond the object [scope] of the contract.

##### Article 425. Validity of a Guarantee

The guarantee shall be considered real [valid] unless it contravenes [other] rules prescribed by law or unless it obliges the debtor excessively.

##### Article 426. Form of a Guarantee

A guarantee must be formulated in writing.

### TITLE SIX

#### TERMINATION OF OBLIGATIONS

##### CHAPTER ONE

##### TERMINATION OF AN OBLIGATION BY PERFORMANCE

##### Article 427. Termination of an Obligation by Performance in Favor of the Obligee

A relationship of obligation is terminated by performance of the obligation in favor of the obligee (performance). 69

##### Article 428. Termination of an Obligation by Novation

A relationship of obligation is also terminated when, in place of performance of the originally foreseen obligation, the obligee accepts performance of another obligation (novation).

##### Article 429. Acceptance of the Performance of Obligation

1. The obligee, on demand of the obligor, shall issue a document confirming

that performance of the obligation has been received in full or in part.

2. A document drawn up to confirm payment of a debt that says nothing about the interest on the debt shall be taken to mean that the interest has been paid and the monetary obligation is satisfied in full.

3. When the payment of a debt is made periodically, in installments, then the document confirming payment of the last installment shall, until proven otherwise, give rise to the presumption that the preceding installments have also been paid.

#### Article 430. Particulars of a Document On Receipt of Performance

A document on receipt of performance drawn up by a creditor or by a person authorized for such purpose must include data on the amount and the kind of the debt, the name and the last name of the debtor or of the person who is paying the debt, and the time and place of the performance [payment].

#### Article 431. Right to Demand a Document of Indebtedness

If a document of indebtedness [i.e. promissory note] was issued, then the debtor, along with the document on receipt of performance, may demand return or cancellation of the document of indebtedness. If the creditor is unable to return this document, then the debtor shall be entitled to demand an officially authenticated receipt indicating that the obligation is terminated.

#### Article 432. Compensation for Expenses of Issuing the Document of Receipt of Performance

1. The expense of issuing the document on receipt of performance shall be borne by the debtor, unless otherwise stipulated in the agreement between him and the creditor.
2. If a creditor changes his place of residence, or if he dies leaving heirs at another place of residence, then the increased expense of issuing the document on receipt of performance shall be borne by the creditor or by his heirs.

#### Article 433. Repudiation of Performance by Reason of the Creditor's Non-Performance of His Duties

If a creditor refuses to issue a document on the receipt of performance, or to return or cancel the document of indebtedness, or to indicate in the document on receipt of

performance that return of the document of indebtedness is impossible, or to [otherwise] acknowledge that the debt is extinguished, then the debtor shall be entitled to repudiate performance. In such cases the creditor shall be deemed to be in default [to have exceeded the term for performance of an obligation].

## CHAPTER TWO

### TERMINATION OF AN OBLIGATION BY DEPOSIT

#### Article 434. Concept

1. If an obligee delays acceptance of the performance or his location is unknown, then the obligor shall be entitled to place the object of performance on deposit with a notary public or with a court, and deposit the money or securities to the deposit account of a notary public.

2. By such deposit the obligor shall be released from the obligation before the obligee.

#### Article 435. Transfer of the Deposited Property to the Oblige 70

The judge or notary public [as the case may be] shall transfer the deposited property to the obligee.

[In the obligee's absence] the court or the notary shall select a keeper [trustee], but the documents shall be retained by them [i.e. the court or notary].

#### Article 436. Objects Suitable for Deposit

Deposited objects must be suitable for storage. Perishable objects shall not be accepted for storage.

#### Article 437. The Place of Storage

The safekeeping must be effected according to the place of performance.

#### Article 438. Demand that the Oblige Accept the Object

The court or the notary public shall notify the obligee of the acceptance of the object for storage and shall demand from him that he accept the object.

#### Article 439. Compensation for Expenses with Respect to Storage

All expenses with respect to the storage shall be borne by the obligee.

#### Article 440. Reclamation of the Deposited Object by the Obligor

1. The obligor is entitled to claim the deposited object back prior to its acceptance by the obligee, unless he refused to reclaim it initially. If the obligor reclaims the object, the storage shall be deemed not to have occurred.

2. The obligor may retrieve the deposited object if the obligee refuses to accept it, or if the period of time fixed under Article 441 has lapsed.

3. If the obligor retrieves the object, he shall bear the expenses of storage.

#### Article 441. Period of Time for Storage of the Object of Performance

The court or the notary public shall keep the object of performance for a period of up to three years.

If within this time period the obligee does not accept the object, then the obligor shall be notified and it shall be demanded of him to retrieve the object. If, within the period of time [stipulated] for return [of the object to the obligor], the obligor fails to accept the object, then the object shall be deemed to have become the property of the state.

### CHAPTER THREE

#### TERMINATION OF AN OBLIGATION BY SETOFF OF COUNTERCLAIMS

#### Article 442. Possibility of Setoff of Obligations

1. Counterclaims between two persons may be terminated by setoff, if these claims have become due.

2. Setoff of obligations is also possible when the time for performance with respect to one of these claims has not expired, but the party holding [such] claim agrees to the setoff. The setoff of the obligations is exercised by notice to the other party.

#### Article 443. Possibility of Setoff when the Prescription Period ["Statute of Limitations"] on a Claim has Lapsed

Lapse of the prescription period [limitation period] on a claim shall not exclude setoff of the obligations if the prescription period had not expired at the time when the claim could still have been offset.

#### Article 444. The Claims to be Offset

If the claims to be offset cannot compensate each other in full, then only that claim shall be offset which is the lesser of the two claims.

Implicitly, the greater claim is offset to the extent of the value of the lesser claim. 71

#### Article 445. Several Claims to be Offset

1. If a party to a contract who was notified of a setoff has several claims to be offset, then the rules of Article 387 shall apply.

2. If party is obligated to pay interest and other expenses to the other party in addition to the principal obligation to him, then the rules under Article 388 shall apply.

#### Article 446. Setoff of Obligations When There are Different Places of

## Performance

Set-off of obligations is also allowed when different places have been designated for performance of the respective claims [obligations].

### Article 447. Setoff of Claims Not Allowed

Setoff of claims shall not be allowed:

- a. If setoff of claims was excluded in advance by agreement;
- b. If the obligation is one with respect to which an order of payment could not be directed, or if the object of the obligation concerns [a person's] livelihood;
- c. If the obligation stipulates compensation for damage that has been caused by infliction of harm on a person's health or death;
- d. In other instances determined by law.

## CHAPTER FOUR

### TERMINATION OF AN OBLIGATION BY FORGIVENESS OF DEBT

#### Article 448. Concept

Forgiveness of a debt by agreement between the parties terminates the obligation.

#### Article 449. Effects of Forgiveness of Debt for Other Joint Debtors

The granting of debt forgiveness to one joint debtor releases the other joint debtors as well, except when the creditor retains his claim against them. In such case, the creditor may assert against the rest of the joint debtors only one claim, less the share of the released debtor.

#### Article 450. Effects of Forgiveness of Debt Granted to the Principal Debtor

1. Forgiveness of debt granted to the principal debtor releases any sureties as well.
2. Forgiveness of debt granted to the surety does not release the principal debtor from performance of the obligation.
3. Forgiveness of debt granted to one surety releases the other sureties as well.

#### Article 451. Effects of Renunciation of the Claim Under a Bilateral Contract

Under a bilateral contract the renunciation by one of the parties of its claim does not terminate [that party's] obligation [to perform]. Such party is obligated to perform his obligations stipulated under the contract until the other party renounces his claim too.

## CHAPTER FIVE

### OTHER GROUNDS FOR TERMINATION OF AN OBLIGATION

Article 452. Termination of an Obligation Where the Obligee and the Obligor Turn Out to be

## One and the Same Person

The relationship of obligation is terminated when the obligee and the obligor turn out to be one and same person.

Article 453. Termination of Obligation by Reason of Death of the Obligor  
But see Art. 348(c). Setoff may not be prohibited in consumer contracts. 72

1. The death of the obligor terminates the obligation if performance is impossible without his personal participation.

2. Death of the obligee terminates the obligation if the performance was intended personally for the obligee.

Article 454. Termination of Obligation by Reason of Liquidation of Legal Person

The obligation of a legal person is terminated from the moment of the registration of completion of its liquidation.

## TITLE SEVEN

### MULTIPLE OBLIGEEES OR OBLIGORS WITH RESPECT TO AN OBLIGATION

#### CHAPTER ONE

##### JOINT OBLIGEEES

Article 455. Joint Entitlement

If a number of persons are entitled to claim performance of the obligation so that each of them may claim the performance in full, and the obligor is liable for the performance only once, then these persons are jointly entitled persons joint obligees.

Article 456. Grounds Giving Rise to Joint Entitlement

Joint entitlement shall arise out of the contract, by law or by indivisibility of the object of the obligation.

Article 457. Rendering Performance of the Obligation to any Obligee

The obligor, at his own discretion, may render the performance of the obligation to any of the obligees, unless one of the obligees has asserted a claim against him according to Article 455.

Article 458. Rendering Performance of the Obligation to One of the Obligees

Rendering the performance of the obligation in full to one of the obligees releases the obligor from the obligation before the rest of the obligees.

Article 459. Effects of Renunciation by One of the Joint Obligees

If one of the joint obligees renounces the claim against the obligor, the obligor is released from payment only to the extent of the share of the payment which was due to this obligee.

Article 460. Applying the Facts Associated with Other Obligees Not Allowed  
The obligor may not use against one of the obligees the facts associated with the other obligees.

Article 461. Rights of Heirs of a Joint Creditor

If a joint creditor leaves a number of heirs, each heir shall be entitled to only that part of the right to

the debt that corresponds to his portion of the estate.

Article 462. Liability of a Joint Obligee Before the Rest of the Joint Obligees

1. A joint obligee who has received the performance in full from the obligor shall be liable to pay

to the rest of the obligees the shares to which they are entitled.

2. The joint obligees shall have equal shares in relation to each other unless otherwise established

among them.

CHAPTER TWO

JOINT OBLIGORS

Article 463. Joint Obligation 73

If a number of persons are bound to perform the obligation so that each of them is to participate in

the performance of the entire obligation (joint obligation), and the obligee has the right to claim the

performance only once, then these persons are joint obligors.

Article 464. Grounds Giving Rise to Joint Obligation

Joint obligation shall arise out of the contract, by law or by indivisibility of the object of the obligation.

Article 465. Right of the Obligee to Claim Performance from Any of the Obligors

The obligee, at his own discretion, may demand the performance from any of the obligors, both in

part or in full. Until the entire performance is rendered, the obligation of the rest of the obligors

shall remain effective.

Article 466. Counterclaim of a Joint Obligor against the Obligee

A joint obligor is entitled to assert against the obligee all such counterclaims which arise out of the

essence of the obligation, or to which only this obligor is entitled, or which are joint for all joint obligors.

Article 467. Effects of the Entire Performance by One of the Obligors

Rendering of the entire performance by one of the obligors releases the rest of the obligors from

performance. The same rule applies in the case of setoff exercised by the

obligor with the obligee.

Article 468. Applying the Facts Associated with Another Obligor Not Allowed  
The facts associated with one of the joint obligors may be used only against this person unless otherwise following from the relationship of obligation.

Article 469. Lawsuit against One of the Joint Obligors

The filing of a lawsuit against one of the joint obligors does not deprive the obligee of his right to file a lawsuit against the rest of the obligors.

Article 470. Effects of Delay in Accepting Performance

1. The effect of a delay by the obligee in accepting performance from one of the joint obligors shall be effective for the rest of the joint obligors [i.e., in giving them claims or defenses against the obligee].

2. The effects of a delay in performance by one of the joint obligors may not be used against the rest of the joint obligors.

Article 471. Rights of Heirs of a Joint Obligor

If a joint obligor leaves a number of heirs, each heir shall be obligated to pay the claim in accordance with his portion of the estate. This rule shall not apply when the claim is indivisible.

Article 472. Merger of the Creditor's Claim with the Debt of One of the Joint Debtor's

If the claim of the creditor is merged with the debt of one of the joint debtors, the obligation laid on the rest of the debtors shall be terminated to the extent proportional to the share of this obligor.

Article 473. Right of Subrogation in the Case of Entire Performance by One of the Obligors

1. An obligor who has performed the joint obligation has the right of subrogation against the rest of the obligors proportionately to their equal shares, though with subtraction of his own share, unless otherwise stipulated by the contract or law.

2. When it is impossible to determine the extent of the liability of each obligor, the obligors shall be equally liable before each other. 74

Article 474. Effects of Insolvency of a Joint Obligor

If one of the obligors is insolvent, then the share fixed for him shall be distributed in equal shares among all other, solvent obligors.

Article 475. Compensation of a Joint Obligor

If a joint obligor has received an advantage from the joint obligation,



another joint obligor who has not received such advantage may claim from the former satisfaction [compensation] for the performance of his own obligation.

#### Article 476. Effect of Lapse of the Limitation Period

Suspension or interruption of the limitation period with respect to one of the joint obligors shall not be effective with respect to the other obligors. 75

### SPECIAL PART

#### TITLE ONE

#### CONTRACT LAW

#### PART TWO

#### CHAPTER ONE

#### SALE. EXCHANGE

##### I. General Provisions

#### Article 477. Concept. Content

1. Under a contract of sale, the seller is obligated to transfer to the buyer the right of ownership [title] to the property and the documents connected thereto and deliver the goods.

2. The buyer is obligated to pay to the seller the agreed price and accept the purchased property.

3. If the contract does not expressly indicate the price, the parties may agree on the method of its determination.

#### Article 478. Expenses of Sale of a Movable Thing

Expenses with respect to the transfer of the sold thing, in particular the expenses of weighing, measuring and packing, shall be borne by the seller, and the expenses of receipt and carriage of the goods from the place of execution of the contract to another place shall be borne by the buyer, unless otherwise stipulated under the contract.

#### Article 479. Expenses of Sale of an Immovable Thing

The expenses of executing a contract of sale of a plot of land or other immovable thing, as well as the expenses of notarization of the transfer of the title of ownership, its registration in the Public Register and submission of the necessary documents therefor, shall be borne by the buyer.

#### Article 480. Duties of Seller When Shipping the Goods

1. If the seller transfers the goods to a carrier under a contract, and these goods are not clearly marked either by an identification marker or by any other means, then the

seller must notify the buyer of the shipment of the goods and, in addition, must dispatch to the buyer a detailed list of the freight.

2. If the seller is obliged to ship the goods, he must execute the contracts that are required for carriage of freight to the determined place and for regular terms of such carriage.

3. If the seller is not obliged to insure the freight during the carriage, then, upon request of the buyer, he must hand over to the buyer all the information he possesses which is required for execution of such a contract of insurance.

#### Article 481. Obligations of a Seller of a Plot of Land

1. The seller of a plot of land is obligated to pay the expenses for the development of the plot and expenses for similar undertakings incurred prior to the execution of the contract, without regard to the moment that the obligation to pay [for such works] arises.

2. The seller of the plot of land shall not be liable for those public obligations that may be unregistered in the Public Register.

#### Article 482. Passing of the Risk of Accidental Perishing of a Thing

1. Upon transfer of the thing sold the risk of accidental perishing or deterioration of the thing shall pass to the buyer, unless otherwise agreed by the parties.

2. If the seller, upon request of the buyer, ships the sold thing to a place other than that stipulated in the contract, then the risk of accidental perishing or deterioration of the thing shall pass to the buyer from the moment at which the seller delivered the thing to the carrier or to the person responsible for performance [of carriage]. 76

#### Article 483. Presumption of Acceptance of the Goods

The goods shall be considered accepted if the buyer performs such action that evidences acceptance.

#### Article 484. Grounds for Repudiation of the Contract

1. Each party to the contract may refuse to perform its obligations if it turns out after execution of the contract that there is a real danger of non-performance by the other party of a significant part of its obligations.

2. Such refusal shall not be allowed if the safety [performance] of this party is secured.

#### Article 485. Selling Goods to a Number of Persons

If a seller has sold one and the same item to a number of persons, then priority shall be given to the buyer into whose possession the good was transferred first, and if the good has not been transferred to any of them, then to the buyer with whom the contract was executed earlier.

#### Article 486. Delivery of the Sold Goods in Installments

When the sold goods are delivered in installments, a party to the contract may repudiate the contract

if, by reason of the non-performance of only one obligation of delivery by the other party, a real

danger arose that the future obligations of delivery will not be performed as well.

#### Article 487. Duty to Transfer a Thing Without Defects

The seller must transfer to the buyer the object of the sale free of material defects or defects of rights [title].

#### Article 488. A Thing Without Material Defect

1. A thing is without material defects if it is of the agreed quality. If the quality is not agreed in

advance then the thing shall be deemed without defect if it is suitable for the use stipulated in the contract or for ordinary use.

2. The following are equivalent to defects: if the seller transfers only one part of the thing or an entirely different thing, or he transfers it in insufficient quantity, or if one part of the thing is defective, except for such cases where the defect will not materially affect the performance of the thing.

#### Article 489. A Thing Without Defects of Rights [Title]

1. A thing is without defects of right [title] when a third person may not assert against the buyer any claim with respect to his rights to it.

2. The title is considered defective where a non-existent [false] title is registered in the Public Register.

#### Article 490. Duties of the Seller When Selling a Defective Thing

1. If the thing sold is defective, the seller must either eliminate the defect or, in case of a generic thing, replace it within the time required.

2. Expenses required for elimination of the defect, including expenses of transportation, transit,

work and cost of material, shall be borne by the seller.

3. The Seller may refuse to eliminate the defect or to replace the thing if either action would require disproportionately high expenses.

4. If the seller, in order to eliminate the defect, transfers to the buyer a thing without defect, then he may demand from the buyer return of the defective thing.

The drafter appears to have deliberately written this article so that either the buyer or the seller can repudiate the contract if the other party does not perform its obligations related to delivery. The buyer's obligations related to delivery would be, at a minimum, receipt and acceptance of the goods, as well as payment. 77

Article 491. Right of the Buyer to Terminate the Contract

1. By reason of the defect of the thing, the buyer may demand dissolution of the contract under Article 352.

2. The seller must compensate the buyer for expenses thereby incurred.

Article 492. Demand for Price Reduction

If the buyer does not demand elimination of the defect or replacement of the defective good with a new one without defect after lapse of the period of time accorded to the seller, [nor demands] dissolution of the contract, then he may demand reduction of the price of the good in the amount necessary for elimination of the defect. The price existing at the time of execution of the contract shall be taken into account.

Article 493. Right to Reject the Goods

1. The buyer is entitled to refuse to accept the goods if the seller has delivered to him a smaller quantity of goods than that specified in the contract. If the buyer accepts the [non-conforming delivery] he shall pay [for the delivery a] price proportional to the price under the contract.

2. If the quantity of goods delivered exceeds the amount specified in the contract, then the buyer may either accept this amount and pay the price proportionately to the price under the contract, or accept only that amount which is specified in the contract and return the excess at the expense of the seller.

Article 494. Procedure for Compensation of Damages Arising Out of the Sale

1. Damages sustained due to defect of the thing sold or due to the breach of other conditions

stipulated in the contract shall be recovered according to the general rules [i.e. the rules of this Code for breach of contract].

2. No rights shall accrue to the buyer on the grounds of the defect of the thing bought if at the time of execution of the contract he knew of the defect.

#### Article 495. Acceptance of a Defective Thing by the Buyer

1. If the buyer is an entrepreneur, he is obliged to inspect the thing immediately; if after detecting the defect he fails to assert a complaint against the seller within an appropriate period of time, or within the period of time during which he ought to have known of the defect, then he shall be deprived of the right to complain on the grounds of the defect of the thing.

2. If the seller intentionally kept silent about the defect of the thing, he may not enjoy the right provided for in this Article.

#### Article 496. Duration of Fitness of a Thing

If the seller fixes the duration of the fitness of the thing, it shall be presumed that the defect detected within this period of time entitles the buyer to make a claim with respect to the defect.

#### Article 497. Exclusion of Liability of Seller

The liability of the seller for defects may be excluded or limited by contract. Such a contract term, however, shall be void if the seller intentionally kept silent about a defect of the thing.

#### Article 498. Transfer of Right or Other Property

1. The rules regulating the sale of a thing shall apply accordingly to the sale of a right or other property.

2. In case of sale of a right the seller shall incur the expense of verification of the validity of the right and its transfer.

“Appropriate” may mean reasonable or it may mean a period of time stipulated in the sale agreement for the buyer to complain of defects.

The article is intended to apply to perishable goods. 78

3. If a right is sold that provides the possibility to possess a thing, then the seller is obligated to transfer to the buyer that thing without material defects or defects of title.

#### Article 499. Sale of a Thing Repeatedly

If a thing is sold repeatedly, then a right securing an obligation [i.e., a

lien] shall be passed to every subsequent buyer. A buyer may assert claims [with respect to the defect in title caused by the lien] within the scope of his rights against the relevant seller in this succession of sales.

#### Article 500. The Right to Arrest a Thing [Seller' s Lien]

If the buyer does not accept the thing in time or fails to pay its price in time, the seller is obligated to keep the thing. The seller has the right to retain the thing or to detain it in transit until the buyer compensates him for his corresponding expenses.

#### Article 501. Return of the Thing by the Buyer

If the buyer has accepted the thing but is willing to return it lawfully, then he must take care of storing the thing. The buyer has the right to retain the thing until the seller compensates him for his corresponding expenses.

#### Article 502. Expenses of Storage of the Thing

The party who is obligated to keep the thing may, at the expense of the other party, store it in the warehouse of a third person, unless to do so would cause disproportionate expenses.

#### Article 503. The Right of the Keeper of the Thing

1. The party who keeps the thing according to the rules under Articles 500-502 may sell the thing by observing the applicable rules if the other party delays in accepting the thing or in compensating him for the expenses of keeping it. He shall notify the other party about this.

2. The party who sells the thing is entitled to retain from the sale proceeds the amount which corresponds to the expenses of storing and selling the thing and he shall hand over the remaining amount to the other party.

#### Article 504. Peculiarities of Keeping Highly Perishable Things

If in cases within Articles 500 and 501 the thing is highly perishable or it may depreciate or its storage requires high expense, then the party who is liable to keep it shall be obliged to sell it according to the provisions of Article 503.

## II. Installment Sale

#### Article 505. Concept

In the case of an installment sale the seller is obligated to deliver the thing to the buyer before the price is paid. Payment of the price of the thing is made in periodic

installments on fixed time intervals.

#### Article 506. The Form of an Installment Sales Contract

1. An installment sales contract shall be executed in writing.
2. The contract shall specify:
  - a. The [total] amount of cash payment;
  - b. The amount and time of payment of the installments;
  - c. The annual rate of interest.
3. The seller shall deliver to the buyer the copies of the documents of sale.

#### Article 507. Presumption of Execution of Contract from the Moment of Delivery of a Thing 79

If a contract is executed in violation of the requirements under Article 506, the contract shall be deemed to have been executed from the moment of delivery of the thing. In such a case the buyer is obligated to pay only the price of the thing, without interest.

#### Article 508. Bilateral Restitution Upon Non-Performance of the Obligation

When the seller retains the right to repudiate the contract if the buyer does not perform the

obligations imposed on him, then upon [seller' s] repudiation both parties shall be bound to return to

each other what they have received under the contract. An agreement that contravenes this rule shall be void.

### III. Redemption

#### Article 509. Concept

If, under a contract of sale, the seller has the right of redemption, the exercise of this right shall depend upon the will of the seller.

#### Article 510. Redemption Price

Redemption is exercised by paying the initial price. Simultaneously, the buyer may also demand

the amount by which the value of the goods has increased up to the moment of redemption as a

result of useful expenditures [valuable improvements], and the redeemer may demand deduction of

the amount by which the value of the goods has decreased up to the time of its redemption.

#### Article 511. An Appurtenance Under Redemption

The buyer shall be obliged to return the purchased thing with its appurtenances.

#### Article 512. Compensation for Damages Incurred Prior to the Redemption

If the buyer has damaged the thing prior to the seller' s exercise of his right of redemption, he must

compensate the seller for the damage thereby arisen.

Article 513. Invalidity of Alienation of the Thing Prior to the Redemption  
If the buyer has alienated the thing prior to the exercise of the right of redemption, such alienation shall be void.

Article 514. Time Limitation on the Right of Redemption

The period of time during which the right of redemption may be exercised may not exceed five

years. This period of time may not be extended.

Article 515. Option

The parties may agree that the buyer has a unilateral right to buy some object within a specified

period of time or until the occurrence of some specified event (option to purchase), or, under the

same conditions, the seller has the right to sell the object to the buyer (option to sell). The norms

regulating a contract of sale shall apply an option contract unless the parties agree otherwise.

IV. Preferential Right of Purchase

Article 516. Concept

1. A person having a preferential right of purchase may exercise this right if the obligor executes a

sales contract with respect to the given thing with a third person.

2. The preferential purchase right is neither alienable nor hereditary unless otherwise stipulated.

Substantively, the right described in this section is more akin to a right of first refusal. 80

Article 517. Obligation of Notification on the Possible Sale of the Thing

1. The obligor shall immediately notify the person having the preferential purchase right of the

content of the contract that he intends to execute with third persons.

2. The preferential purchase right is exercised by notice to the obligor.

Through the notice, the

contract of sale shall be executed between the entitled person and the obligor under the terms of the

obligor's offer made to the third party.

3. The person having the preferential purchase right may exercise this right only within the period of time fixed by the obligor.

Article 518. Voidness of an Agreement Relying on Non-Exercise of the Preferential Purchase

Right

An agreement between the obligor and a third person shall be void if, under that agreement, the

contract of sale is dependent upon non-exercise of the preferential purchase



right, or the obligor has the right to repudiate the contract in case of exercise of the preferential purchase right.

#### Article 519. Performance of Additional Obligation

1. If a third person has incurred an additional obligation by contract which the person having the preferential purchase right is unable to perform, then he [the person with the preferential right] shall pay the value of the additional obligation instead of [performing it].

2. If the additional obligation cannot be measured in monetary terms, the preferential right of purchase may not be exercised; the agreement on the additional obligation is voided if the agreement was made in order to elude the preferential right of purchase.

#### Article 520. Contract of Sale Conditioned upon Approval of a Thing

A contract of sale may be executed on the condition of approval of the thing, provided the buyer

does not reject the thing within the agreed period of time. In case of rejection the parties shall be bound to return to each other what they have received under the contract.

#### V. Exchange [Barter]

##### Article 521. Concept

1. Under a barter agreement, the parties are bound to transfer to each other ownership of property.

2. Each party to the barter agreement is deemed to be the seller of the property that it offers and the buyer of that property that it receives in return.

##### Article 522. Inequality of the Exchanged Property

If the bartered property is not equal in value to the property received in return, [then the difference in the relative values] may be paid for monetarily by agreement of the parties.

##### Article 523. The Rules Applied to Exchange [Barter]

The corresponding rules regulating sales contracts shall apply to barter contracts.

#### CHAPTER TWO

#### GIFT

##### Article 524. Concept

The article seems to be saying that where a third person has made an agreement with the obligor that contains an additional element of performance above what the holder of the preferential right was willing to pay or do, then the holder of the preferential right would have to pay the obligor the value of the additional performance in order to

maintain his preferred status (to preempt the third party). If the additional level of performance is something that cannot be measured in monetary terms -- some aspect of quality of performance or reputation -- then the preferred party loses his status to the third party. This will not be the case, however, if the additional measure of performance was a mere ruse to avoid the preferential right of the entitled person. 81 Under a contract of gift the donor gratuitously transfers to the donee ownership of property with the consent of the donee.

#### Article 525. Execution of a Gift Contract. Promise of a Gift

1. A gift contract is deemed to be executed from the moment of transfer of the property.
2. If the object of the gift is property of the type to which ownership may arise only by observance of a particular form prescribed by law, then that form must be observed in the gift contract.
3. A promise of a gift shall give rise to the obligation to give the gift only if [the document promising the gift] is notarized.

#### Article 526. Gift Disallowed

A person does not have the right to transfer property by gift if the gift would deprive the donor or his dependents of their basic means of support.

#### Article 527. Defect of Property Transferred by Gift

If the donor maliciously conceals a defect in the property transferred by gift, he shall be obliged to compensate the donee for the damage thereby sustained.

#### Article 528. Charitable Donation

1. The parties may determine that the validity of the contract of gift is dependent on the performance of some condition or on the achievement of a particular objective. This objective may be the common good as well [as more private purposes] (charitable donation).
2. Besides the donor, the person in whose interests the condition was stipulated may also demand performance [of the condition].
3. If the donee does not perform the condition, the donor may repudiate the contract.

#### Article 529. Revocation of the Gift by Reason of Ingratitude of the Donee

1. The gift may be revoked if the donee is extremely ungrateful towards or severely insults the donor or his near relative.
2. If the gift is revoked, then the donor may recover the property given by gift.

3. The gift may be revoked within one year after the donor becomes aware of the circumstance that gives him the right to revoke the gift.

#### Article 530. Recovery of the Thing Given by Gift

1. If after giving the gift the donor comes into hardship and he is unable to support himself or his dependents, then he has the right to demand the thing given by gift back from the donee, provided it actually exists and the return would not put the donee in hardship.

2. The thing given by gift may not be recovered if the donor put himself into hardship by intent or gross negligence.

### CHAPTER THREE

#### RENTAL

##### Article 531. Concept

Under a rental contract the lessor is bound to transfer the thing to the use of the lessee for a specified period of time. The lessee is obligated to pay to the lessor the stipulated rent.

##### Article 532. Transfer of the Object of Renting in Suitable Condition

The lessor is obligated to transfer to the lessee the rented thing in a condition suitable for the use specified under the contract, and to maintain this condition during the term of the rental contract.

##### Article 533. Duty to Transfer Defectless Thing

The lessor must transfer to the lessee the thing with no material defects or defects of right [title].<sup>82</sup>

##### Article 534. A Thing Without Defects of Right

A thing is without defects of right [title] when a third person may not assert against the lessee any claims with respect to the thing.

##### Article 535. A Thing Without Material Defects

A thing is without material defects if it has the stipulated characteristics. If these characteristics are not stipulated, then the thing shall be deemed without defect if it is suitable for the use specified in the contract or for ordinary use.

##### Article 536. Reduction of Rent by Reason of Defect of the Thing

1. If the rented thing is found to be defective, then the amount of the rent shall be reduced proportionately to the amount by which the suitability of the thing is decreased by reason of the defect. This right shall expire upon elimination of the defect. An immaterial defect shall not be

taken into account.

2. A contract of tenancy evidently detrimental to the tenant of a lodging shall be void.

Article 537. Compensation of Damage Arisen by Reason of the Defect of the Thing

1. If the defect that decreases the suitability of the thing exists at the moment of execution of the contract, or if it is found afterwards because of circumstances for which the lessor is liable, or if the lessor delays elimination of the defect, then the lessee may claim damages in such a manner that he will not be deprived of the right to claim reduction of the rent.

2. If the lessor delays elimination of the defect, then the lessee may eliminate it himself and claim indemnification against the expenses.

Article 538. Effect of Not Asserting a Claim on the Grounds of the Defectiveness of a Thing

If at the time of conclusion of the contract the lessee is aware of the defect of the thing and he does not assert a claim on these grounds, then the rights under Article 536 shall not accrue to him.

Article 539. Voidness of an Agreement on Release from Liability

An agreement by which the lessor's liability for defect of the thing is relieved or limited shall be void if the lessor has intentionally concealed the defect.

Article 540. Obligation to Tolerate Nuisances in Case of Rental of Lodgings  
The tenant of a lodging must tolerate the influences applied to the rented thing that are required for

maintenance of the rented lodging or the building. The landlord shall, if it is possible, notify the tenant of these measures and shall avoid such actions that are not caused by necessity.

Article 541. Right to Repudiate the Contract

1. If transfer of the rented thing to the lessee, in whole or in part, is delayed, or if afterwards the lessee was deprived of the right to use the thing, then the lessee may repudiate the contract without observance of the time period stipulated for the dissolution of the contract. Repudiation of the contract is allowed only if the lessor does not eliminate the circumstances hindering the use of the thing within the time fixed by the lessee.

2. The fixing of a period of time [for cure] is not required if the lessee has lost interest in the contract as a result of those circumstances that give grounds for repudiation

of the contract.

3. In the rental of lodgings, an agreement which prohibits or restricts the right to dissolve the agreement defined in paragraph (1) of this Article shall be void.

Article 542. Dissolution of a Contract for Rental of Lodging by the Tenant  
As before, use of the term "agreement" indicates a provision within a contract. Only the provision, not the whole contract, is voided.

See previous note. The same principle will continue to apply throughout. 83  
If a dwelling or other lodging intended for human habitation is in such condition that its use creates a significant danger to the health of the dwellers, then the tenant may dissolve the contract of tenancy without observance of any notice period. The tenant shall still have this right even if at the time of conclusion of the contract he was aware of the danger but did not assert the claim thereupon.

Article 543. Duties of the Lessee Upon Detecting the Defect of the Rented Thing

If the rented thing is found to be defective, or if necessary measures are to be taken in order to protect the thing from an unforeseen danger, then the lessee must immediately notify the lessor thereof. The same rule applies when a third person asserts his rights to the thing.

Article 544. Burden of Encumbrance Created on the Rented Thing

The burden of an encumbrance created on the rented thing rests on the lessor.

Article 545. Obligations of the Lessor

1. The lessor shall be obligated to compensate the lessee for necessary expenses incurred with respect to the thing.

2. The obligation to compensate other expenses [undertaken by the lessee] shall be determined in accordance with the rules governing management of the affairs of another person without his mandate.

Article 546. Right of the Lessee to Things Added to the Rented Thing

1. The lessee shall be entitled to retain what he equipped the rented thing with.

2. The landlord of a dwelling place may substitute the exercise of this right with appropriate compensation, except when the tenant disagrees with the landlord on legitimate grounds.

#### Article 547. Liability for Normal Wear and Tear to the Thing

The lessee is not liable for alteration or deterioration of the rented thing caused by the use specified under the contract.

#### Article 548. Expenses of Current Repair

1. As a rule, the tenant is bound to do current repairs. He may not make alterations or reconstruction of the dwelling place without the consent of the landlord.
2. The tenant shall be bound to perform these works at his own expense.
3. The landlord may claim damages that have been caused by non-performance of the duty under paragraph (1) of this Article by the tenant.

#### Article 549. Consent of the Lessor on Sublease

The lessee has no right to convey the rented thing to a third person (sublease) without the consent of the lessor. A family member of the lessee shall not be deemed to be a third person.

#### Article 550. Refusal of Sublease Disallowed

The landlord may not reject a sublease of a dwelling if the tenant, having a legitimate reason, is willing to sublet some or all of the rented lodgings to a third person. This rule shall not apply if the sublessee is an undesirable person for the landlord, or if the lodgings have been overcrowded, or if a sublease is unacceptable to the landlord for other reasons.

#### Article 551. Fate of the Sublease upon Completion of the Renting Relation

That is, if a tenant undertakes expenses which were not necessary, then his right to compensation from the landlord shall be governed by the same rules that apply where a person undertakes expense to manage, protect or improve the property of another person without the latter's permission. See torts, §§ 969-975. 84

If the sublease was intended to evade the guaranties of dissolution of the rental contract, then upon completion of the renting relation the lessor shall assume those rights and duties that existed between the lessee and the sublessee.

#### Article 552. Amount of Security for the Rental Relation

1. If under a rental contract for a dwelling place the tenant is bound to submit security for the obligation [to pay rent], the amount of the security may not exceed the amount of treble the monthly rent. If the monetary amount is to be paid in advance, then the tenant shall be entitled to pay it in equal monthly installments over three months.

2. Interest at the rate prescribed by law shall accrue on the security paid in advance, and after completion of the rental relation it shall be returned to the tenant together with the accrued interest.

3. Any agreement concluded otherwise to the detriment of the tenant shall be void.

#### Article 553. Procedure for Payment of the Rent

1. Rent is to be paid upon expiration of the term of the rental contract. If the payment of rent is specified to be made periodically, then it must be paid at the end of each period of time.

2. The payment of additional expenses may be required only if an agreement on that matter exists between the parties.

#### Article 554. Effect of Nonpayment of Rent Through Fault of the Lessee

If the tenant is obstructed in use [of the rental property] through his own fault, he shall not be released from payment of the rent.

#### Article 555. Early Dissolution of the Contract by the Initiative of the Tenant of a Dwelling

##### Place

The tenant of a dwelling place is entitled to dissolve the contract of tenancy before the expiration of its term, provided he gives notice thereof to the landlord not less than one month before the expiration of the term and offers to the landlord a tenant who is solvent and acceptable for the landlord, and who agrees to be the tenant over the remaining term of the tenancy.

#### Article 556. Counterclaims of the Tenant against the Landlord

If, against the claim for payment of rent on a residence, the tenant has the right to [arrest property] or set off other claims arising out of the tenancy relation, then the tenant may exercise such right even if the contract stipulates otherwise, provided he gives advance notice thereof to the landlord.

#### Article 557. Dissolution of the Contract by the Initiative of the Lessor

A lessor may dissolve the contract before the expiration of its term if the lessee, having ignored the notice given by the lessor, substantially damages the rented thing or creates an apparent danger threatening substantial damage.

#### Article 558. Dissolution of the Contract Because of Non-Payment of the Rent

A lessor may dissolve the contract before the expiration of its term if the

lessee has not paid the rent  
for three months.

#### Article 559. Termination of the Rental Relation by Expiration of its Term

1. The rental relation is terminated upon expiration of the term of the contract.
2. If the lessee continues to use the thing after expiration of the term of the contract and the lessor does not object thereto, then the contract shall be deemed to have been extended for an indefinite term.
3. If the term of the rental contract is not fixed, then the making of a declaration on dissolution of the contract shall terminate the renting relation. 85

#### Article 560. Right to Claim Extension of the Contract of Tenancy for an Indefinite Term

If a contract of tenancy for a dwelling place is concluded for a fixed term, then the tenant may claim extension of the contract of tenancy for an indefinite term by giving written notice thereof at least two months before termination of the renting relation, provided the landlord declares his consent thereto.

#### Article 561. Period of Time for Dissolution of the Contract

The period of time for dissolution of a rental contract is three months unless otherwise following from the circumstances or from agreement of the parties.

#### Article 562. Termination of a Contract of Tenancy of a Dwelling Place for Legitimate Reasons

1. The landlord may terminate a contract of tenancy for a dwelling place only if legitimate reasons exist for termination.
2. A reason is legitimate if:
  - a. The tenant has substantially breached his obligations under the contract;
  - b. The landlord needs the dwelling place personally for himself or for his near relatives;
  - c. The tenant refuses to pay an increased rent, that corresponds to market rates, offered by the landlord;
  - d. The tenant has committed against the landlord such illegal or immoral acts that the continuation of their relation is no longer possible.
3. If the object of the contract of tenancy is a furnished apartment, then the landlord may always dissolve the contract of tenancy provided he observes the time period fixed for dissolution of the



contract.

#### Article 563. Form of Termination of the Contract

Termination of a contract of tenancy of a dwelling place must be made in writing.

#### Article 564. Duties of the Lessee upon Termination of the Rental Contract

Upon termination of the rental contract of a thing the lessee shall be bound to return the thing to the

lessor in the same condition in which he received it, taking into account normal wear and tear, or in

the condition which was specified under the contract.

#### Article 565. Right of Continued Occupancy Disallowed

The lessee of a tract of land has no right to occupy [arrest] the tract for satisfaction of his claims.

#### Article 566. Transfer of Rented Property to Third Persons

If the lessee has transferred the thing to the use of a third person, then after termination of the rental

contract the lessor may recover the thing from the third person.

#### Article 567. Recovery of Damages Arising as a Result of Failure to Return the Rented Thing

1. If after completion of the renting relation the lessee has not returned the rented thing, the lessor

shall have the right to claim payment of the stipulated rent for the period of delay as compensation

for damages.

2. An agreement by which the lessee is bound to compensate damages in excess of the [actual]

damage sustained shall be void.

#### Article 568. Landlord's Lien on the Things of the Lessee

For securing any claims arising out of the renting relationship, the lessor of a tract of land, house or

apartment has a lien on those things that the lessee brought to the place. The lien lapses

simultaneously upon removal of the things from the rented premises if this is done in the ordinary

course of life [i.e., and not to evade the lien]. 86

#### Article 569. Form of a Rental Contract on a Tract of Land

A rental contract covering a tract of land for a term of more than ten years shall be drawn up in

writing. In case the form is not observed it shall be presumed that the contract has been concluded

for an indefinite term. Termination of the contract is allowed only upon expiration of the first year

of the rental.

#### Article 570. Procedure for Dissolution of Contract Concluded for a Term of

## More Than Ten Years

If a rental contract is concluded for a term of more than ten years, then after ten years each party may dissolve the rental contract within the period prescribed under Article 561.

### Article 571. Transfer of Rights of the Tenant to his Family Members

If a contract of tenancy is concluded for a dwelling place where the tenant keeps his household

jointly with his family members, then in case of death of the tenant, his family members shall enter

into the legal relation with the landlord. They shall have the right to dissolve the contract of tenancy

within the time period prescribed by law.

### Article 572. Succession of Title in case of Alienation of the Rented Thing

If the lessor alienates the rented thing to a third person after having transferred it to the [possession

of the] lessee, the acquirer shall stand in the place of the lessor and the rights and duties arising out

of the renting relation shall pass to him.

### Article 573. Limitation Period on Claim for Damages

1. For replacement or deterioration of the rented thing the lessor is entitled to claim damages and

the lessee is entitled to assert against him any claim for recovery of expenses within six months.

2. The limitation period on the lessor's claim for damages begins to run from the moment of return

of the rented thing, and the limitation period on the lessee's claim from the moment of termination

of the rental contract.

### Article 574. Dispute Between Spouses in the Case of Divorce

1. Where, in the case of divorce, the spouses cannot agree on who will live in the rented lodgings,

a court shall settle the dispute.

2. For the court it is of no importance which of the spouses is the tenant. If the court acknowledges

the right of that spouse to the lodgings who is not the tenant, then this spouse shall become the

participant in the tenancy relation.

### Article 575. Protection of Rights of Lessee

The lessee has the right to protect his possessions from any encroacher including the owner.

## CHAPTER FOUR

### FINANCE LEASE

#### Article 576. Concept. Content

1. Under a finance leasing contract the lessor is obligated to transfer to the use of the lessee the specified property for a term fixed by the contract. The lessee is obligated to pay compensation to the lessor in accordance with the specified periodicity.
2. The lessor is obligated to produce or purchase the property specified under the contract.
3. The finance leasing agreement may obligate or entitle the lessee to either purchase or rent the object of the finance lease upon expiration of the term of the agreement, unless the contract ends with the complete depreciation of the thing. In assessing the final value of the thing the fact of depreciation shall be taken into account in any event. Unless there is a contrary provision in the contract, the lessee shall be entitled to purchase the object of the finance lease. 87

#### Article 577. Form of a Contract of Finance Lease

A finance leasing contract shall be concluded in writing. The contract shall include:

- a. The full price;
- b. The amount of finance leasing payments and the time periods for payment;
- c. The amount of the final payment due, and, in case of early performance of the contract, the procedure for its computation.

#### Article 578. Liability of the Lessor

1. The lessor in a finance lease shall be liable to the lessee for failure or delay in transfer of the property, as well as for the transfer of defective property, in accordance with the rules governing a rental contract.
2. The parties may agree that the lessee, prior to asserting a complaint against the lessor, must claim satisfaction from the supplier of the property.

#### Article 579. Liability of the Lessee

If the contract is terminated before its term due to the fault of the lessee, then the lessor may not assert against the lessee claims that go beyond his interests in connection with the performance. In assessment of the claim, consideration is to be given to the remaining value of the rented property, the remaining interest on the lease rental payment, and the costs saved.

#### Article 580. Other Rules Applicable to Finance Leasing

The rules governing a rental contract that do not contravene Articles 576-579

shall apply to the  
finance lease.

## CHAPTER FIVE

### LEASE

#### Article 581. Concept

1. Under a lease contract the lessor is bound to transfer the specified property to the temporary use of the lessee and to [allow the lessee] the possibility of obtaining fruits during the term of the lease, if they are obtained through proper management of the leased property. The lessee is obligated to pay to the lessor the stipulated lease payment. The lease payment may be determined both in money and in kind. The parties may agree on other means of determination of the lease payment as well.

2. The rules governing a rental contract shall apply to a lease contract unless otherwise provided for under Articles 581-606.

#### Article 582. Dissolution of a Lease Contract Concluded for a Term of More Than Ten Years

If a lease contract is concluded for a term of more than ten years, then after expiration of this term each party may dissolve the lease relation within the period prescribed under Article 561.

#### Article 583. Lease of Land with Inventory

1. If a tract of land is leased with inventory, then the lessee shall be liable for maintenance of each part of the inventory.

2. The lessor shall be obligated to replace those parts of the inventory that have become unsuitable due to circumstances beyond the control of the lessee. The lessee is obligated to restitute the loss of livestock included in the inventory, regardless of the proper management of the leased property.

3. The lessee must keep the inventory in such condition, and over the term of the lease must replenish it to such extent, that corresponds to the properly managed property. Particular pieces of inventory purchased by the lessee and attached to the common inventory shall become property under the ownership of the lessor. 88

#### Article 584. Risk of Accidental Loss of Inventory

1. If the lessee of a tract of land receives the inventory with an assessment of its value and undertakes to return it also with an assessment of its value upon expiration

of the contract, then the risk of accidental loss or deterioration is on him. The lessee may dispose of individual parts of the inventory within the limits of proper management of the property.

2. Upon expiration of the term of the lease contract the lessee shall return the inventory to the lessor. The lessor may refuse to accept the inventory purchased by the lessee if it is unnecessary for proper management of the tract of land or if it is overly expensive; simultaneously with the lessor's refusal, the right of ownership of unaccepted inventory shall pass to the lessee. If there is a difference in the assessments of the value of conveyed and returned inventories, then this difference shall be compensated in money. The assessment shall be made on the basis of those prices that were operative at the moment of completion of the lease contract.

#### Article 585. Prohibition of Disposition of Individual Parts of Inventory Not Allowed

Provisions of a lease contract that obligate the lessee not to dispose of individual parts of the inventory or to dispose of them only with the consent of the lessor shall be valid only if the lessor undertakes the obligation to purchase the inventory in accordance with the inventory assessment [valuation] performed upon expiration of the lease relation.

#### Article 586. Lien on the Inventory

1. The lessee of a tract of land shall have a lien on the inventory under his possession for those claims that may be asserted against the lessor that relate to the leased inventory.

2. The lessor may avoid the lessee's lien by submitting other means of security. He may redeem each item of the inventory from the lien by offering means of security equal to the value of the released items.

#### Article 587. Sublease

1. The lessee has no right to sublease without the consent of the lessor.

2. The lessor may refuse to allow the renting out of individual parts of the leased property if thereby he will sustain significant loss.

3. The lessee shall be liable to the lessor for such use of the thing by the sublessee or by a renter that was not authorized by the lessor. The lessor may directly put an end to

such use of the property  
by the sublessee or by the renter.

#### Article 588. Early Return of the Leased Property

1. If the lessee returns the property before termination of the lease relation, he shall be exempt from further lease payments only if he offers to the lessor a new lessee who is solvent and acceptable to the lessor in lieu of himself. The new lessee must agree to accept the lease contract on the same conditions.

2. If the lessee fails to offer such a lessee, then he shall be bound to pay the lease payments up until end of the lease relationship [i.e., to the end of the contract term].

#### Article 589. Dissolution of a Lease Contract with an Unspecified Term

1. If the term of a contract for lease of land or of a right is not specified, then the contract may be dissolved only after one year; in such case it may be dissolved no later than one month after the end of the year of lease.

2. These rules shall likewise apply when a lease relation may be dissolved earlier than as prescribed by law.

#### Article 590. Dissolution of the Contract by Reason of Death of the Lessee

1. If the lessee dies, both his heirs and the lessor may dissolve the lease relationship within six months after the end of the calendar year. 89

2. The heirs may refuse to allow dissolution of the contract and may claim extension of the lease relationship, provided they are able to properly manage the leased property themselves or through third persons.

#### Article 591. Recovery of Damage in Case of Failure to Return the Leased Property

If, after completion of the lease relationship, the lessee has not returned the leased property, the lessor may claim payment of the stipulated lease payment for period of the delayed return; the lessor may claim other damages as well.

### CHAPTER SIX

#### LEASE OF AGRICULTURAL LAND

#### Article 592. Concept

1. Under a contract for lease of agricultural land, a tract of land is transferred for agricultural purposes, with or without dwellings or farming equipment (or an enterprise) intended for economic

use.

2. The rules governing lease contracts shall apply to the lease of agricultural land unless otherwise prescribed for the lease of agricultural land.

#### Article 593. Form of the Contract

A contract of lease of agricultural land shall be drawn up in writing. In the case of nonobservance of this form it shall be presumed that the contract has been concluded for an indefinite term.

#### Article 594. Inventory of the Leased Property

At the beginning of the lease relation the parties shall jointly make an inventory of the leased property that shall include the amount and condition of the property at the moment of its transfer under the lease. The same rule shall apply at the end of the lease relation. The inventory shall be signed by both parties and the date of its making shall be indicated therein.

#### Article 595. Condition of the Leased Property. Its Repair

The lessor must transfer to the lessee leased property in a condition suitable for the use specified under the contract and must maintain this condition during the whole term of the lease. The lessee is bound to perform current repairs of the property at his own expense, to repair the dwelling and farming structures, roads, ditches, pipelines and fences. He is obligated to use the leased property for economic purposes.

#### Article 596. Lien on the Fruit

For the satisfaction of claims arising out of the lease relationship the lessor shall have a lien on the things added by the lessee [to the property] and on the income derived from the leased property (fruits).

#### Article 597. Claim for Reduction of Lease Payment

If more than half of the annual production to be reaped from the area under lease accidentally perishes, then the lessee shall have the right to demand pro rata reduction of the lease payment. The lessee has the right to claim reduction of the lease payment only before harvesting.

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#### Article 598. Obligation to Compensate Necessary Expenses

The lessor is obligated to compensate the lessee for necessary expenses incurred with respect to the

leased property.

Changes have been made in verb tense and vocabulary to clarify the clause. 90  
Article 599. Compensation for Expenses Incurred by Consent of the Lessor  
Apart from the expenses defined under Article 598, upon expiration of the  
leasing relationship the  
lessor shall compensate the lessee for those other expenses to which he [the  
lessor] consented.

Article 600. Compensation for Harvest Not Yet Gathered

If a leasing relationship is terminated during a year of the lease, the lessor  
shall compensate the  
lessee for the value of the harvest that is not yet gathered but is to be  
gathered before the end of the  
current year of the lease.

Article 601. Obligation of the Lessee to a New Lessee

1. Upon expiration of the term of a lease of agricultural land, the lessee  
shall leave to any new  
lessee the buildings in a suitable condition, and the equipment and  
agricultural products in the  
amount necessary for the continuation of management until harvesting in the  
next year.

2. If the lessee is obligated to leave the products in a larger amount or of a  
better quality than he  
received at the beginning of the lease, then he may demand from the lessor  
compensation for the  
[additional] value.

Article 602. Obligation to Return the Leased Property

After expiration of the leasing relationship the lessee shall be obligated to  
return the leased property  
in a condition that secures proper management of the property as it existed  
before the return.

Article 603. The Lessee's Rights to Individual Parts of the Leased Property

1. The lessee has the right to detach the equipment with which he equipped the  
leased property.

The lessor may substitute the lessee's right to detach with corresponding  
compensation, except  
when the lessee has a legitimate interest in the detachment.

2. An agreement that excludes the lessee's right of detachment, defined in  
paragraph (1) of this  
Article, shall be valid only if this agreement stipulates the corresponding  
amount of compensation.

Article 604. Demand for Extension of the Lease Relationship

The lessee may demand from the lessor extension of the lease relationship if:

- a. The leased property is the sustenance of the lessee's business;
- b. The tract of land is vitally essential for sustaining the lessee's  
business and the dissolution of



the lease, even in accordance with the contract, is so painful for the lessee and his family

that it may not be justified even on the grounds of the legitimate interests of the lessor.

Article 605. Termination of the Lease Relationship by the Lapse of its Term  
The lease relationship is terminated by the lapse of the term of the contract.

A contract concluded

for a term of more than three years may be extended for an indefinite term if an offer of one party to

extend the lease relation is not rejected by the other party within three months. The offer and the

rejection shall be made in writing.

Article 606. Termination of Lease Relationship in the case of a Contract for an Unspecified

Term

1. If the duration of a lease relationship is not specified, then each party to the contract may, no

later than ten days from the commencement of a year of the lease, declare its intention to dissolve

the lease contract for the next year of the lease. A calendar year is deemed to be a year of the lease.

If the parties agree on a shorter period of time, then this shall be drawn up in writing.

See Article 595. The lessor is obligated to compensate the lessee only for those expenses which were incurred to

restore some fundamental aspect of the property's suitability, as delivered by the landlord. The lessee is not entitled to

compensation for routine maintenance. 91

2. When a lease relationship may be terminated earlier than as prescribed by law, this shall be

allowed only at the end of a year of the lease.

## CHAPTER SEVEN

### FRANCHISE

Article 607. Concept

A franchise agreement is a long-term relationship of obligation under which independent businesses

are bilaterally bound, as far as necessary, to promote the production and marketing of goods and

rendering of services by performing specific obligations.

Article 608. Obligations of a Franchiser

1. A franchiser is obligated to present to a franchisee, in the form in which the franchiser exercises

them: intangible property rights; trademarks and tradenames; samples and packaging; the concepts

of management, production, purchase and marketing of the goods, as well as other information required for promotion of sales.

2. The franchiser is obligated to protect the system of joint operation from the intervention of third persons, to develop it consistently, and to support the franchisee by sharing business skills and furnishing information and training.

#### Article 609. Obligations of a Franchisee

A franchisee is obligated to pay the franchise fee, the amount of which is essentially calculated taking into account the contribution made towards the implementation of the system of the franchise, to actively conduct the business with due diligence, to receive services, and to purchase goods through the franchiser or through persons named by the franchiser if this is directly related to the objective of the agreement.

#### Article 610. Obligation Not to Disclose Confidential Information

At the time of execution of the contract, the parties must openly and completely inform each other about the circumstances relating to the franchise, especially the system of the franchise, and to communicate the information to each other in good faith. The parties are obligated not to disclose the information confided to them even if the agreement is not executed.

#### Article 611. Form of Contract

The validity of a franchise contract requires that it be in written form. In addition to clearly indicating the bilateral obligations, the duration of the contract, provisions on dissolution or extension of the contract and other essential clauses, the contract shall contain a complete description of the system of the franchise.

#### Article 612. Duration of the Contract

1. The duration of the contract shall be determined by the parties, taking into consideration the requirements for marketing the given goods and services.

2. If the duration of the contract exceeds ten years, then either party is entitled to dissolve the contract by observing a one-year period of time required for dissolution.

If neither party exercises this right to dissolve the contract, the contract shall be extended for two years [at the end of its term]. If the contract is dissolved by lapse of its term or by the initiative

of the parties, then the parties shall try, observing the principles of mutual confidence, to continue the contract on the same or altered terms up until the time the business relationship is actually ended.

#### Article 613. Loyal Competition

It is unclear whether termination may be introduced by either party within the ten year term, or only within one year of the end, barring which the contract is automatically extended for an additional two years. 92

1. Even after expiration of the contractual relationship the parties are obligated to compete with each other loyally. Within these limits, the franchisee may be prohibited from competing [with the franchisor] within a specified area for a period of time, not to exceed one year.

2. If the prohibition of competition may endanger the professional business [of the franchisee], then an appropriate monetary compensation shall be given to the franchisee despite the expiration of the term of the contract.

#### Article 614. Liability of the Franchiser

The franchiser is liable for the rights and information specified by the system of the franchise. If, by his fault, he breaches the contractual obligation, the franchisee shall be entitled to reduce the franchise fee. The amount of the reduction shall be determined finally by an independent expert, the expenses of whose services shall be borne by the parties.

### CHAPTER EIGHT

#### [GRATUITOUS] LENDING

#### Article 615. Concept

Under a contract of lending, the lender undertakes the obligation to transfer property to the borrower for his temporary and gratuitous use.

#### Article 616. Liability of the Lender

The lender shall be liable only for damages inflicted either intentionally or by gross negligence.

#### Article 617. Obligation to Compensate Damages in Case of Concealment of Defect

If the lender knowingly conceals a defect of the right or the thing from the borrower, he shall be obligated to compensate the damage thereby inflicted.

#### Article 618. Purposeful Use of the Loaned Thing

The borrower may not use the thing otherwise than as stipulated in the contract. He has no right to transfer the thing to the use of a third person without the consent of the lender.

#### Article 619. Obligation to Bear Ordinary Expenses

1. Ordinary expenses required for maintenance of the loaned thing shall be borne by the borrower.
2. The lender's obligation to compensate other expenses shall be determined in accordance with the rules governing management of the affairs of another person without his mandate.

#### Article 620. Wear and Tear to the Loaned Thing

The borrower shall not be liable for changes to or deterioration of the loaned thing if they are caused by uses that comply with the contract.

#### Article 621. Obligation to Return the Loaned Thing

1. The borrower shall be bound to return the loaned thing after expiration of the term fixed under the contract of lending.
2. If no such term is fixed under the contract, then the lender may retrieve the thing after expiration of the period of time required for the intended use; and if the intended use is not specified, then he may demand return of the thing at any time.
3. The borrower may return the thing at any time.

#### Article 622. Effect of Death of the Borrower [and Unforeseen Circumstances]

If the borrower dies or if the lender is in need of the thing due to unforeseen circumstances, then the lender may dissolve the contract.

See footnote to § 545. 93

### CHAPTER NINE

#### LOAN

#### Article 623. Concept

Under a loan contract the lender transfers to the ownership of the borrower money or some other generic thing, and the borrower undertakes the obligation to return a thing of the same kind, quality and amount.

#### Article 624. Form of a Loan Contract

A loan contract is made orally. The parties may agree on a written form as well. In the case of an oral contract its validity may not be proved only on the grounds of evidence given by witnesses [testimony].

#### Article 625. Loan Interest

The parties may predetermine that the loan is to be made for interest, the rate of which shall reasonably correspond to the ceiling interest rate fixed by the National Bank or by the Interbank

Credit Auction. An agreement made in violation of this rule shall be void.

#### Article 626. Termination of the Contract and Payment of the Debt

1. If the time for payment of the debt is not specified under the contract, then the loan shall be repaid upon termination of the contract by the lender or the borrower.

2. The period of time for termination of the contract is three months. If no interest is promised, then the borrower may prepay the debt before its due date. Prepayment of an interest-bearing loan shall be allowed only by the preliminary agreement of the parties or by the consent of the lender.

3. The interest shall be paid after the lapse of each year. If a date of maturity is specified in the loan, then both the debt and the interest shall be paid when due.

#### Article 627. Right to Claim Immediate Repayment

The lender has the right to claim immediate payment of the debt if the economic condition of the

borrower substantially deteriorates, endangering the claim for repayment of the loan. This right shall likewise be effective if the deterioration of the borrower's economic condition preceded conclusion of the contract, but the lender became aware of it only after conclusion of the contract.

#### Article 628. Promise of Loan

In case of promise of a loan, the promisor may refuse to grant the loan if the other party's economic condition has deteriorated so badly [since the promise was made or the promisor became aware of the promisee's condition] that the repayment of the loan may be endangered. The promise of a loan shall be made in writing.

### CHAPTER TEN

#### CONTRACT FOR WORK [BY INDEPENDENT CONTRACTOR]

#### Article 629. Concept

1. Under a contract for work the contractor undertakes the obligation to perform the work specified in the contract, and the client is obligated to pay the agreed compensation to the contractor.

2. If some article is to be manufactured under a contract for work, and the

contractor manufactures

it with materials that he purchased himself, then he transfers ownership of the manufactured thing to the client. If a generic thing is manufactured, the rules governing a contract of sale shall apply.

3. Drawing up an estimate of the work to be performed under the contract shall not be

compensated as part of the contract, unless otherwise stipulated by agreement.

Literally, "property status." 94

#### Article 630. Agreement on Compensation

1. An agreement to pay compensation for the work shall be implied if, taking into consideration

the circumstances of the case, the contract work would be expected to take place only if

compensated.

2. When the amount of compensation has not been agreed upon, a tariff rate shall be deemed to

apply as agreed compensation, provided such a rate exists, or, if no tariff schedule exists, then a

usual level of compensation shall apply.

#### Article 631. Effects of Exceeding an Approximate Estimate

1. If a contractor significantly exceeds an approximate estimate, he may demand only an agreed

compensation, except when the cost overrun could not be foreseen.

2. The contractor shall immediately notify the client of any overrun of the approximate estimate

that could not be foreseen at the time of execution of the contract. If the client terminates the

contract on the grounds of the cost overrun, he shall be obliged to pay for the work according to the

approximate estimate.

#### Article 632. Obligation to Perform the Work Personally

A contractor shall perform the work personally only if this proceeds from the specific circumstances

or from the nature of the work.

#### Article 633. Client's Obligation to Compensate for Damages

1. The contractor may claim damages if the client does not accept the work performed. The client

is also obligated to pay damages if he fails to perform any actions required for performance of the

work.

2. The amount of compensation for damages shall be determined, on the one hand, according to

the period of delay and the amount of compensation, and on the other according to what the

contractor would have received in consideration for his labor skills used otherwise had the employer received the performance in time.

#### Article 634. Mechanic's Lien in Movable Things

For securing his claims [against the client] the contractor may use the right of lien on any movable thing manufactured or repaired by him if this thing is in the possession of the contractor for the purpose of its manufacture or repair.

#### Article 635. Mechanic's Lien on a Plot of Land for Construction

If the object of the contract is a structure or individual parts a structure, the contractor may, proceeding from his requirements under the contract, demand that a lien be placed on the land plot used for the construction.

#### Article 636. Dissolution of the Contract

The client may repudiate the contract at any time before completion of the work, but he must compensate the contractor for the work performed and compensate damages caused by the dissolution of the contract.

#### Article 637. Dissolution of the Contract by the Initiative of the Contractor Before completion of the work the contractor may terminate the contract only in a manner that

enables the client to receive the services from someone else, except when there are some important

The intention appears to be that the contractor shall receive compensation in the amount that he would have received had he been allowed to work during the period that he was delayed. In effect, he gets the contract rate for the period of delay. 95

grounds for the termination. In this case the obligation to compensate damages [to the client] shall be excluded.

#### Article 638. Right to Demand a Portion of the Compensation

If the contractor terminates the contract under Article 637, he may demand compensation proportionately to the services rendered [before termination], if the client has any interest in [received value from] the services rendered.

#### Article 639. Obligation to Submit a Thing Without Defect

If the services include the manufacture of some article, then the contractor must deliver the thing to the client with no material defects or defects of rights [title].

Article 640. An Article Without Defects of Right [Title]

An article is without defects of right [title] if third persons may not assert against the client any rights [with respect to the article].

Article 641. An Article without Material Defect

1. An article is without material defect if it corresponds to the agreed conditions; and if no such conditions are agreed upon, then the article shall be deemed to be without material defect if it is suitable for the use stipulated in the contract or for ordinary use.

2. A material defect shall exist where the contractor has manufactured an article different from or in a smaller quantity than the article ordered.

Article 642. Claim for Additional Performance

1. If the article is defective, the client may demand additional performance. The contractor may, at his choice, either eliminate the defect or manufacture a new article.

2. For the purpose of additional performance the contractor is obligated to incur any necessary expenses, including expenses of transportation, work and materials. The contractor may refuse to

provide additional performance if it will require disproportional expenses.

3. If the contractor manufactures a new article, he may demand return of the defective article from the client.

Article 643. Elimination of the Defect in the Article by the Client

1. If the contractor has not refused to provide additional performance because of disproportional expense, but the time period fixed for the additional performance on the grounds of the article's defectiveness has expired without any result, then the client may eliminate the defect himself and demand compensation [from the contractor for] the expenses incurred.

2. In any case within paragraph (2) of Article 405, the fixing of an additional period [for performance] shall not be required.

3. The client may demand from the contractor payment in advance for the expenses required to eliminate the defect.

Article 644. Repudiation of the Contract Because of Defect of the Article

On the grounds of defectiveness of the article the client may repudiate the contract under Article

405. In such case the contractor shall be obligated to compensate the client for expenses related to the contract.



Article 645. Reduction of Compensation Because of Defect of the Article  
A client who neither receives the remedy of additional performance of the contract after the expiration of the time fixed therefor, nor repudiates the contract, may reduce the compensation to be paid to the contractor by an amount that equals the decrease in value of the article as a result of the defect. 96

Article 646. Performing Work with the Contractor's Materials

1. If the contractor performs labor with his own materials, he shall be liable for material of poor quality.

2. The contractor shall be liable for improper use of the client's materials. The contractor is bound to submit to the client an accounting of material expenditures and to return any remaining materials to him.

Article 647. Obligation to Give a Warning Notice

1. The contractor is bound to timely warn the client that:

a. The material received from the client is unsuitable and of poor quality;  
b. If the client's instructions are fulfilled, the work will be unstable or useless;

c. There exist other circumstances beyond the control of the contractor endangering the durability and suitability of the work.

2. If the client, notwithstanding the warning given by the contractor, fails to replace the unsuitable and substandard materials within an appropriate time, fails to alter the instructions given on the procedure of work performance, or fails to eliminate the other circumstances threatening damage to the suitability and durability of the work, then the contractor shall have the right to repudiate the contract and to claim damages thereby sustained.

Article 648. Payment of Compensation for Work Performed

The client is obligated to pay compensation to the contractor after the work is performed, unless the contract predetermines payment in installments.

Article 649. Acceptance of the Work

If, under the contract or proceeding from the nature of the work performed, its conveyance is required, the client is obligated to accept the work performed and to pay the compensation for it on acceptance. The work shall be deemed accepted if the client fails to accept

the work within the time fixed by the contractor.

#### Article 650. Liability of the Contractor in Case of Perishing of the Client's Property

The contractor shall be liable for the perishing or deterioration of the client's property due to the contractor's negligence.

#### Article 651. Risk Placed on the Contractor

1. Prior to delivery of the performance to the client, the risk of accidental loss or deterioration of

the work performed is on the contractor. Simultaneously with delivery of the work performed, the

risk of accidental loss or deterioration shall shift to the client. [For purposes of shifting the risk of

loss or deterioration to the client,] the client's delay in accepting performance shall be equivalent to

delivery of the performance to the client.

2. The risk of accidental loss or deterioration of materials is on the party supplying the materials.

#### Article 652. Effect of Acceptance of a Defective Article

If the client is aware of a defect in the article and yet he accepts it without asserting a complaint,

then he shall have no right to make any claim on the basis of such defect.

#### Article 653. Guaranty Period

If the contractor has given a period during which the fitness of the article is guaranteed, then any

defect detected during this period shall give rise to corresponding rights [in the client].

#### Article 654. Effect of Intentional Concealment of a Defect by the Contractor

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If the contractor intentionally conceals a defect, he may not resort to any agreement that excludes or

restricts the right of the client to make claims regarding defects in the article.

#### Article 655. Limitation Period

The client may assert claims regarding defects in the performance within one year [following

acceptance of the work], and may assert claims with respect to structures [buildings] within five

years from the date of acceptance of the work.

#### Article 656. Computation of the Limitation Period when the Work is Received in Installments

If under a contract the work is received in installments, then the limitation period on claims arising

from defects begins to run from the date of receipt of the work in full.

CHAPTER ELEVEN  
TOURIST SERVICES

Article 657. Concept

Under a tourism contract a travel agency is obligated to render the agreed services to a tourist (traveler). The tourist is obligated to pay the promised compensation to the travel agency for the services rendered.

Article 658. A Third Person Traveler

1. Prior to the beginning of the travel the tourist may demand substitution of a third person to travel in his place. The travel agency may refuse to substitute the third person if the latter does not qualify for the travel, taking into account the necessary conditions thereof.
2. The travel agency may demand from the tourist compensation for any additional expenses caused by participation of the third person in the travel.

Article 659. Shortcomings of the Travel

1. The travel agency is obligated to organize the travel so as to avoid shortcomings in the travel that may devalue or reduce the significance of the travel for ordinary purposes or for the purposes stipulated under the contract.
2. If the travel has such shortcomings, the tourist may demand their elimination. The travel agency may refuse to eliminate the shortcomings if to do so would require disproportionately high expenses.
3. If the travel agency fails to eliminate the shortcomings within a reasonable period of time fixed by the tourist, then the tourist may eliminate the shortcomings himself and demand compensation of necessary expenses thereby incurred. Fixing a period of time for cure is not required if the travel agency refuses to eliminate the shortcomings, or if the tourist has an interest in elimination of the shortcoming immediately.

Article 660. Reduction of the Price Because of Shortcomings of the Travel

1. If the travel is defective, its price shall be reduced taking into account the duration of the shortcomings.
2. The price shall not be reduced if the tourist, through his own fault, fails to notify the travel agency of the shortcoming.

## Article 661. Termination of the Contract on the Tourist' s Initiative Because of Shortcomings

1. If the tourist has sustained significant harm because of the shortcoming defined under Article 659, he may terminate the contract. The same rule shall likewise apply when he is unable to participate in the travel for a legitimate reason known to the travel agency.
2. Termination of the contract is allowed when the travel agency fails to eliminate the shortcomings within a time period fixed by the tourist. Fixing the time period is not required if the shortcomings cannot be eliminated, or if the travel agency refuses to eliminate them, or if the termination of the contract is justified by the special interests of the tourist.
3. Upon termination of the contract the travel agency shall be deprived of its right to receive the agreed compensation, but it may demand compensation for services already rendered without defect.
4. If the contract provided for the return travel of the tourist, then after termination of the contract the travel agency is obligated to return the tourist back [to his point of origin]. Any additional expenses in this case shall be borne by the travel agency.

## Article 662. Compensation for Damage Caused by the Shortcoming of the Travel

1. If the shortcomings of the travel have been caused by circumstances for which the travel agency is liable, then the tourist may claim damages caused by nonperformance [of the travel agency' s duties] without limiting the right to terminate the contract or the right to demand reduction of the compensation [to be paid to the travel agency] arising out of the grounds of the shortcomings.
2. If the travel was ruined or if it was organized improperly, the tourist may demand corresponding monetary compensation for the uselessly wasted vacation.

## Article 663. Limitation Period on Claims Arising out of a Tourism Contract

1. A tourist may assert against a travel agency the claims defined under Articles 659-662 within one month from the lapse of the time period of the travel stipulated in the contract. After expiration of the limitation period the tourist may assert his claims only if he was not at fault in exceeding the limitation period.

2. The limitation period for claims by the tourist is six months. This period begins to run from the date at which the travel should have ended under the contract. If the tourist asserts the claim before beginning of the limitation period, the running of the limitation period shall be suspended until the date on which the travel agency rejects the claim.

#### Article 664. Limited Liability

The travel agency, by agreement with the tourist, may limit its liability to treble the amount of compensation for its services if:

a. The harm sustained by the tourist was not caused by the intent or gross negligence [of the travel agency],

or

b. The travel agency is not solely and entirely liable to the tourist for the damage caused through the fault of one of the persons who performed the travel agency's obligations.

#### Article 665. Repudiation Before the Beginning of the Travel

1. The tourist may repudiate the contract at any time before the beginning of the travel.

2. Upon repudiation of the contract by the tourist the travel agency shall be deprived of its right to receive the agreed compensation. At the same time, it may demand appropriate compensation, the amount of which shall be determined on the basis of the agreed compensation, by deducting the amount that it could have received by providing its services otherwise.

#### Article 666. Force Majeure

1. If the travel is essentially obstructed, or if any other danger arises, or if the tourist sustains harm due to the occurrence of force majeure that could not have been anticipated at the time of execution of the contract, then either the tourist and the travel agency may terminate the contract.

Clauses 1 and 2 appear, without explanation or distinction, to present two different rules for calculating the limitation period on claims, and different limitation periods.

The clause appears to provide that the travel agency receives compensation, using the contractually agreed rates or amounts as a basis, that it would have received if its services had been otherwise engaged. 99

2. In a case of termination of the contract as provided under paragraph (1) of

this Article, the rules of paragraph (3) and the first sentence of paragraph (4) of Article 661 shall apply. Each party shall bear half of the additional expenses of return travel. In other cases the additional expenses shall be borne by the tourist.

#### Article 667. Agreement to the Detriment of a Traveler Disallowed

The rules prescribed in this Chapter may not be altered to the detriment of a traveler.

### CHAPTER TWELVE

#### CARRIAGE

##### I. Contract of Carriage

#### Article 668. Concept

Under a contract of carriage, the carrier is obligated to transport freight or passengers to the place of destination for an agreed fee.

#### Article 669. Liability of the Carrier

1. The carrier shall be liable for damage sustained by the passenger, as well as for damage to the passenger's baggage, or its loss.

2. The liability shall not accrue if the damage is caused by force majeure or by the passenger himself or his baggage.

3. The liability of the carrier may not be excluded or limited by contract.

#### Article 670. Obligation to Enter into a Contract

A person who publicly offers the carriage of freight or passengers shall be obligated to enter into a contract of carriage unless grounds for refusal exist.

#### Article 671. Carriage by Several Means of Transport

If a motor vehicle [mobile container] loaded with freight is transported on one part of the passage by means of marine, railway or air transport and in the situation defined under Article 682 the freight is not unloaded, then the norms of this Chapter shall apply to the entire carriage all the same.

#### Article 672. Form of a Contract of Carriage

A contract of carriage shall be drawn up in the form of a bill of lading (or other document).

Regardless of the nonexistence, defectiveness or loss of a bill of lading, the content and validity of a contract of carriage shall be determined by the norms of this Chapter.

#### Article 673. The Procedure for Drawing Up a Bill of Lading

1. A bill of lading shall be drawn up in three originals signed by the shipper and by the carrier. The first original document is kept by the shipper, the second accompanies the

freight, and the third is kept by the carrier.

2. If the freight to be carried will be transported by several means of transport, or in the case of various kinds of freight or freight divided into individual shipments, then either the shipper or the carrier may demand that as many bills of lading be drawn up as there are kinds of freight, [individual shipments], or means of transport.

#### Article 674. Particulars of a Bill of Lading

1. A bill of lading shall include the following:

- a. The date and place of issuance;
- b. The name and address of the shipper;
- c. The name and address of the carrier;
- d. The date and place of consignment, as well as the place of delivery of the freight;
- e. The name and address of the recipient;
- f. The regular name of the type of freight and packaging, and in case of hazardous freight, its universally recognized symbol;
- g. The quantity, marks and [identifying] numbers of the freight to be shipped;
- h. The weight of the freight or otherwise indicated volume;
- i. The costs of carriage (price of carriage, additional expenses, customs duties and other expenses that arise from the time of execution of the contract until the freight is delivered);
- j. The marks [seals] of customs and other similar agencies;
- k. The indication that the carriage, regardless of the bilateral agreement, is still subject to the norms of this Chapter.

2. If necessary, the bill of lading shall include additional data as follows:

- a. Prohibition of reloading to another transport;
- b. Expenses which the shipper undertakes;
- c. The amount of the "markup" to be paid at the dispatch of the freight;
- d. The value of the freight and the indication of any special interest in delivery;
- e. Instructions given by the shipper to the carrier with respect to insurance of the freight;
- f. The agreed period of time within which the carriage is to be completed;
- g. The list of documents handed over to the carrier;

3. The parties may also enter in the bill of lading any other data that they consider appropriate.

#### Article 675. Liability of the Shipper

1. The shipper shall be liable for all expenses and damages due to the incorrect or incomplete submission of:

a. The data required under subparagraphs (b), (d), (e), (f), (g), (h) and (j) of paragraph (1) of Article 674;

b. The data defined under paragraph (2) of Article 674;

c. All other data or instructions of the shipper with respect to the drawing up of the bill of lading or to be entered therein.

2. If the carrier, on demand of the shipper, enters the data listed under paragraph (1) of this Article in the bill of lading, then it shall be presumed, until proven otherwise, that the carrier acted on behalf of the shipper [in filling out the bill of lading].

3. If the bill of lading does not include the information required under subparagraph (k) of paragraph (1) of Article 674, then the shipper shall be liable for any expenses and damages that the person having the right to the freight sustains by reason of absence of this information.

Article 676. Liability of the Carrier upon Acceptance of the Freight

1. When accepting the freight, the carrier shall be obligated to inspect:

a. The number of pieces of the freight, the accuracy of the data contained in the bill of lading regarding the marks and [identifying] numbers of the freight; and

b. The external condition of the freight and its packaging.

2. If the carrier lacks the appropriate means to inspect the data defined in subparagraph (a) of paragraph (1) of this Article, then he shall enter in the bill of lading the conditions to be performed.

He shall likewise enter those conditions which pertain to the external condition and packaging of the freight. These conditions shall not be binding upon the shipper unless he clearly acknowledges them in the bill of lading.

3. The shipper may demand that the carrier inspect the weight of the freight or its otherwise indicated volume. He may also demand that the carrier inspect the content of the freight. The carrier is entitled to demand compensation for any expenses it incurs with respect to the performance of such inspections. The results of the inspection shall be indicated in the bill of lading.



Or “added value” or “added price.” Cf. Art. 690.101

#### Article 677. Presumption of Execution of a Contract of Carriage

1. Until proven otherwise, a bill of lading (or consignment or other form accepted in the carriage business) shall be proof that the contract of carriage has been executed and its content determined, and the carrier has taken the freight into its custody.

2. If the bill of lading does not indicate the conditions of carriage, then it shall be presumed, until proven otherwise, that at the time of the taking of the freight into custody by the carrier, the freight and its packaging were in good external condition and the number of pieces of the freight, the marks and [identifying] numbers thereof corresponded to those indicated in the bill of lading.

#### Article 678. Liability of the Shipper for Damage Caused by Substandard Packaging of the Freight

The shipper shall be liable to the carrier for any damage inflicted on persons, materials and other property because of the poor quality of packaging of the freight, as well as for expenses incurred by reason of the poor quality packaging of the freight, except when the defect was obvious, or the carrier knew of the defect at the time of acceptance of the freight but did not stipulate any condition in this respect.

#### Article 679. The Shipper's Obligation to Furnish Necessary Information

1. The shipper is obligated to attach to the bill of lading all those documents that are required for the performance of customs and similar operations prior to the delivery of the freight [to the consignee], or to hand over these documents to the carrier and furnish all necessary information.

2. The carrier shall not be obligated to examine whether or not these documents and information are correct and sufficient. The shipper shall be liable to the carrier for any damage caused by the incompleteness or inaccuracy of the documents and data, unless these [failures in the documents] occurred due to the carrier's fault.

3. The carrier shall be liable for loss or improper use of the documents indicated in and attached to the bill of lading or handed over to it; the carrier's liability may not

exceed the liability for loss of the freight.

#### Article 680. Rights of the Shipper

1. The shipper is entitled to dispose of the freight, and to demand termination of the carriage; it may also demand that the carrier not change the destination of the freight, or deliver it to any person other than the one indicated in the bill of lading.

2. The shipper's rights [under subparagraph (1) above] shall be extinguished immediately upon the handing over of the second original of the bill of lading to the consignee of the freight, [i.e., the original that went with the freight] or when the consignee exercises its rights under paragraph (1) of Article 681. From this moment forward, the carrier must execute the instructions given to it by the consignee.

3. The consignee acquires the right to dispose of the freight immediately upon the drawing up of the bill of lading if the shipper so designates in the bill of lading.

4. If the consignee, when exercising its right of disposition, has instructed that the freight be delivered to a third person, then that third person shall not be entitled to name another consignee.

5. The right of disposition shall be exercised subject to the following rules:

a. If the shipper or, in the case defined under paragraph (3) of this Article, the consignee, wishes to exercise its right of disposition, then it must present the first original bill of lading, which shall include the new instructions, to the carrier, and it must compensate the carrier for all expenses and damages that arise as a result of the execution of these instructions.

b. The execution of the instructions must be possible when they reach the person who is to execute the instructions. They may not obstruct the carrier in the conduct of its regular business activities, nor may the instructions be allowed to inflict damage on [other freight of the shipper or of the consignee];

c. The instructions shall not cause division of the freight.

6. If the carrier, on the grounds defined in subparagraph (b) of paragraph (5) of this Article, is unable to execute the instructions, it shall immediately notify the person who

gave these instructions that they cannot be executed.

7. A carrier who fails to execute instructions given in accordance with the provisions of this

Article, or who executes them without having demanded the first original of the bill of lading, shall

be liable before the entitled person for any damage caused thereby.

Article 681. Rights of the Consignee upon Delivery of the Freight

Upon delivery of the freight to its predetermined destination, the consignee shall be entitled to

demand that the carrier tender the second original bill of lading as confirmation of the receipt of the

freight, and the freight shall thereby be deemed to be delivered. If a shortage of the freight is

detected, or if the freight is not delivered within the period of time defined under Article 688, then

the consignee may exercise on his own behalf the [shipper' s] rights arising out of the contract of

carriage against the carrier.

Article 682. Impossibility of Performance of the Contract

1. If, prior to the receipt of the freight at the place predetermined for delivery to the consignee, it is

[clear that it will be] impossible to perform the contract in accordance with the conditions indicated

in the bill of lading, then the carrier shall demand instructions with respect to [delivery of] the

freight from the person entitled under Article 680.

2. If the circumstances enable the carriage to be performed otherwise than under the conditions

indicated in the bill of lading, and if the carrier within an appropriate period of time is unable to

receive from the entitled person the instructions with respect to the freight defined under Article

680, then it shall undertake such measures that are deemed to be in the best interests of the entitled

person.

Article 683. Circumstances Impeding Delivery of the Freight

1. If, after arrival of the freight at its destination, circumstances arise hindering the delivery of the

freight to the consignee, the carrier shall demand instructions from the shipper. If the consignee

refuses to accept the freight, the shipper shall be entitled to dispose of the freight himself, even

without presenting the first original bill of lading.

2. Until the carrier receives contrary instructions from the shipper, the consignee may demand delivery of the freight to him even when he [first] refused to accept the freight.

3. If the circumstances impeding the delivery of the freight arise after a consignee entitled under § 680(3) has ordered the freight delivered to a third person, then in the cases where paragraphs (1) and (2) of this Article would apply, the consignee shall stand in the place of the shipper and the third person in the place of the consignee.

Article 684. The Right to Demand Compensation for Expenses That Arise on the Grounds of

Instructions Given by the Shipper

1. The carrier has the right to demand compensation for expenses incurred by reason of receiving or executing instructions, except when these expenses arise through the carrier's own fault.

2. In cases under Article 683 and paragraph (1) of Article 682, the carrier may urgently unload the freight at the expense of the entitled person, and after such unloading the carriage shall be deemed

completed. Following this, the carrier shall store the freight for the entitled person. He may entrust

The bracketed text is translated literally, but would more logically read "on the freight of other shippers or consignees."

This subparagraph of course presupposes the existence of impossibility as provided for in the first subparagraph of the article. 103

the storage of the freight to a third person, and in such case he shall be liable only for [due diligence in the] selection of the third person. All claims and expenses arising out of the bill of lading [in these circumstances] shall be paid from the value of the freight.

3. Without waiting for instructions from the entitled person, the carrier may sell the freight if the goods are highly perishable or if the condition of the freight justifies such action, or if the expenses of storage exceed the value of the freight. The carrier may sell the freight in other cases as well if no instructions from any party are given to it.

4. If the freight has been sold in accordance with this Article, then the sum, less the expenses related to the freight, shall be transferred to the entitled person. If these

expenses exceed the proceeds, the carrier may demand compensation for the difference.

5. The procedure of sale shall be determined in accordance with the laws and usages of the place where the freight is located.

#### Article 685. Carrier's Lien on the Cargo

The carrier, on the basis of expenses arising out of the contract of carriage, shall have a lien on the freight until he is entitled to dispose of the thing.

#### II. Liability of the Carrier

##### Article 686. Concept. Content

1. The carrier shall be liable for the partial or total loss of the freight and damage to it if the freight was lost or damaged within the period of time from its acceptance [by the carrier] to its delivery [to the consignee], as well as for exceeding the period for delivery [delay].

2. The carrier shall be released from liability if the loss or damage to the freight or the overrunning of the period for delivery has been caused through the fault of the person entitled to the freight, or because of instructions from such person for which the carrier is not liable. [The carrier is likewise relieved of liability] if the defect of the freight has been caused by circumstances which the carrier could not avoid, nor could their results be avoided.

3. The carrier may not avoid its liability by claiming defect in the means of transportation used for the carriage or the fault of the staff of the lessor or lessee of the means of transportation.

4. In the cases defined under paragraphs (2)-(5) of Article 687, the carrier shall be released from liability if the loss or damage to the freight was caused by extraordinary danger related to the following circumstances:

- a. Open, uncovered transportation was used, provided its use was directly agreed to and indicated in the bill of lading;
- b. The freight was not packaged or the packaging was of a poor quality that risked loss or damage to the freight, having due regard to the nature of the freight;
- c. The examination, loading, stowing or unloading was done by the shipper or the consignee or by a third person who acted for them;
- d. Because of the peculiarity of the specific freight, a danger of partial or

total loss or damage

is presumed to exist, and in particular, there is a presumptive danger of breakage, rust,

corrosion, withering, spilling, normal wear and tear or the influence of insects and rodents;

e. The freight to be transported was inadequately marked or numbered;

f. Animals were transported.

Article 687. Burden of Proof

1. The burden of proof that the loss or damage to the freight or the delay in delivery was caused by

the circumstances defined in paragraph (2) of Article 686 is on the carrier.

2. If the carrier proves that, proceeding from the specific circumstances of the case, the loss or

damage may have been caused by one or more of the dangers specified in paragraph (4) of Article

686, it shall be presumed that the damage was caused thereby. The entitled person may prove that

the damage was not caused by this danger or not only by this danger. 104

3. The presumption stated in paragraph (2) of this Article shall not apply if the freight is lost or has

perished in extraordinary circumstances in a case defined under subparagraph (a) of paragraph (4)

of Article 686.

4. If the carriage is performed by a means of transportation which is equipped with special

equipment for protecting the freight from heat, cold, temperature variation or wind, the carrier may

resort to paragraph (4) of Article 686 only if he proves that he has performed [all] necessary tasks

for the selection, operation and use of such equipment and observed all the requirements incumbent

upon him.

5. The carrier may resort to subparagraph (d) of paragraph (4) of Article 686 only if he proves that

he undertook all measures incumbent upon him and observed all instructions given to him.

Article 688. Exceeding the Period for Delivery of the Freight

The period of time for delivery of the freight shall be deemed to have been overrun if the freight is

not delivered within the agreed period of time, or, in case no time was fixed, within an ordinary

period of time required for transportation, having due regard to circumstances that relate to the

determination of the time required for assembling parts of the freight when the freight is to be

loaded in parts, or if a time period was not observed which a prudent carrier ought to have observed.

#### Article 689. Presumption of Loss of Freight

1. The entitled person may deem the freight to be lost, even without presenting any additional proof thereof, if the freight is not delivered to its destination within thirty days after the agreed time of delivery, or, if no such time was fixed, within sixty days after acceptance of the freight by the carrier.

2. The entitled person, upon compensation for damages for the lost freight, may demand in writing that he be immediately notified if the lost freight is found within one year from the date he receives compensation for the damage. The reply to this demand shall be made in writing as well.

3. Within thirty days after receipt of notice [that the freight has been found], the entitled person may demand delivery of the freight to him, after satisfaction of any rights [claims] arising out of the bill of lading, and on the condition [that he] return the compensation received, [taking into account] deduction for [his] expenses which arose at the time of the payment of compensation for his damage.

His claims for damages with respect to overrunning of the time period for delivery under

Articles 692 and 694 shall not be altered.

4. If the demand provided for under paragraph (2) of this Article is not asserted, or if there is no instruction [request] because of the thirty-day period referred to in paragraph (3), or if the freight is found after the lapse of one year from the date of compensation, then the carrier may dispose of the freight in accordance with the rules effective at the place where the freight is located.

#### Article 690. Right to Demand Payment of the "Markup" [Carrier's Fee]

If the freight is delivered to the consignee without payment of the due markup that is to be paid to the carrier upon delivery of the freight at its destination, then the carrier may, with reference to the right of recourse, demand compensation for damages from the shipper.

#### Article 691. Procedure for Shipping Hazardous Freight

1. If the shipper ships a hazardous freight, he shall be obligated to furnish

accurate information and a warning notice to the carrier, and, where necessary, to insure the freight. If these obligations are not carried out in the bill of lading, then the shipper and the consignee are required to prove by other means that the carrier was precisely aware of the type of the freight and the expected danger.

The net result of this paragraph appears to be that use of open, uncovered transportation gives the carrier no protective presumption against liability for loss, even if that method of transportation was agreed to with the shipper.

In other words, before returning the compensation he received for loss of the freight, the entitled person (shipper or consignee) may set off his own claims for expenses.<sup>105</sup>

2. If the carrier was not aware of the danger associated with the hazardous freight under paragraph

(1) of this Article, then he may at any time and at any place unload, destroy or neutralize the freight without any obligation to compensate for damages. The shipper is likewise liable for expenses and

damage caused by having tendered this freight for carriage or transportation. Article 692. Value of the Freight in the Case of its Partial or Total Loss

1. If, according to the rules of this Chapter, the carrier is obligated to compensate damages

sustained by partial or total loss of the freight, then the damages shall be calculated according to the price of the freight in effect at the place and time of handing over of the freight.

2. The value of the freight is determined according to commodity exchange price, and if no such price exists, then according to the market price; and if no market price is available, then the value shall be determined by analogy to freight of the same kind and value.

3. Transportation costs, customs duties and other similar expenses shall be compensated [paid back] either in full, in case of total loss of the freight, or in part in the case of partial loss.

4. If the time period for delivery of the freight is exceeded and the entitled person proves that damage was thereby caused, then the carrier shall be bound to compensate for this damage only to

the extent of the value of the freight. The compensation of amounts in excess of this value may be

claimed only if, under Article 694, a special interest in this carriage existed, or if the [special] value



of the freight was indicated.

#### Article 693. Compensation for Damage to the Freight

1. In case of damage to the freight, the carrier shall pay compensation equivalent to the amount by which the value of the freight was diminished, which shall be calculated according to the value of the freight as determined under Paragraphs (1), (2) and (3) of Article 692.

2. Compensation for damage may not exceed the amount which:

- a. Ought to have been paid for total loss of the freight, provided that as a result of the damage the freight is totally devalued.
- b. Ought to have been paid for loss of value of part of the freight, provided that as a result of the damage, only a part of the freight is devalued.

#### Article 694. Indication of Special Interest in the Bill of Lading

1. The shipper, on the basis of payment of a stipulated markup, may indicate in the bill of lading his special interest in this carriage in the event of loss or damage to the freight or overrunning of the time period for delivery.

2. If a special interest in the carriage has been so expressed, then independently from the [right to receive] compensation for damages as provided in Articles 692 and 693, additional damages may be claimed in the amount of the special interest expressed.

#### Article 695. Claim of Interest on Secured Compensation for Damages

1. The person entitled to the freight may demand that interest be paid on damages "secured" for him at the annual rate of five percent. The interest begins to accrue from the date of presentation of the claim to the carrier, or, if a claim was not presented, then from the date of filing of a lawsuit.

2. If the damages are stipulated in a currency that is not effective in the country [where payment is sought], and the payment is demanded, then the rate of exchange shall be determined according to the exchange rate in effect on the date and at the place of payment of compensation for damages.

#### Article 696. Non-contractual Claims in Carriage

Although not entirely clear, it appears that the price used to determine value for compensation will be the price at the time and place of handing over the goods to the carrier (the beginning of the journey) and not at the time and place of projected or actual delivery of the goods to the consignee. 106

1. If a non-contractual claim arises on the grounds of loss, damage or overrun of time occurring during a carriage regulated under this Chapter, then the carrier may resort to those rules of this Chapter that exclude his liability or define or limit the amount of damages.
2. If a non-contractual claim arising out of the loss, damage or overrun of time is asserted against any person, then this person may resort to those rules of this Chapter that exclude his liability or define or limit the amount of damages.

#### Article 697. Release of the Carrier from Liability Not Allowed

A carrier may not resort to those rules of this Chapter that exclude or limit his liability or release him from the burden of proof, if the damage is caused through his fault.

#### III. Claim and Lawsuit

##### Article 698. Concept. Content

1. If the consignee accepts the freight without inspecting it together with the carrier and does not assert against the carrier any claims of a general nature with respect to loss or damage, then it shall be presumed until proven otherwise that the recipient received the freight in the condition indicated in the bill of lading. A complaint must be asserted on the very day that the freight is handed over to him if the matter concerns externally visible shortages or damage, and in the case of shortages or damage which are not externally visible, then no later than seven days after the delivery of the freight. In the case of shortages or damage which are not externally visible, the complaint shall be made in writing.
2. If the consignee and the carrier jointly inspected the condition of the freight, then proof contradicting the results of the examination shall be allowed only if the matter in dispute concerns externally invisible shortages or damage and the consignee did not assert a written demand within seven days after receipt of the freight.
3. A claim for damages on the grounds of overrun of time may be asserted only if the consignee submits to the carrier a written claim within twenty-one days from the receipt of the freight.
4. The days of the freight's dispatching, examination and delivery to the consignee shall not be

counted in computation of the time periods defined under this Article.

5. The carrier and the consignee shall assist each other in carrying out the required inspections and in establishing the necessary facts.

Article 699. Prescription Period on Rights Arising Out of the Carriage

The prescription period on rights arising out of a carriage regulated by this Chapter is one year. In

case of [intentional misconduct] or gross negligence the period of limitation is three years. The

limitation period begins to run:

a. in case of partial loss, damage or overrunning of the time of delivery of the freight from

the day of its dispatching;

b. in case of total loss of the freight from the twenty-first day after expiration of the agreed

period of time for the carriage, or, if no such period was stipulated then from the sixtieth

day after receipt of the freight by the consignee;

c. in all other cases upon the lapse of three months from the day of execution of the contract

of carriage.

Article 700. Suspension [Tolling] of the Limitation Period

The limitation period is suspended [tolled] on the basis of a written claim, as of the day on which

the carrier rejects the claim and returns the attached documents. If the claim is acknowledged in

part, then the limitation period on the part in dispute continues to run. The burden of proof with

respect to acceptance of the complaint and response to it, as well as the burden of proof of return of

“Reklamation” in Georgian, and in German as well.<sup>107</sup>

the documents, is on the person who resorts to them.

Further claims regarding the same subject

matter shall not suspend the running of the limitation period.

IV. Carriage by Connecting Carriers

Article 701. Liability in the Case of Carriage by Connecting Carriers

If under one contract the carriage is performed by a number of different, connecting carriers, then

each of them shall be liable for the performance of the entire carriage. The second and each

subsequent carrier by receiving the freight and the bill of lading shall become a party to the

contract.

Article 702. Obligation to Tender the Appropriate Documents

1. The carrier accepting the freight from the preceding carrier shall be obligated to tender a document confirming receipt of the freight dated and signed by him. He must indicate his name and address in the second original of the bill of lading. Where necessary, the subsequent carrier enters in the bill of lading the terms provided for under paragraph (2) of Article 676 and the confirmation of receipt of the freight.

2. The relations among the connecting carriers shall be regulated by Article 677.

Article 703. Claim for Compensation of Damage from Connecting Carriers  
Claims for damages on the grounds of the loss or damage of the freight or overrun of the time for transportation, except counterclaims and countersuits, may be asserted only against the first carrier, the last carrier, or the carrier who was carrying the freight when it was lost or damaged or the time period was overrun. One and the same action may be brought against several carriers.

Article 704. Right of Recourse in the Case of Compensation for Damages  
If, under this Chapter, a carrier has already paid compensation for the damages, he shall have the

right of recourse [against the other carriers] in the following cases:

a. If the carrier who caused the loss or damage of the freight is obligated to compensate by

himself the loss that he caused alone or that was caused by several carriers;

b. If the loss or damage to the freight has been caused by two or more carriers, then each of

them must compensate for the damages according to his share of the liability; and if these

shares cannot be determined, then each of them shall be liable proportionately to his share in

the [total] fee of the carriage.

c. If it cannot be determined which carrier is obligated to compensate the damage, then all the

carriers shall pay the compensation according to the proportion defined in subparagraph (b).

Article 705. Effects of Insolvency of the Carrier

If one of the carriers is insolvent, then the amount to be paid by him but not yet paid shall be

distributed among the rest of carriers proportionately to their shares in the received fee of the

carriage.

Article 706. Dispute Regarding the Exercised Right of Recourse

The carrier against whom recourse is had under Articles 704 and 705 may not claim that the carrier who had the right of recourse paid the damages groundlessly, provided that the decision on payment [of damages] was made by a court and the carrier [against whom recourse was sought] was properly notified of the litigation and was afforded the opportunity to participate in the litigation.

#### Article 707. Mutual Agreement Among Connecting Carriers

Presumably this means that the burden of proof rests on the part of the carrier—who seeks to prove that the statute of limitations has run out.

Assumes that the carrier who paid the compensation is not the carrier who was, for whatever reason, solely liable. 108

The carriers may enter into an agreement on the issues different from those defined in Articles 704 and 705.

#### Article 708. Voidness of Unlawful Agreements

1. Except for the rules set forth under Article 707, any agreement that directly or indirectly contravenes the rules of this Chapter shall be void. The voidness of such an agreement shall not entail the voidness of other terms of the entire contract.
2. Any agreement by which the carrier waives claims arising out of the insurance of the freight, as well as any other similar agreement by which the burden of proof is passed to another person, shall be void.

### CHAPTER THIRTEEN

#### MANDATE

#### Article 709. Concept

Under a contract of mandate the mandatary is bound to perform one or several actions mandated (entrusted) to him for and on behalf of the mandator at the expense of the latter.

#### Article 710. Remuneration for Mandate

1. The mandator is obligated to pay a remuneration to the mandatary only if stipulated by the contract of mandate or prescribed by law.
2. An agreement on remuneration shall be implied if, having due regard for the circumstances of the case, performance of the action is expected only by remuneration.
3. When the amount of remuneration is not agreed upon, then if some tariff schedule exists, a tariff

rate shall be deemed to be the agreed remuneration, or, if no tariff schedule exists, then an ordinary remuneration.

#### Article 711. Turning Over the Mandate to a Third Person

1. The mandatary shall perform the mandated task personally, except when he is [explicitly] permitted to turn over the task to a third person, or when he is compelled to do so by circumstances.

The involvement of an assisting person shall be allowed.

2. If turning over of the mandated task to a third person is permitted, then the mandatary shall be liable only for his fault in the selection of this person and in turning over the task to him.

#### Article 712. Divergence From the Instructions Given by the Mandator

1. The mandatary is obligated to execute the instructions given by the mandator.

2. The mandatary may deviate from the instructions given to him by the mandator if, having due regard to the circumstances, he may presume that the mandator would approve such deviation had the mandator known the state of affairs. The mandatary shall be obligated to notify the mandator prior to deviation from the instructions and to await his decision, unless the delay threatens damage to the mandator.

3. If execution of the instructions by the mandatary may inflict substantial damage on the mandator, the mandatary may execute the instructions only after he notifies the mandator thereof and the mandator does not change his instructions.

#### Article 713. Obligation to Furnish Information

The translation is literal. It should be taken to mean that the carriers may enter into an agreement among themselves allocating liability according to rules different from those rules set forth in Articles 704 and 705.

The translation is literal. A possible meaning is that the carrier may not disclaim liability to an insurer who acts as the subrogee of the shipper.

See German Civil Code, §§ 662–676. 109

1. The mandatary is obligated to furnish any necessary information to the mandator, and, on demand of the latter, to keep him informed regarding the course of performance of the mandated task, and after performance to submit a report to him.

2. An agreement by which the duties of the mandatary defined under paragraph

(1) of this Article are limited or excluded in the future shall be made in writing.

#### Article 714. Obligation to Keep Secrets

1. The mandatary is obligated not to disclose facts that become known to him within the scope of his activity and in which mandator has a legitimate interest of confidentiality, unless a duty exists to disclose the secret on the basis of applicable law, or the mandator gives permission to the mandatary to disclose it.

2. The obligation not to disclose information [ "facts" ] shall remain effective after completion of the contractual relation.

#### Article 715. Obligation to Return a Thing Transferred for Performance of the Mandated Task

1. The mandatary is bound to return to the mandator everything he received for performance of the mandated task and did not use for it, as well as everything he acquired in connection with the performance of the mandated task.

2. If the mandatary uses for his own purposes money that he ought to have returned to or used for the benefit of the mandator, then the mandatary shall be obligated to return such money with the accrued interest.

#### Article 716. Presumption of Mandator' s Ownership of Property

Property which the mandatary has acquired on his own behalf and at the expense of the mandator, or which was transferred to him by the mandator for performance of the mandated task, shall be deemed to be the mandator' s property in the mandatary' s relations with creditors.

#### Article 717. Duty to Compensate Expenses

1. The mandator must compensate the mandatary for necessary expenses incurred in the performance of the mandated task.

2. The claim recognized under paragraph (1) of this Article shall not arise if the expenses are to be paid from the remuneration.

3. The mandatary may demand from the mandator an advance payment for those expenses for which he is to be compensated.

#### Article 718. Compensation of Damage Occurring Through No Fault

1. The mandator is bound to compensate any damages which the mandatary

sustains, even when there was no fault on the mandator's part, if the damage occurred as a result of significant danger associated with performance of the mandated task in accordance with the mandator's instructions.

2. The claim recognized under paragraph (1) of this Article shall not arise if the damage sustained was to be paid from the remuneration, or if the damage was caused by the [unauthorized, negligent etc.] action of the mandatary. If compensation of the damage from the remuneration is disputed, then the burden of proof is on the mandatary [to prove that the remuneration did not include allowance for damages].

#### Article 719. Compensation for Damage Caused by Culpable Action

If the mandatary performs the tasks mandated to him gratuitously [for no pay], then he shall be liable only for damages caused by intentional [misconduct] or gross negligence.

#### Article 720. Termination of a Contract of Mandate

1. The parties may terminate the contract of mandate at any time. An agreement on renunciation of this right shall be void. 110

2. If the mandatary terminated the contract at a time when the mandator was unable to secure his interests otherwise, then the mandatary must compensate the damage thereby caused, except when the mandatary had substantial grounds for the termination.

3. If the mandator terminates the contract, he shall be bound to compensate the mandatary for all necessary expenses incurred during performance of the mandated task, and, in the case the contract was for payment, to pay remuneration for the work performed.

#### Article 721. Effect of Death of the Mandator

1. The contract is not terminated by reason of the death or legal incapacity of the mandator unless otherwise agreed, or unless otherwise proceeding from the content of the mandate.

2. If the contract is terminated by reason of the death or legal incapacity of the mandator, the mandatary shall be obligated to continue performance of the mandated task [nonetheless] if delay [in performance of the task] may create a danger that threatens to inflict damage on the mandator or his heirs until the heir or the statutory representative of the mandator [can]



undertake the necessary measures; during such time, the contractual relation shall be deemed extended.

3. If the contract is terminated by reason of the death or legal incapacity of the mandator, then the contract shall be considered extended for the mandatary until he is notified of the grounds for termination of the contract.

#### Article 722. Effect of Death of the Mandatary

1. The contract is terminated in the case of death of the mandatary unless otherwise agreed or

unless otherwise proceeding from the content of the mandate.

2. In case of death of the mandatary his heirs shall be obligated to notify the mandator thereof and to undertake necessary measures for the protection of the mandator's interests.

#### Article 723. Contract of Commission Agency

The Law on Entrepreneurs shall apply to a contract of commission agency.

### CHAPTER FOURTEEN

#### ENTRUSTMENT OF PROPERTY

#### Article 724. Concept

Under a contract of property trust, the trustor transfers property to the trustee, who holds and

manages it in accordance with the interests of the trustor.

#### Article 725. Rights and Duties of the Trustee

1. The trustee shall be bound to manage the property held in trust in his own name, but at the expense and risk of the trustor.

2. The trustee enjoys the owner's entitlement in relations with third persons. If the trustee, contrary to the interests of the trustor, is not acting in the same good faith as in managing his own affairs, he shall be obligated to compensate the damage thereby arisen.

#### Article 726. Compensation for Expenses of the Trust

1. The trustor pays no remuneration to the trustee with respect to the management of the property

held in trust unless otherwise stipulated by agreement of the parties.

2. All expenses in connection with the property held in trust shall be borne by the trustor.

3. The fruits of the property belong to the trustor.

#### Article 727. Form of a Contract of Property Trust

A contract of property trust shall be made in writing.

#### Article 728. Liability of the Trustee 111

In relations with third persons, the trustee shall be liable.

Article 729. Application of the Rules Governing a Contract of Mandate  
The rules governing a contract of mandate shall apply to a contract of property trust.

## CHAPTER FIFTEEN

### FREIGHT FORWARDING

Article 730. Concept

1. Under a contract of freight forwarding, the forwarding agent undertakes the obligation to carry out activities in connection with transportation of freight in his own name and at the expense of a client. The client is obligated to pay an agreed commission.

2. The rules governing a mandate shall apply accordingly to a contract of freight forwarding, unless otherwise provided for in this Chapter.

Article 731. Diligence Required from a Forwarding Agent

The forwarding agent shall dispatch the freight and select the persons participating in the transportation in accordance with the due care to be expected from a conscientious forwarding agent, and shall protect the interests and execute the instructions of the shipper.

Article 732. Duties of the Client

1. The client, at the request of the forwarding agent, shall timely provide him with appropriate documents with respect to the freight and give the necessary instructions for drawing up the transportation documents, furnish necessary information for performance of customs and other operations and, where necessary, for payment of the customs duties on the freight. In addition, the client shall hand over documents necessary to confirm the veracity of such information.

2. In the case of hazardous freight the client shall give a warning notice to the forwarding agent precisely indicating the kind of danger and, where necessary, instruct him on the appropriate safety measures.

3. If the forwarding agent was not aware of the danger associated with the hazardous freight, then this freight may be unloaded, destroyed or neutralized at any time and place without giving rise to an obligation to compensate damages.

4. The client is obligated, if so required by the kind of freight, to package the freight in accordance with the requirements of the transportation.

5. If special markings are required for identification of the freight, they shall be marked in a

manner clearly displaying the markings until delivery of the freight.

6. The client shall be liable for the damage sustained by the forwarding agent as a result of

nonperformance of the duties defined in the preceding paragraphs of this Article, except when the

forwarding agent, under paragraphs (3) and (4) of this Article, did not raise any objections with

respect to the absence or defectiveness of packaging or markings, although it was evident, or he had

notice thereof, when accepting the freight.

Article 733. Inspection of the Freight by Pieces

The client may, by paying special remuneration therefor, demand that the forwarding agent inspect

the freight "by pieces" [piece by piece] at the time of its acceptance by the forwarding agent.

Article 734. Obligation to Insure the Freight

The forwarding agent shall be obligated to insure the freight only when so instructed by the client.

In the absence of any special instructions, the forwarding agent shall be bound to insure the freight

only on the usual terms.

Article 735. Contract of Insurance of the Forwarding 112

The forwarding agent shall be obligated to insure the freight against damages that may be sustained

by the client by reason of the forwarding agent's actions during performance of the order at the

customer's expense, if the client does not reject it clearly and in writing.

The forwarding agent shall

notify the client of the party with whom he has concluded the insurance contract [i.e., the insurance

company].

Article 736. Obligation of Timely Notice of Damage

On the grounds of the insurance contract concluded under Article 735, the client must take care of

the timely notification of the damage. If the notification of damage is sent to the forwarding agent,

then he is obligated to immediately dispatch it to the insurer(s).

Article 737. Effects of Non-Acceptance of the Freight

If at the place of destination the consignee does not accept the freight or acceptance is impossible

on other grounds, then the rights and duties of the forwarding agent shall be regulated by the rules

governing a contract of carriage.

#### Article 738. Impossibility of Inspection of the Freight' s Condition upon its Receipt

If the condition of the freight cannot be inspected in the presence of the parties, then, until proven otherwise, the acceptance of the freight shall be deemed to be the proof that the freight was received without shortage or damage, except when the consignee indicates the general character of the damage to the person delivering the freight. If the matter concerns obvious shortage or damage, then this shall be indicated immediately upon receipt of the freight, and if the matter does not concern such [obvious] shortage or damage, then no later than three days after the day of the receipt of the freight.

#### Article 739. Right to Transport the Freight by [the Forwarder' s] Own Means

1. Unless the parties agree otherwise, the forwarding agent has the right to transport the freight by

his own means. Exercise of this right shall not be prejudicial to the rights and interests of the client.

2. If the forwarding agent exercises this right, he shall simultaneously acquire the rights and duties of the carrier of the freight.

#### Article 740. Liability of the Forwarding Agent

Ordinarily, the forwarding agent shall be liable for duties arising out of the contract of forwarding when he or his assistants bear some fault.

#### Article 741. Damage Caused by a Third Person

If the damage is caused by a third person participating in the contract, then the forwarding agent, on demand of the client, shall be obligated to assign his claim against the third person to the client,

except when the forwarding agent undertakes to exercise the claim himself on the grounds of a special agreement, at the expense and risk of the client.

#### Article 742. Compensation for Damage Caused by the Forwarding Agent' s Culpable Action

1. The forwarding agent may not have resort to rules that exclude or limit his liability or that

transfer the burden of proof if the damage was caused through his intentional [misconduct] or gross negligence.

2. The same rule applies to non-contractual liability of the assistant if, under paragraph (1) of this

Article, the fault may be laid on him.

#### Article 743. Procedure of Payment of the Commission

It is not clear why the client should have the burden of notice of loss or damage to the insurer if the freight is in the possession of the forwarder, and the forwarder has arranged for the insurance.  
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The commission shall be paid after the forwarding agent hands over the freight to a transport organization [carrier].

### CHAPTER SIXTEEN

#### BROKERAGE

##### I. General Provisions

#### Article 744. Concept

A person who promises the payment of a commission for the services of a broker rendered for conclusion [execution] of a contract shall be obligated to pay the commission only if the contract is concluded as a result of these services. If the contract is concluded with a postponing condition, then payment of the commission may be demanded only after the occurrence of the condition [contingency]. If the amount of the commission is not determined, then an ordinarily operative commission shall be deemed to be the agreed commission. Any agreement entered into to the detriment of the client in a manner contravening the first and second sentences of this Article shall be void.

#### Article 745. Remuneration for the Services of the Broker

1. The parties may agree upon a commission for those services of the broker provided for under the [brokerage] contract that are not included in the brokerage services [to be provided], independently of whether or not the contract [for which the main commission is to be paid] is executed.

2. The broker, under Article 744, may not stipulate an advance payment or receive it.

3. The broker shall be compensated for his expenses only if this was agreed upon. This rule shall likewise apply when the contract [for which the brokerage services were secured] is not concluded.

An agreement stipulating compensation for those expenses that are not necessary for performance

of the brokerage contract shall be void.

#### Article 746. Exclusive Mandate

1. If the client is to be prohibited from using another broker for a certain period of time (exclusive mandate), then the broker shall be obligated to promote the conclusion of the contract during this period of time. If the client acts contrary to the obligation defined in the first sentence, then the broker may claim damages if the contract is concluded by using another broker. The [brokerage]

contract may predetermine a one-time payment for damages in accordance with proof of the existence of the damages. This amount may not exceed two percent of the contract price if the contract was intended for brokering the conclusion of a contract of sale.

2. The client shall be entitled to conclude a contract with a third person [i.e., other than the intended counter-party] without using the broker. At the same time, it may be agreed that the client is obligated to pay the appropriate commission even if he concludes a contract without using the broker. The commission may not exceed two percent of the contract price if the contract was intended for brokering the conclusion of a contract of sale.

3. Any agreement entered into to the detriment of the client in a manner contravening these rules shall be void.

4. An agreement on exclusive mandate shall be made in writing.

#### Article 747. Dissolution of the Brokerage Contract

1. The brokerage contract may be dissolved at any time without observing any periods of time if the term of the contract was not fixed.

2. An exclusive mandate may be dissolved only on substantial grounds. After the lapse of six months it may be dissolved at any time.

See § 96. 114

3. The right to dissolve the contract may be excluded even when a period of more than six months has elapsed, but [the exclusion against the right of dissolution] is required by the peculiarities of the type and subject matter of the contract to be concluded by brokering.

#### Article 748. Payment of Commission to the Broker Not Allowed

1. Payment of a commission to the broker or compensation of his expenses shall not be allowed if the contract concluded with the third party concerns a thing owned by the

broker. The same rule applies when the exercise of the client's interests by the broker may be impeded by a danger that may arise under extraordinary circumstances; in particular, when:

- a. The broker is a legal person or company in which the third party is a partner and has a pecuniary interest;
- b. The third person is a legal person or company in which the broker is a partner and has a pecuniary interest;
- c. The broker is in official business or labor relations with the third person; or
- d. The broker is the spouse of the third person.

2. The broker shall have the right to receive his commission or be compensated for his expenses if he notifies the client of these circumstances prior to entering into the contract with the third party.

3. The broker shall be deprived of the right to receive his commission or be compensated for his expenses if he, contrary to the content of the contract, acted to the detriment of the client's interests.

4. An agreement contravening the rules prescribed by paragraphs (1) and (2) of this Article shall be void.

## II. Brokerage In the Case of Apartment Rentals

### Article 749. Apartment Broker

1. The general rules governing brokerage shall apply to a contract under which a person undertakes the obligation to broker the conclusion of a rental agreement for an apartment (apartment broker), unless otherwise proceeding from the brokerage contract on rental of an apartment.

2. The norms regulating the brokerage contract on rental of an apartment shall not apply to those contracts which pertain to mediation in providing accommodations during tourism and business trips.

### Article 750. Remuneration Not Allowed

1. The apartment broker may not claim remuneration or compensation for expenses when:

- a. The rental agreement provides for extension or alteration of an already existing rental relation with respect to the same apartment;

b. The rental agreement is concluded on housing premises administered by the apartment broker.

2. An agreement entered into to the detriment of the client shall be void.

### III. Loan Brokerage

#### Article 751. Loan Broker

The general rules governing brokerage shall apply to a contract under which a person undertakes the obligation to broker the conclusion of a loan agreement (loan broker), unless specific rules proceed from the Articles 752 and 753.

#### Article 752. Form of the [Loan Brokerage] Contract

1. The contract shall be executed in writing.

2. The contract shall include the amount of commission of the loan broker by indicating the

specific interest rate of the loan; in addition, the contract shall include: the amount of the loan, its 115

duration, rate of interest, date of maturity, rate of exchange at repayment, duration of interest

accrual, additional expenses, the total amount to be repaid by the client, and the name and address

of the lender. These rules shall not apply when the brokering concerns a loan secured by a mortgage

of land or a loan made for the purchase of a tract of land, as well as any loan which is to be used by

the client for his independent professional, entrepreneurial, departmental or employment activities.

3. The text of the [loan] contract shall not be associated with brokerage with respect to the issuance of loan.

The loan broker shall hand over a copy of the [loan] contract to the client.

#### Article 753. Obligation to Pay Commission

1. The client is obligated to pay the commission only if he received the loan as a result of the

broker's services. An agreement entered into to the detriment of the client shall be void.

2. The loan broker may not demand remuneration other than as defined in paragraph (1) of the

Article for the actions associated with brokerage of the loan.

#### Article 754. Broker for Sales

The Law on Entrepreneurs shall apply to a broker for sale.

### CHAPTER SEVENTEEN

### PUBLIC PROMISE OF REWARD. COMPETITION

#### Article 755. Concept

One who publicly promises a reward for performance of a certain action, in



particular, for achievement of some result, shall be obligated to pay the reward to the person who performs the action. The person shall have the right to receive the reward even if he acted not by reason of the public promise of reward.

#### Article 756. Withdrawal of the Public Promise of Reward

1. The public promise of reward may be withdrawn prior to the performance of the announced action. Withdrawal of the public promise of reward shall be valid if it is made public either through the same medium as the initial promise or through a special notification.
2. The public promise of reward may indicate that the right to withdraw it is renounced. It shall be presumed when in doubt that the promise is withdrawn if the [desired] action has not been performed within a fixed period of time.

#### Article 757. Performance of the Action by a Number of Persons

1. If the action for which the reward was announced is performed by a number of persons, then the reward shall be granted to the person who performed it first.
2. If several persons simultaneously performed the action, then each performer shall be rewarded equally. If, because of the characteristics of the reward, it cannot be divided, or if according to the content of the public promise it is to be received by one person only, then the matter shall be settled by drawing lots [lottery].

#### Article 758. Announcing a Prize

1. A person who publicly announces a prize for the best performance of a certain work shall be obligated to pay the prize to the best performer of the work.
2. Announcement of a competition for a prize shall be effective only if it predetermines a certain period of time for performance of the work.

#### Article 759. Alteration of the Conditions of the Competition Not Allowed

The sentence should be understood to mean that the terms of the loan agreement may not be influenced of the fact that it is attained through a broker. 116

Alteration of the conditions of the competition to the detriment of the participants in the competition [contestants] shall not be allowed.

#### Article 760. Decision on Winning the Competition

The person indicated in the announcement of the competition, or if no such

person exists, then the person who has made the announcement, shall make a decision on whether or not the work submitted within the time allotted meets the conditions of the competition, or which of the several works is the best.

#### Article 761. Several Winners of the Competition

If the work for which the prize was announced is performed by a number of persons, then the corresponding rules regulating a public promise of reward shall apply to them.

#### Article 762. Procedure for Return of the Works Submitted to the Competition

The person who announced the prize competition shall be obligated to return the submitted works to the participants in the competition, unless otherwise stipulated in the announcement of the prize competition.

### CHAPTER EIGHTEEN

#### BAILMENT

#### Article 763. Concept

Under a contract of bailment the bailee undertakes the obligation to store a movable thing delivered to him by the bailor.

#### Article 764. Compensation for Bailment

1. A bailment is gratuitous unless otherwise stipulated by agreement. If the bailee stores goods within the scope of entrepreneurial activities, then a duty of compensation shall be implied.

2. If the amount of compensation is not determined, then if a tariff schedule exists a tariff rate shall be deemed to be the agreed compensation, or, if no tariff schedule exists then an ordinary compensation shall be deemed to apply.

#### Article 765. Bailee's Duty in Case of Gratuitous Bailment

If the bailment is gratuitous then the bailee is obligated to store the thing in the same good faith as he would store his own thing.

#### Article 766. Transfer of the Thing to a Third Person Disallowed

1. The bailee has no right to transfer the thing to a third person for its storage without the consent of the bailor.

2. If the transfer of the thing to the third person for storage is done with the consent [of the bailor], then the bailee shall be liable only for his fault in the selection of third person or the place of the

storage.

#### Article 767. Use of the Bailed Thing Not Allowed

A bailee has no right to use the thing bailed with him without the consent of the bailor, except when use of the thing is necessary for preserving it.

#### Article 768. Change of Procedure for Keeping the Thing

The bailee, if necessary, has the right to change the procedure for storing the thing. He shall notify the bailor thereof. The bailee shall also notify the bailor of any claims of third persons with respect to the bailed thing. 117

#### Article 769. Compensation for Damage Caused by a Feature of the Thing

The bailor shall compensate the bailee for any damage sustained by reason of a feature of the bailed item, except when he did not know and could not have known of the hazardous features of the thing.

#### Article 770. Time Period for Return of the Bailed Thing

The bailor may demand return of the bailed thing at any time, even when the time period of the bailment was fixed.

#### Article 771. Obligation to Take Back the Bailed Thing

1. The bailee may at any time demand that the bailor take back the bailed thing unless the time period of the bailment was fixed.
2. The bailee may exercise this right only in a manner that enables the bailor to deposit the thing somewhere else, except when there are substantial grounds for returning the thing.

#### Article 772. Place of Return of the Bailed Thing

The thing shall be returned at the place indicated in the contract except when an agreement is reached on returning it to another place. Transportation costs shall be borne by the bailor.

#### Article 773. Obligation to Hand Over the Fruit of the Bailed Thing

1. The bailee is obligated to hand over to the bailor the fruit received during the bailment.
2. The bailor is obligated to compensate the bailee for the necessary expenses of storage of the thing.

#### Article 774. Bailee's Liability in Case of Intentional [Misconduct] or Gross Negligence

If a time period is fixed for taking back the bailed thing, then after expiration of this period the

bailee shall be liable only for intentional [misconduct] or gross negligence.

#### Article 775. Obligation to Pay Compensation

In the case of a bailment for hire [lucrative bailment], the bailor is obligated to pay the stipulated compensation to the bailee upon termination of the contract.

#### Article 776. Warehouse's Lien on the Bailed Thing

The bailee may refuse to return the bailed thing until he receives the compensation due and is compensated for the expenses of storage.

#### Article 777. Peculiarities of Bailment of Generic Things

If a generic thing is bailed with the bailee on terms that the ownership of it is to be transferred to him, and the bailee is obligated to return a thing of the same kind, quality and amount, then the corresponding rules governing a contract of loan shall apply.

#### Article 778. Peculiarities of Bailing a Thing with a Hotel

A hotel, health resort or guesthouse shall be liable for damages sustained by a guest if the property that he brought to it is lost, destroyed or damaged. This rule shall not apply to money and valuables unless they were bailed in a special manner.

#### Article 779. Release from Liability by Reason of Force Majeure

Liability shall be excluded if the damage is caused by force majeure, by a guest or a person accompanying him, or by the features of the thing.

Although not explicitly stated, this article appears to apply only to things bailed with an innkeeper. See German Civil Code § 701(3), "Liability of Inkeeper," which is very similar. 118

### CHAPTER NINETEEN

#### WAREHOUSE BAILMENT

##### Article 780. Concept

The corresponding rules governing a bailment shall apply to a contract of warehouse bailment unless otherwise provided for in this Chapter.

##### Article 781. Obligation to Perform Duties of Storage in Good Faith

A warehouse (bailee) shall perform the obligations arising out of the bailment of goods in good faith and with due diligence.

##### Article 782. Inspection of Quantity of Goods by the Warehouse

1. At the time of acceptance of the goods for storage the warehouse is not obligated to inspect

their quantity, size, weight, type, quality or other features unless the rules of this Chapter stipulate otherwise.

2. If the goods handed over to the warehouse for storage are found to be

damaged or

“disassembled” at the time of handing them over, and this condition is visible by external inspection as well, then the warehouse shall be obligated to notify the bailor thereof immediately. If he fails to perform this obligation, then he shall compensate the bailor for the damages caused.

#### Article 783. Right to Inspect the Bailed Goods

The warehouse shall permit the inspection of the bailed goods, the taking of samples and the exercise of [any other] necessary actions by the bailor during the working hours.

#### Article 784. Obligation to Give Notice

The warehouse is obligated to notify the bailor immediately if he conveys the goods bailed for storage to another warehouse, or if he finds out that the features of the goods have changed or there is a danger that they may change. The warehouse shall notify the last holder of the warehouse receipt known to him. If the warehouse fails to perform this obligation, he shall be obligated to compensate the damage caused.

#### Article 785. Obligation to Compensate Damage

The warehouse shall be liable for damage caused by loss and/or deterioration of the goods bailed for storage, except when such damage could not have been avoided even by a conscientious warehouse.

#### Article 786. Peculiarities of Storage of Generic Things

1. In case of storage of generic things the warehouse has the right to mix them with other things

of same kind and characteristics only if the bailor consents thereto.

2. The bailors shall have the right of joint ownership to the goods created as a result of such mix.

The share of each bailor shall be determined proportionately to the quantity of the goods bailed by him.

3. The warehouse shall return the bailed goods to each bailor proportionately to his share without consent from the other bailors.

#### Article 787. Sale of the Bailed Goods

The Georgian word used for bailee is rooted in the word for storage and not in the word for bailment. Accordingly, even though the same word is used in Georgian in Chapter 18 for bailee and in

Chapter 19 for the person performing the analogous function in warehouse storage, we have chosen to shift to a different English word, “warehouser,” because its use comports better with the subject of the chapter and is consistent with the etymology of the Georgian word. 119

If the goods bailed for storage are perishing or changing to such an extent that they may be devalued, and the warehouser does not have enough time to notify or is unable to notify the entitled person, then he is entitled to sell the goods.

#### Article 788. Warehouse Receipt

At the time of acceptance of the goods the warehouser shall be obligated to hand over a warehouse receipt to the bailor.

#### Article 789. Particulars of a Warehouse Receipt

1. A warehouse receipt shall include:

- a. The date of issuance and the registration number of the warehouse receipt;
  - b. The identity and addresses of the parties;
  - c. The place of storage;
  - d. The procedure for storage of the goods;
  - e. A description of the goods to be stored (quantity, volume, or weight) and their quality; and
- in case the goods are packaged, a description of the packaging;
- f. The amount of the storage fee and other necessary expenses;
  - g. If the goods to be stored must be insured, then the amount of the insurance;
  - h. The duration of the contract;
  - i. The signature of the warehouser confirmed by the appropriate seal.

2. Failure to state the above terms completely in the warehouse receipt shall not release the parties from any liabilities. The parties have the right to enter other conditions in the warehouse receipt as well.

#### Article 790. Warehouse Warrant

The holder of the warehouse receipt may, through a certificate of lien, pledge the goods bailed at the warehouse for the securing of another obligation in such a manner that the goods may not be taken from the warehouse (warehouse warrant).

#### Article 791. Negotiable Warehouse Receipt

If the warehouser issues a negotiable warehouse receipt, this receipt may be transferred to a third person by endorsement.

#### Article 792. Liability for Endorsed Warehouse Receipt

1. If a warehouse receipt is issued by endorsement, the warehouser shall be

liable before the holder of the receipt for the accuracy of the conditions stated therein, except when the receipt clearly indicates that the data is based on information supplied by the bailor or a third person.

2. If the warehouseer knew that the data was incorrect, then he shall be liable even if he has made the indication defined under paragraph (1) of this Article.

3. In cases of mixed storage, the warehouseer may not make the indication referred to in paragraph (1).

#### Article 793. Presumption of Accuracy of the Endorsement

1. When returning goods bailed for storage, the warehouseer who issued a negotiable warehouse receipt shall be obligated to hand the goods over only to the lawful holder of the warehouse receipt.

2. If a warehouse warrant is issued, the warehouseer must demand its return.

3. The warehouseer is not obligated to examine the accuracy of the endorsement. The transfer shall be confirmed by the appropriate inscription on the warehouse receipt.

Presumably "its" refers to the negotiable warehouse receipt, so that the holder of the receipt may not use it to remove goods subject to a warehouse warrant. See Art. 790. This assumes that the warehouseer's participation in the issuance of the warrant is necessary, so he had the opportunity to demand surrender of the warehouse receipt. See Art. 785(3). 120

#### Article 794. Loss of Warehouse Receipt

1. If a warehouse receipt or warrant is lost or destroyed, its lawful holder shall have the right to apply to a court and demand that the lost document be declared void and a new certificate [receipt or warrant] be issued instead. The court shall consider the application under the procedure for special proceedings.

2. On the grounds of the court judgement [following the aforementioned process], the warehouseer shall issue the warehouse receipt or warrant anew.

#### Article 795. Pledging of the Bailed Goods

1. In order to pledge the goods bailed for storage with the warehouse, the owner must make a special inscription (endorsement) on the warehouse warrant and hand over it [in that form] to the interested person.

2. The endorsement shall include the identities of the bailor and the creditor

and the extent of the obligation.

3. The warehouser shall be notified of the transfer of the warehouse warrant to the creditor, and he shall make the appropriate notation.

Article 796. Transfer of the Lien to the New Holder of the Warehouse Receipt

1. Based upon the [accumulation of] storage expenses, the warehouser's lien on the goods shall

accrue until [as long as] the goods are in his possession.

2. If the warehouse receipt is transferred by endorsement, then the right of lien shall exist with

respect to the new holder of the warehouse receipt.

Article 797. Demand to Take Back the Bailed Goods Not Allowed

The warehouser may not demand that the bailor take back the bailed goods until the agreed period

of time is expired, or, if no such period was fixed, then until the lapse of three months from the date

of bailment.

Article 798. Fixing an Additional Period of Time at the Time of "Acceptance" of the Goods

1. If, after expiration of the storage period, the holder of the warehouse receipt is avoiding

reclamation of the goods from the warehouse, then the warehouser shall fix an additional period of

two weeks for reclaiming of the goods. If the holder of the warehouse receipt fails again to take the

goods back within this period, then the warehouser shall have the right to sell the goods.

2. The sale proceeds, less the amount of expenses due to the warehouser, shall be transferred to the

holder of the warehouse receipt.

## CHAPTER TWENTY

### INSURANCE

#### I. General Provisions

Article 799. Concept

1. Under a contract of insurance the insurer is bound to compensate the insured for damages

sustained by the occurrence of an insured contingency, in accordance with the [insurance] contract

terms. In the case of a firmly fixed insurance [payout] amount, the insurer is bound to pay the

insurance amount or to perform any other promised action.

2. The insured is obligated to pay the insurance premium.

Article 800. Obligation to Conclude a Contract of Insurance

A person who publicly offers to conclude [execute] a contract of insurance



shall be obligated to conclude this contract unless there is a substantial basis for refusal.

As is clear from the text, the article relates to the warehouse fixing an additional period of time for the bailor or entitled person to claim (reclaim) the goods. 121

#### Article 801. Compulsory Insurance

Compulsory insurance may be prescribed by law, to which the rules of this Chapter shall apply, except to the extent that the rules of this chapter would contravene the provisions of the compulsory insurance law. Relations related to reinsurance shall be regulated under legislative rules.

#### Article 802. Insurance Certificate (Policy)

1. The insurer is bound to deliver to the insured a signed document detailing the contract of insurance (insurance certificate policy).
2. The insurance policy shall include:
  - a. The identities of the parties to the contract and their domiciles (place of residence or legal address);
  - b. The object of the insurance and the name of the insured person;
  - c. Definition of the risk [coverage] of the insurance;
  - d. The commencement and duration of the insurance;
  - e. The amount of insurance;
  - f. The amount of the insurance premium and the place and time of its payment.
3. If the object of the insurance is the life of a person, then additional data shall be required on the calculation of the estimated income of the person and on the conditions of distribution of this income.

#### Article 803. Types of Insurance Policies

If an insurance policy is issued to the bearer in the form of a nominative or warranty policy, then the insurer may assert against the holder of the policy all of those claims that he has against the original insured. This rule shall not apply if the [new] holder of the insurance policy notifies the insurer of the transfer of rights in the insurance to him, and the insurer fails to assert its claims immediately.

#### Article 804. Effect of Loss of the Insurance Policy

1. If the contract requires that the insurer perform its obligation only upon tender of the insurance policy, but the policy was lost or destroyed, then the insured may demand performance from the

insurer only if the insurance policy has been declared invalid [i.e., because of its loss] under the procedure for special proceedings.

2. If the insurance policy is lost or destroyed, the insured may [also] demand a copy from the insurer. The expense of issuance of the copy shall be borne by the insured.

#### Article 805. Rights of an Insurance Agent

1. If an insurance agent (representative) is authorized to conclude a contract of insurance, he may alter the terms of the insurance, extend its duration or dissolve the contract as well.

2. An insurance agent who brokers the conclusion of a contract of insurance shall have the right to execute such a contract.

#### Article 806. Time of Commencement of the Insurance

1. The insurance [coverage] commences at 24:00 hours on the day of execution of the contract and

ends at 24:00 hours on the last day of the period fixed under the contract.

2. If a contract of insurance is concluded for a term of more than five years, then either party may dissolve the contract three months after from giving notice of the termination.

#### Article 807. Effect of Increase in the Insurance Premium

If the insurer increases the insurance premium, the insured may terminate the contract by giving one

month's notice for dissolution of the contract. This right shall not apply where the increase of the insurance premium is insignificant. 122

#### Article 808. Obligation to Communicate Information

1. At the time of execution of the contract the insured shall inform the insurer of all circumstances

known to him that are material to the occurrence of the danger or contingency specified in the

insurance contract. Circumstances that might influence the decision of the insurer to repudiate the

contract or to conclude it on altered terms shall be deemed material.

2. Any circumstance about which the insurer clearly and unequivocally inquires of the insured

shall also be deemed material.

3. If, contrary to the rules under paragraph (1) of this Article, the insurer is not advised of a

material circumstance, then it may repudiate the contract. This shall be equivalent to the situation

when the insured intentionally avoided informing the insurer of [material] circumstances.

4. The contract may not be terminated if the insurer knew of the concealed circumstances or if

there was no fault of the insured in the failure to communicate them.

#### Article 809. The Effect of Communicating Incorrect Information

1. The insurer may also repudiate the contract when notice with respect to material circumstances

includes incorrect data.

2. The contract may not be repudiated if the insurer knew of the inaccuracy of the data, or if there

was no fault on the part of the insured in communicating the incorrect data.

The insurer may

dissolve the contract within one month after communication of such data.

#### Article 810. Dissolution of a Contract of Insurance Because of Failure to Communicate

Information

If the insured was to reply to written questions regarding the circumstances of a danger, the insurer

may dissolve the contract on the basis of failure to communicate data which, though not inquired

about, were intentionally withheld by the insured.

#### Article 811. Period for Dissolution of the Contract on the Grounds of Failure to Communicate

Information

1. Within one month after the failure to communicate information defined under this Chapter, the

insurer may dissolve the contract. This period begins to run from the moment at which the insurer

became aware of the breach of the obligation of notification.

2. The insured shall be notified of the dissolution of the contract.

#### Article 812. Dissolution of the Contract after Occurrence of the Contingency Specified in the

Contract of Insurance

If the insurer dissolves the contract of insurance after the occurrence of a contingency specified

therein, the insurer shall not be released from performance of its duty if the circumstance with

respect to which the obligation of notification was breached had no effect on the occurrence of the

contingency and on the performance of the insurer's duty.

#### Article 813. Obligation of Notice with Respect to Increased Danger

1. The insured is bound to immediately notify the insurer upon increase of a danger that arose after

execution of the contract, provided the danger would have materially affected the [decision to

execute] the contract.

2. In any case within paragraph (1) of this Article, the insurer has the right to either dissolve the contract upon one month's notice or to demand a pro rata increase in the insurance premium. If the insured has intentionally caused the increase of danger, then the insurer may dissolve the contract without observing the notice period. 123

#### Article 814. Obligation of Notification upon Occurrence of the Contingency Specified in the Contract of Insurance

1. Upon becoming aware of the occurrence of the contingency specified in the contract of insurance the insured shall be obligated to notify the insurer immediately.
2. After occurrence of the contingency specified in the contract of insurance the insurer may claim from the insured any kind of information necessary for determining the extent of the contingency and of the obligation [to compensate the insured].
3. The insurer may not resort to an agreement by which he is released from liability if the insured fails to provide required notifications but the interests of the insurer have not been substantially impaired [by the lack of notifications].
4. The insurer shall perform his duty after the contingency specified in the contract of insurance is ascertained and the amount of compensation is determined.

#### II. Insurance Premium

##### Article 815. Obligation to Pay the Insurance Premium

1. The insured is obligated to pay the insurance premium only after receipt of a document confirming the insurance.
2. If the insured interest is lost, the insurer may demand payment of the portion of the insurance premium that corresponds to the duration of the risk assumed [in providing the coverage]. The insurer may demand compensation according to the services [it] rendered.

##### Article 816. The First Periodic Payment of the Insurance Premium

The insurer has no liability until the first periodic insurance premium or a single insurance premium is timely paid.

##### Article 817. Overdue Insurance Premium

1. If the insurance premium is not timely paid, the insurer may in writing set a two-week period for payment. In addition, he shall indicate the effects of expiration of this term

[without payment].

2. If, after expiration of the term, the contingency specified in the contract of insurance occurs, and by that time the insured has exceeded the time period allotted for payment of the premium or the interest, then the insurer shall be released from his duties.

#### Article 818. Dissolution of the Contract Because of Overdue Payment of the Insurance Premium

If the insured has not paid the insurance premium on time, the insurer may give one month's advance notice regarding dissolution of the contract, and then may dissolve the contract after the lapse of this period without payment.

#### Article 819. Termination of Payment of the Insurance Premium

The insured may terminate payment of the insurance premium if, after execution of the contract, it is found that the economic position of the insurer has deteriorated to such an extent that there is a real danger of nonperformance of the contractual obligations of the insurer upon occurrence of the contingency specified in the contract.

### III. Insurance against Damages

#### a. Content of the Contract

##### Article 820. Obligation of Monetary Compensation for Damages

The clause may mean that if the insured property is "lost" through an uninsured event, then the insurer is entitled to make the demands stated (Cf. "interest" in § 822). Alternatively, it may apply where the insured becomes uninterested in continuing the insurance. 124

In policies of insurance against damages, the insurer shall compensate the damages in money.

##### Article 821. Limits of Compensation for Damages

The insurer shall compensate the damage only within the limits of the amount of insurance.

##### Article 822. Insurance Estimation

1. If it is found that the amount of the insurance significantly exceeds the value of the insured interest (insured value), then in order to avoid excessive insurance either the insured or the insurer may demand reduction of the amount of the insurance, with [corresponding] reduction of the insurance premium upon reduction of the coverage.

2. If the insured, with intent to receive illegal income, concludes the

contract by increasing the insurance, then the contract shall be deemed void.

The insurer shall retain the insurance premiums paid prior to voidness of the contract if he was not aware of the voidness at the moment of execution of the contract.

#### Article 823. Peculiarities of Property Insurance

The value of the property shall be deemed to be the amount of the property insurance, unless otherwise established by the circumstances of the matter.

#### Article 824. Profit Insurance

Insurance shall extend to profits lost because of a contingency specified in the contract of insurance, if so determined by the agreement.

#### Article 825. Insurance of Unity of Things

If the unity of things is insured, the insurance shall extend to each of the things in it.

#### Article 826. The Amount of Insurance Compensation

The insurer is not obligated to pay to the insured an amount in excess of the damages sustained, even if the amount of the insurance to be provided in case of the occurrence of the contingency specified in the contract exceeds the insured value.

#### Article 827. Underinsurance and Double Insurance

1. If the amount of insurance is less than the insured value at the moment of the occurrence of the contingency specified in the contract of insurance (underinsurance), then the insurer shall compensate the damage according to the proportion of the amount of the insurance and the insured value.

2. A person who has simultaneously insured one and the same interest with several insurers shall be obligated to notify each insurer thereof. The notice shall include the identity of each insurer and respective amount of insurance.

3. If one and the same risk to the said interest is under insurance coverage by several insurers and the combined amounts of insurance exceed the insured value, or, if because of other reasons the sum of the amounts which would have been paid by each insurer in the case of nonexistence of other contracts exceeds the amount of the total damage (double insurance), then the insurers shall be liable before the insured as joint obligors within the limits of the amount

under each respective contract of insurance, but the insured has no right to receive an aggregate amount exceeding the actual damage [other-insurance clause].

i. e., if he over-insures with bad intent.

The rule provides that payment will not be made up to the policy limit, but only up to the amount reflecting the proportion by which the insured value exceeds the amount of insurance, i. e., Insurance = proportion of loss paid.

Insured Value<sup>125</sup>

Article 828. Voidness of Double Insurance

If the insured has entered into double insurance with the intent to receive illegal profit, then each contract concluded for such purpose shall be void.

Article 829. Fault of the Insured in Occurrence of the Contingency Specified in the Contract of Insurance

The insurer shall be released from performance of his obligation if the insured has caused the contingency specified in the contract of insurance [to occur] by intent or gross negligence.

Article 830. Obligation to Execute the Insurer's Instructions

1. In case of the occurrence of the contingency specified in the contract of insurance, the insured is obligated to avoid or reduce the damage as far as possible and, in this respect, to execute the instructions given by the insurer.

2. The insurer is obligated to compensate expenses incurred according to his instructions.

Article 831. Compensation of Damage caused by War or Other Force Majeure

The insurer shall be liable for damage caused by war or other force majeure circumstances only if this is stipulated by special agreement.

Article 832. Claim for Damages Asserted Against a Third Person [Subrogation]

1. When the insured may assert a claim for damages against a third person, then this claim shall be transferred to the insurer if he compensates the insured against the damage.

If the insured renounces his claim against the third person or the right to security on this claim, then the insurer shall be released from the obligation to compensate the [insured for the] damage to the extent of that amount which he [the insured] could have received in connection with the exercise of

the right or assertion  
of the claim in order to compensate his own expenses.

2. When the right of the insured with respect to compensation for damages concerns family members residing with him, then the transfer of the right [to the insurer] shall be excluded if a family member has caused the damage intentionally.

#### Article 833. Effects of Alienation of the Insured Property

If the insured property is alienated, then the rights and duties of the insured shall pass to the acquirer.

#### Article 834. Obligation to Notify on Alienation of the Insured Property

The insurer shall be immediately notified of the alienation of the insured property. If the insured or the alienator failed to immediately notify the insurer thereof, then the insurer shall be released from the obligation to compensate provided the contingency specified in the contract of insurance occurred more than two weeks after the moment at which the insurer ought to have been notified of the alienation.

#### Article 835. Termination of the Insurance in Case of Alienation of the Property

1. The insurer has the right, upon giving one month's notice for dissolution of the contract, to terminate the insurance relation with the insured. The right to dissolve the contract shall be lost if the insurer does not exercise this right within one month from the moment that he became aware of the alienation of the insured property.

2. The acquirer has the right to dissolve the contract of insurance. He may dissolve it only either immediately or at the end of the current period of the insurance. The right to dissolve shall be extinguished if the acquirer does not exercise it within one month from the acquisition; and, if the Agreement in this sense may be a provision within a contract; a separate contract is not evidently required. 126  
acquirer was not aware of the insurance, then the right to dissolve shall be effective until one month elapses from the moment at which the acquirer became aware of the insurance relation.

3. If the contract of insurance is dissolved on the grounds of these rules, then the alienator shall be bound to pay the insurance premium [due] to the insurer, but not in excess of



the amount which he ought to have paid during the term of the insurance up to and including the moment of dissolution of the contract. In such case the acquirer shall not be liable for payment of the insurance premium.

#### b. Insurance for the Benefit of Another Person

##### Article 836. Conclusion of a Contract of Insurance for the Benefit of Another Person

The insured may enter into a contract with the insurer for the benefit of another person. The naming of this person shall not be required.

##### Article 837. Rights of Another Person under the Contract of Insurance

1. In the case of insurance for the benefit of another person, the rights arising out of the contract shall belong to this person. The right to demand the insurance policy [certificate] shall belong only to the insured.

2. The person entitled to receive the insurance proceeds [beneficiary] may enjoy his rights without agreement with the insured, [but] may demand exercise of his rights through a court only if he holds the insurance policy.

##### Article 838. Rights of the Insured

1. The insured on his own behalf may enjoy the rights that under the contract of insurance belong to the beneficiary.

2. If an insurance policy is issued, the insured may receive the compensation from it without the consent of the beneficiary [but] may transfer the right to this person only if he holds the insurance policy.

3. The insurer shall be obligated to pay to the insured compensation for the benefit of the beneficiary only if the insured proves that the beneficiary consented to the contract of insurance.

#### c. Civil Liability Insurance

##### Article 839. Concept

Under a contract of civil liability insurance, the insurer is bound to release the insured from the obligations put on him [the insured] as a result of his liability to a third person arising during the period of insurance.

##### Article 840. Claim of Direct Compensation for Damage

The insurer, within the limits of his obligation, shall be bound to compensate

the damage directly to the person who sustained the damage, if he presents the claim to the insurer.

Article 841. Litigation and Extrajudicial Expenses  
The insurance covers both court and extrajudicial expenses incurred for defense against the claim of the third person if, under the circumstances of the matter, such expenses are necessary.

Article 842. Release of the Insurer from Liability

The insurer shall be released from liability if the insured deliberately caused the circumstance which created the liability to the third person.

Article 843. Liability in Case of Compulsory Insurance 127

1. If the insurer is entirely or partially released from the obligation to the insured, its liability to the third person shall be effective in those cases prescribed by law with respect to compulsory insurance.

2. If the insurer satisfies the claim of the third person, then the claim of the third person against the insured shall pass to the insurer.

IV. Life Insurance

Article 844. Concept

1. Life insurance may concern [cover] the insured or another person.

2. If the contract of life insurance is concluded for the benefit of another person, then the written consent of this person or his statutory representative shall be required.

Article 845. Refusal to Conclude the Contract Not Allowed

[Repudiation of the Contract]

If, at the time of execution of the contract, the insured breached his obligation to communicate

[required] information, then the insurer may not repudiate the contract after the lapse of five years

from the date of execution of the contract. Repudiation of the contract shall be allowed if the failure to disclose was intentional.

Article 846. Dissolution of the Contract in the Case of Periodic Payment of the Insurance

Premium

If the insurance premium is to be paid periodically, the insurer may dissolve the insurance relation

at any time, but only [to take effect at] the end of the current period of the insurance.

Article 847. Transfer of the Right to Compensation to a Third Person

1. In the case of "accumulated insurance," the insured may transfer the right to receive benefits to

a third person or substitute the third person with another person, unless otherwise stipulated in the contract.

2. The third person who has the right to receive benefits may exercise the right only upon occurrence of the contingency specified in the contract of insurance, unless the insured gave another instruction in this regard.

#### Article 848. Non-Entitled Third Person

1. If, in case of “accumulated” insurance, the right of the third person does not correspond to the obligation of the insurer, then the insured shall retain this right.

2. If, in the case of accumulated insurance, the third person does not exercise his right to receive the benefit, then the insured shall retain this right.

#### Article 849. Release of the Insurer from the Obligation to Compensate Damage

1. When the contract of insurance is concluded on the condition of compensation upon another person's death, then the insurer shall be released from its obligation if the insured intentionally caused the death of such person by acting illegally.

2. If in the case of life insurance a third person has the right to receive the benefit, then this right shall not be recognized if he, by acting illegally, intentionally caused the death of the person whose life was insured.

#### Article 850. Release from Payment of Compensation in the Case of Suicide

1. The insurer shall be released from its obligation to pay life insurance benefits if the person whose life was insured commits suicide.

The title in Georgian may be unclear. The title in brackets is ours.

The meaning of the words literally translated as “accumulated insurance” seems closest to the American concept of whole-life insurance. 128

2. The heir of the insured may claim return of the insurance premiums paid.

#### Article 851. Substitution of the Contract of Insurance

1. The insured, at any time prior to the end of the current insurance period, may demand substitution of the contract of insurance with a premium-free contract of insurance.

2. If the insured claims such substitution, then from such moment the amount of insurance or the benefit shall be substituted with such amount that corresponds to the obligation of the insurer,

having regard to the age of the person covered by the insurance, provided the reserve of accumulated premiums is regarded as a single premium.

#### Article 852. Deductions at the Termination of the Contract

If the contract of life insurance is terminated by reason of repudiation, dissolution or appeal

[dispute], then the insurer shall be bound to return the amount of the insurance premium received

under the contract. The insurer may make appropriate deductions.

#### Article 853. Effects of Forced Execution

1. If a court judgment based on an insurance claim is entered through a forced execution against

assets, or if legal proceedings are carried out in connection with the bankruptcy of the insurer, then

the person who is specifically named as the beneficiary shall be entitled to subrogate the insured in

relations under the contract of insurance. If the person entitled to the benefits participates in the

contract [i.e. as a named party or beneficiary], then he shall satisfy all requirements of a creditor,

or secure [a share] of the bankruptcy mass to the extent of the amount which the insured could have

received from the insurer upon dissolution of the contract.

2. If the person entitled to the benefit has no interest in receiving the benefit, or if he is not

designated by name, then such right shall accrue to the spouse and the children of the insured.

### V. Accident Insurance

#### Article 854. Concept

1. A contract of accident insurance may be concluded for an accident [affecting] both the insured

and another person.

2. If the contract of accident insurance is concluded not by the person covered but for his benefit,

then the rules governing life insurance shall apply to such contract.

#### Article 855. Effects of Injury to Health

If the insurer's obligation depends upon injury intentionally caused to the health (bodily injury),

then the absence of intent shall be presumed until proven otherwise.

#### Article 856. Effects of Causing the Accident by Intent

1. The insurer shall be released from performance of his obligation if, in the case of a contract

concluded for the benefit of another person, the person entitled to the benefit intentionally causes

the accident by illegal action.

2. If another person has the right to receive the benefit, he shall be deprived of this right if he intentionally causes the accident by illegal action.

#### Article 857. Obligation to Notify of the Accident

If the obligations are to be performed for the benefit of the person entitled to the benefit [i.e., the third-party beneficiary or claimant], then this person shall be bound to make a declaration on the accident. This rule shall apply to the obligations of communicating information and handing over documents as well.

While ambiguous, the phrase is best interpreted in context as requiring the beneficiary to meet the requirements for a recognized creditor in the insurance company's bankruptcy proceeding. 129

#### Article 858. Right of Recourse Disallowed

The insured has no right of recourse against the person who is liable for the damage.

### CHAPTER TWENTY-ONE

#### BANKING

##### I. Settlement Account

#### Article 859. Concept

1. Under a settlement account contract, a credit institution is obligated to make payments from the account of its customer within the limits of the amount available on the account, and to enter in the account incoming amounts.

2. Subject to the instructions given by the account holder, the same operations may be effected in cash.

3. An agreement of the parties may bind the account holder to pay the service costs.

#### Article 860. Obligation to Provide a Statement of Account

1. The credit institution is obligated to keep an accounting ledger for both cash and non-cash settlements [transactions].

2. The credit institution is obligated to provide the account holder with information on the balance in his account (statement of account) within the periods specified in the contract; and the account holder is entitled to demand at any time information on the balance in the account and the entries on credit and debit operations.

#### Article 861. Withdrawal of Money from the Account

The credit institution is obligated to make withdrawals of monetary sums from

the account subject to the permission or instruction of the holder of this account. Otherwise, the credit institution shall be obligated to credit back to the assets of the account holder the damages sustained and the incorrectly transferred sum.

#### Article 862. Effects of Cancellation of the Account Holder' s Order

1. The account holder has the right to cancel an order given to the credit institution until the transfer is actually made. Otherwise, the credit institution is obligated to notify the appropriate persons of the [account holder' s] refusal of performance.

2. In case of timely cancellation of the order the credit institution is obligated to reinstate the amount on the account of the account holder.

#### Article 863. Obligation to Keep Secrecy

1. Credit institutions are obligated to keep secret the facts related to the account, or other facts made known to them in the course of business relations with the account holder, except in those cases prescribed by law or except where the matter concerns ordinary banking information that is not prejudicial to the account holder' s interests.

2. The credit institution' s obligation of secrecy shall remain in effect after termination of the contract as well.

#### Article 864. Termination of the Settlement Account Contract

1. Either party may terminate the settlement account at any time.

2. The credit institution may terminate the contract only in a manner that enables the account holder to otherwise receive settlement account services, except when there are important grounds for the termination.

It appears that the bank is to notify the transferee of the account holder' s refusal to perform, even though the stoppayment order has been received after the transfer was made. 130

#### Article 865. Check Payment

Where a relevant agreement has been made, the credit institution is obligated to pay checks signed

by the account holder within the limits of the assets in the account in accordance with the Law on

Checks. In this case the rules governing a contract of non-cash settlement shall apply.

#### Article 866. Collection of Checks

Under a settlement account contract, the credit institution is obligated

before the account holder, without any additional agreement, to collect checks presented by the latter by timely presenting such checks to a credit institution [from whose account the check is issued], and in the case of nonpayment of the check, to undertake necessary measures for securing the check.

## II. Bank Credit

### Article 867. Concept

Under a bank credit contract, the lender makes available or is obligated to make available to the borrower a credit for consideration in the form of a loan.

### Article 868. Interest Rate on Bank Credit

1. By agreement of the parties the rate of interest for the credit may be either fixed or variable.
2. If the variable interest rate stipulated in the agreement and its amount may be set by the lender, he shall do so on a fair basis. He shall also be obligated to tie the loan interest rate to the variation of the market interest rate.
3. Variation of the interest rate shall be tied to the discount rate fixed by the National Bank of Georgia or to the interest rate fixed at the Interbank Credit Auction.
4. The maximum and minimum amounts of variability of the interest rate and the minimum interval of variation shall be determined at the time of execution of the credit contract.
5. The lender is obligated to notify the borrower of the interest rate in an acceptable manner.
6. If the annual percentage rate is not indicated, then only the annual percentage rate prescribed by law shall apply. If the imposition of costs is not accounted for at the [time of] computation of the annual interest rate, then such costs shall not be compensated.

### Article 869. The Interest Rate Prescribed by Law

1. If the borrower delays the repayment stipulated in the bank credit contract, then the amount of arrears shall be subject to accrued interest at the combined rate of 3 % plus the interest (or discount) rate fixed at the Interbank Credit Auction for the corresponding period.
2. If the lender terminates the bank credit contract on the grounds of delay in repayment of the credit, then the right to demand the interest rate prescribed by law shall arise. These rules shall not apply to the lender's or the borrower's right to prove the existence of more

or less damage in individual cases.

#### Article 870. Providing Additional Security

1. If tangible or personal security is agreed upon at the [time of] issuance of the credit, then in the case of underpayment of the loan the lender may claim that additional security be [provided.]

2. The lender, on demand of the borrower, shall be obligated to return any security that exceeds the limit of the agreed repayment.

#### Article 871. Termination of the Agreement

1. If an interest rate is fixed for a certain period for the credit, the borrower may terminate the credit contract if the obligation to pay interest ends prior to the stipulated [loan] repayment date, and no new agreement on the interest rate is concluded. The time period for termination is one month. 131

2. If the borrower is a consumer and the credit is not secured by a mortgage, then the right of termination shall arise six months after issuance of the credit. The time period for termination shall be three months.

3. After the expiration of ten years the right of termination shall apply in any case. The time period for termination shall be six months.

4. The borrower may terminate a loan borrowed on variable interest rate terms at any time, with three months' notice of termination.

#### Article 872. Compensation for Damage Sustained Due to Early Repayment of the Credit

[Prepayment]

If the borrower repays the credit before completion of the credit relation, then the lender may claim corresponding compensation for damage. At the same time, the damages shall take into account the value of saved expenditures, as well as the benefit which the creditor would have received by using the loan currency otherwise [i.e., other than by lending it to the borrower who repaid early], or if the borrower intentionally prevented the receipt [of such benefit].

#### Article 873. Termination of the Credit Relation in Case of Repayment in Installments

The lender may terminate the credit relation if the stipulated repayment is to be made in



installments and the borrower has missed the deadline for two consecutive periods of payment. The termination shall be effective if the borrower fails to repay [the amount due] after being given an additional two-week grace period.

### III. Deposit Account

#### Article 874. Concept. Liability of the Directors of the Credit Institution

1. When money is deposited with a credit institution, the institution obtains the right of ownership to it, and is obligated to return the amount received when due in the same currency.
2. If the maturity date is not fixed, the monetary amount may be claimed back at any time.
3. An appropriate rate of interest shall accrue on a deposit.
4. The depository and the directors (managers) of the credit institution shall be obligated to provide the depositor with information on the liquidity and solvency of the bank.
5. A person who culpably provides false information or refuses to provide necessary data shall be obligated to compensate the depositor for any loss caused by the providing of false information or by the failure to provide information.
6. Likewise, the bank directors (managers) who publicize false information on the liquidity and solvency of the bank through advertising brochures or otherwise shall be jointly liable.

#### Article 875. Passbook

At the [time of] issuance of a passbook, the credit institution is entitled to issue it in a nominative as well as bearer form. If the bearer is not entitled [to possession of the passbook], the credit institution shall be released from liability only if it did not act intentionally or with gross negligence in the issuance of the passbook.

### IV. Documentary Letter of Credit. Collection of Commercial Documents

#### Article 876. Concept

1. By issuing a documentary letter of credit, the credit institution (the issuing bank) shall be obligated, at request and order of its customer (the account party), to pay the monetary amount to the third person (the beneficiary) in exchange for the said document by order of the latter, or to pay

Compare Art. 777. Arguably, the deposit may be classified as a bailment. 132

the bill of exchange presented by the beneficiary, to perform acceptance, or to commission another bank to perform this operation provided the credit terms are met.

2. The customer is obligated to pay the agreed consideration.

#### Article 877. Order for Collection

By the order for collection, the credit institution authorized for the collection operation (bank)

undertakes the obligation to issue negotiable securities by the order of the customer (ordering party), in exchange for acceptance and/or, where necessary, in exchange for payment by the payor.

#### Article 878. Usages of International Transactions

Unless otherwise agreed, the rights and duties of the parties shall be determined in accordance with the recognized practices of international transactions concerning documentary letters of credit and orders for collection.

#### V. Banker's Guarantee

##### Article 879. Concept

By virtue of a banker's guarantee, a bank, other credit institution or insurance organization (guarantor) at the request of another person (principal) undertakes a written obligation to pay a monetary amount to the principal's creditor (beneficiary) in accordance with the undertaken obligation and upon the written demand of the principal.

##### Article 880. Consideration for Banker's Guarantee

1. The banker's guarantee shall secure the due performance of the principal's obligation before the beneficiary.

2. The principal shall pay the agreed consideration to the guarantor for issuance of the banker's guarantee.

##### Article 881. Independence of the Guarantor's Obligation from the Primary Obligation

The guarantor's obligation before the beneficiary defined under the banker's guarantee in their relations shall not depend for performance upon the primary obligation for which it is issued, even when the guarantee includes a reference to this obligation.

##### Article 882. Retraction of Banker's Guarantee Not Allowed

The banker's guarantee may not be retracted by the guarantor unless otherwise stipulated in the guarantee.

##### Article 883. Transfer of the Beneficiary's Claim to Another Person Not

Allowed

The beneficiary's claim against the guarantor arising out of the banker's guarantee may not be

transferred to another person unless otherwise stipulated in the guarantee.

Article 884. Effectiveness of the Banker's Guarantee

The banker's guarantee shall be effective from the day of its issuance unless otherwise stipulated in

the guarantee.

Article 885. The Form of Presenting the Claim

1. The beneficiary's claim [demand] for payment of the monetary amount due under the banker's

guarantee shall be presented to the guarantor in a written form, with the documents indicated in the

guarantee enclosed. In the demand or in the enclosure the beneficiary shall indicate the incident of

breach by the principal of the primary obligation for the securing of which the guarantee was

issued. 133

2. The beneficiary's demand shall be presented to the guarantor before the expiration of the

guarantee's term.

Article 886. Obligation of the Guarantor upon Receipt of the Beneficiary's Claim

1. Upon receipt of the beneficiary's claim the guarantor shall immediately notify the principal

thereof and shall hand over the copy of the claim to him with all the enclosed documents.

2. The guarantor shall consider the beneficiary's claim with the enclosed documents within a

reasonable time and shall exercise reasonable diligence in order to establish whether or not the

claim and enclosed documents meet the conditions of the guarantee.

Article 887. Guarantor's Refusal to Satisfy the Beneficiary's Claim

1. The guarantor shall refuse to satisfy the beneficiary's claim if the claim and the enclosed

documents do not meet the conditions of the guarantee, or if they are presented to the guarantor

after the expiration of the period of time stipulated in the guarantee. The guarantor shall

immediately notify the beneficiary of the refusal to satisfy his claim.

2. If prior to satisfaction of the beneficiary's claim the guarantor becomes aware that the primary

obligation secured by the banker's guarantee has already been performed in the relevant part, is

terminated on other grounds, or is void, then he shall immediately notify the beneficiary and the principal thereof. The repeated demand of the beneficiary presented after such notification from the guarantor shall be subject to satisfaction by the guarantor.

#### Article 888. Limits of the Guarantor's Obligation

The guarantor's obligation to the beneficiary stipulated under the banker's guarantee shall be

limited to payment of the amount for which the guarantee is issued.

#### Article 889. Grounds for Termination of the Guarantor's Obligation

1. The guarantor's obligation to the beneficiary shall be terminated:

a. By payment to the beneficiary of the amount for which the guarantee was issued;

b. Upon expiration of the period of time for which it was issued;

c. Upon the beneficiary's renunciation of his rights arising out of the guarantee and the return of the guaranty to the guarantor.

2. The guarantor who has become aware of the termination of the guarantee shall immediately

notify the principal thereof.

#### Article 890. Right to Demand Compensation with Recourse

1. The guarantor's right to demand compensation, by the procedure of recourse, from the principal

for the amount compensated to the beneficiary under the banker's guarantee shall be determined by

the agreement between the guarantor and the principal in performance of which the guarantee was issued.

2. The guarantor has no right to demand from the principal payment of any amount that was paid

to the beneficiary in contradiction to the terms of the guarantee, or because of breach of the

guarantor's obligation to the beneficiary, unless otherwise stipulated in the agreement between the guarantor and the principal.

### CHAPTER TWENTY-TWO

#### SURETYSHIP

##### Article 891. Concept

1. Under a contract of suretyship, a surety undertakes the obligation to answer for the performance

of a third person's obligation to the creditor of the third person.

2. The suretyship may be used for future and contingent obligations as well.

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##### Article 892. The Form of Suretyship

1. The validity of the suretyship shall require the written application of the

surety and an indication in the document of suretyship (contract) of the maximum amount of the quantitatively determined liability of the surety.

2. If one declares the undertaking of the suretyship within the scope of his professional activities, then observance of this form is not required.

#### Article 893. Grounds of the Surety's Obligation

The existence of a corresponding principal obligation is "definitional" [fundamentally required as the basis] for the obligation of the surety. A transaction concluded by the principal debtor after the suretyship has been undertaken shall not increase the surety's liability, and the suretyship shall not extend to relations arising out of this transaction.

#### Article 894. The Surety's Refusal to Satisfy the Creditor

The surety may refuse to satisfy the creditor until the creditor attempts forced execution against the principal debtor.

#### Article 895. Joint Liability of the Surety

If the surety undertakes the liability [jointly with the principal debtor] or in another equivalent form, then the claim may be asserted against him even without the attempt of forced execution on the debtor, if the principal debtor exceeded a period for payment and warning was given to him with no effect, or if the insolvency of the debtor is evident.

#### Article 896. Liability of Co-sureties

If several persons are sureties for the same obligation, then they shall be liable as joint obligors, even when they did not undertake the suretyship jointly.

#### Article 897. Liability for the Obligations Undertaken by Previous Sureties

A surety who has undertaken, in the face of the creditor, to perform obligations assumed by previous sureties shall be jointly liable with them in the same manner as, ordinarily, a surety is liable jointly with the principal debtor.

#### Article 898. The Limits of the Surety's Liability

1. In any case, the surety shall be liable only to the extent of the maximum amount indicated in the document of suretyship.

2. Unless there is another agreement to the contrary, the surety shall be liable to the extent of the said maximum amount:

- a. For the corresponding amount of the principal debt, in particular, including when the principal debt was changed [increased] because of the fault of the principal debtor, or because payment was overdue. The surety shall be liable for contractual penalties or for the total amount of damages that were foreseen up to the end of the contract, only if these liabilities are stipulated by special agreement;
- b. For expenses related to termination of the contract and for court expenses that are to be compensated by the principal debtor, provided that the surety had the possibility to avoid these expenses by satisfying the creditor;
- c. For the interest to be paid by the principal debtor according to the contract, provided this was directly agreed upon [in the surety agreement].

#### Article 899. The Surety's Right to Counterclaim

1. The surety may assert counterclaims [against the creditor] belonging to the principal debtor. If the principal debtor dies, the surety may not benefit from the limited liability of the heir. 135
2. The surety shall not be deprived of the right to counterclaim [against the creditor] on the grounds that the principal debtor renounced the counterclaim.

#### Article 900. The Surety's Refusal to Satisfy the Creditor

The surety may refuse to satisfy the creditor until the principal debtor has [been afforded] the right to dispute the transaction that gave rise to his obligation.

#### Article 901. Reduction of the Surety's Liability

If the creditor, to the detriment of the surety, reduces the liens or other means or advantages of security [that he has against the principal debtor], then the surety's liability shall be reduced by an amount corresponding to the above-mentioned reduction [of security].

#### Article 902. Effect of Overdue Payments by the Principal Debtor

1. If the principal debtor has exceeded the period for payment, then at any time upon demand of the surety, the creditor shall provide him with information regarding the status of the principal debt.
2. If the creditor fails to perform one of these actions, he shall lose his claims against the surety to the extent of the amount of loss [to the surety] caused by his [creditor's] nonperformance.

#### Article 903. Termination of the Contract in Case of Suretyship for an

Unlimited Time

1. If the period of the suretyship is not limited, then the surety shall be obligated to observe a three-month period for termination of the contract [i.e., three month notice period].
2. In the case of a fixed-term suretyship, then after the lapse of five years, the contract may be terminated by observing a three-month period [of notice].
3. In the event of unilateral termination, the surety shall be bound to perform obligations undertaken before the termination.

Article 904. Grounds for Release from the Obligation of Suretyship

1. If the surety undertakes the suretyship of the mandate of the principal debtor, or if under the rules governing the management of affairs of another person without mandate, he is granted the power of attorney with respect to the principal debtor, then he may demand release from the suretyship if:
  - a. The economic [“property”] status of the principal debtor has substantially deteriorated;
  - b. After establishing the suretyship, collection of payment from the principal debtor has been substantially complicated because of a change of the place of residence or domicile [of the debtor];
  - c. The creditor has against the surety a document containing an order of forced execution.
2. If the performance of the principal obligation is not yet due, the debtor may provide the surety with [additional] security instead of a release.

Article 905. Effect of Satisfaction of the Creditor by the Surety [subrogation]

If the surety satisfies the creditor, the creditor's claim against the principal debtor shall pass to the surety [subrogation]. The counterclaims of the principal debtor arising out of his relation with the surety shall remain inviolate.

## CHAPTER TWENTY-THREE CURRENT ACCOUNT

Article 906. Concept. Content

1. Under a current account agreement, the parties undertake the responsibility to enter demands and payments arising out of [their] business relations into an account, and to

deem them inviolable

until the account is [settled and/or] closed.

Also known in U.S. law usage as “open account.” 136

2. The current account balance is subject to payment within an agreed term. If at the settlement of

the account the party entitled to the remainder of the sum does not claim payment, then it shall be

entered in the current account.

3. Closing of the account shall give rise to a demand for the balance that, for purposes of

performance, substitutes the claim placed on the current account.

4. The account shall be settled once a year unless stipulated otherwise.

Article 907. Cancellation of Current Account Agreement

In case of doubt, the current account agreement may be cancelled and the account closed at any time.

Article 908. Interest on Payments Made

Interest at the interest rate prescribed by law shall be paid on the scheduled payments unless

otherwise stipulated in the contract.

Article 909. Personal or Tangible Security for a Claim Entered in the Current Account

1. If personal or tangible security has been given for a claim entered in the current account, then

the creditor may demand satisfaction of the existing account balance in his favor from this security, even after the account is closed.

2. The rule defined in paragraph (1) of this Article shall likewise apply when there is joint liability for the claim.

Article 910. Attachment

[If a creditor of one of the parties to the current account agreement procures the attachment of the

balance sum in the current account, which sum belongs to the debtor, then any additional debt

arising out of a new transaction made after the attachment shall not be considered in favor of the

creditor. A transaction that is made on the basis of claims existing before the [attachment] shall not be deemed to be a new transaction].

CHAPTER TWENTY-FOUR

OBLIGATIONS ARISING OUT OF SECURITIES TRANSACTIONS

I. Obligations Arising out of Bearer Securities Transactions

Article 911. Concept

1. If a person issues a document by which he promises payment to the holder of



the document,  
then the holder may demand payment in accordance with the promise, except when he did not have the right [of demand].

2. The validity of the signature affixed to the issued document may be made dependent upon observance of a special form indicated in the document. The signature may be affixed in any technically possible manner [i.e., in writing, by machine].

#### Article 912. Counterclaims of the Issuer

The issuer of the document may assert against the holder of the security only such counterclaims that relate to validity of the forming [of the document or relationship], the document itself, or that the issuer has against the holder personally.

It appears that no distinction is made between settlement and closing. Article 906(2) clearly anticipates a settlement and then rolling the balance over into the next open period, if the entitled party does not demand payment of the balance at the time of settlement. Subparagraph (3) addresses final closing of the account, as opposed to an interim settlement.

The gist of the article appears to be that the creditor of an account party who is entitled to receive the balance in the account may attach that balance, but in doing so the creditor will cut off his right to add new claims to the debt secured by the lien, except to the extent that the new claims arise out of transactions that are based in obligations which preexisted the attachment.

#### Article 913. Procedure of Transfer of Rights

1. The right defined in the document shall be transferred in accordance with the rules governing the transfer of movable things. It may be transferred by a contract concluded with a third person as well.

2. A person who acquires a document that was lost in some manner shall be deemed to be the holder by lawful title, except when he acted intentionally or with gross negligence [bad faith] when acquiring the document.

#### Article 914. Rights of the Issuer

1. The issuer may challenge any holder [on the grounds that] the security was not issued by him. In addition, he may assert against the holder any counterclaims arising from the

document.

2. If the issuer used a technical method for affixing the signature to the document, then he may not defend himself against the holder by stating that he himself had no right to use this method, except when the acquirer knew of the counterfeit or acted with gross negligence [bad faith].

3. If the document is transferred to the ownership of the holder, the issuer may not assert against him any counterclaims arising from the issuer's direct relations with the former holder of the document, except when the present holder acted intentionally to the detriment of the issuer when acquiring the document.

4. If the counterclaim did not arise out of direct relations [with the holder], then it may be asserted only against a holder who acquired ownership of the document through alienation, and who acted intentionally or with gross negligence in the acquisition.

#### Article 915. Obligation of the Issuer

1. The issuer shall be bound to perform his obligation only when the document is tendered to him.

2. The debtor who performs his obligations to the holder of the document shall [thereafter] be released from his obligations, unless he acted intentionally or with gross negligence, and he is able to prove the bad faith of the holder.

3. The debtor who is released from his obligation to the holder of the document shall acquire the right of ownership of the document handed over to him.

#### Article 916. Re-registration of the Bearer Security

Only the issuer may re-register the bearer security in the name of a certain person. At the same time, the issuer is not obligated to re-register the bearer security.

#### Article 917. Replacement of Security Unusable for Circulation

When a damaged bearer security is no longer usable for circulation, the holder may demand

issuance of a new bearer security in return for surrender of the damaged document, if the identification of its content and essential distinguishing marks is still possible. Expenses related to the exchange shall be borne by the holder and paid in advance.

#### Article 918. Revocation of a Security

1. A lost or destroyed security may be revoked by court judgement unless otherwise stipulated in

the security.

2. An issuer is obligated to provide the former holder, upon request of the latter, with information required for consideration of the case on revocation in court and for prohibition of payment. He is also obligated to issue the corresponding certificate. Expenses of issuance of the certificate shall be borne by the former holder and paid in advance.

#### Article 919. Issuance of a New Bearer Document

The person who has procured the revocation of the bearer promissory note may, regardless of the exercise of the claim arising out of the document, demand from the issuer the issuance of a new 138 bearer document in place of the revoked one. This person shall compensate the expenses of issuance in advance.

#### Article 920. Limitation Period on Claims

The limitation period on claims arising out of securities is thirty years from the date of the maturity of the obligations stipulated in the documents.

#### Article 921. Issuance of Promissory Notes of Small Value

If the issuer has issued promissory notes or other similar documents of small value in which the creditor is not specified, and the circumstances of the matter indicate that the issuer is willing to pay to the holder, then the rules of paragraph (1) of Article 911, Articles 913-915 and Article 920 shall apply.

### II. Obligations Arising out of Negotiable Securities

#### Article 922. Concept

1. A promissory note by which the issuer promises payment to the person named [in the note] upon presentation of the note may be issued in the form of a negotiable security.

2. The signature may be affixed in any technically possible manner.

#### Article 923. Transfer of Rights. Types of Endorsement

1. The right defined in the note may be transferred by endorsement and tender of the note.

2. The endorsement is made on the note or on its enclosure. Use of a technical device is allowed.

3. The endorsement does not require indication of the indorsee, and it may be comprised of the signature only (blank endorsement). Any holder by lawful title may fill in the blank endorsement in

his name or on behalf of another, issue the blank note, or make a subsequent endorsement of the note himself to a specified person.

#### Article 924. Procedure of Using a Note Acquired by Endorsement

If a negotiable promissory note is acquired by endorsement, then Article 914 shall accordingly apply.

#### Article 925. Payment in the Case of Subsequent Endorsements

1. The holder of a negotiable security confirmed by subsequent endorsements may demand

payment in exchange for surrender of the signed document, except when he is not entitled thereto.

2. Payment to a non-entitled person who confirmed his right through subsequent endorsements

shall release the debtor [from further liability] unless the debtor acted intentionally or with gross negligence.

3. A debtor who has performed his obligation to the endorsee shall become the owner of the

document handed over to him.

#### Article 926. Claims Guaranteed in Writing

If not only small claims are guaranteed in writing in negotiable securities, then the rules governing

revocation and the issuance of substituting documents for bearer promissory notes shall apply

accordingly.

#### Article 927. Limitation Period on Claims

The rules governing limitation of the claim period for bearer promissory notes shall apply

accordingly to the limitation period on claims arising out of negotiable promissory notes.

### III. Personal Securities 139

#### Article 928. Concept

1. A document drawn up in the name of a specified person may be issued on the condition that the debtor shall be bound to pay only upon surrendering of the document to him by the named person.

2. Unless otherwise stipulated, the right defined in the document shall be transferred under the rules prescribed for transfer of this right.

3. If the document is lost or destroyed, it shall be revoked under the procedure of special [judicial] proceedings, unless otherwise predetermined. This rule shall not apply in case of the loss of documents of small value.

## Article 929. Instruction on the Promised Payment

If a document made out to a specified person contains the instruction that the promised payment may be made to any bearer, then any kind of transaction between the debtor and the holder of the document, including payment, shall be valid, unless the debtor acted intentionally or with gross negligence.

## CHAPTER TWENTY-FIVE

### JOINT ACTIVITY (PARTNERSHIP)

## Article 930. Concept

Under a contract of joint activity (partnership), two or more persons undertake to act jointly for the accomplishment of common economic or other objects by the means stipulated in the contract, without forming a legal person.

## Article 931. Form of a Contract of Joint Activity

1. A contract of joint activity may be concluded either orally or in writing.
2. If the contract is concluded in writing, it shall include:
  - a. The names and addresses of the participants;
  - b. Information on the type and object of the joint activity;
  - c. The rights and duties of the participants;
  - d. The structure and functions of administration bodies;
  - e. The procedure and terms of distribution of income and loss among the participants;
  - f. The procedure of withdrawal [avoidance] from the contract;
  - g. The duration of the activity; [and]
  - h. Procedures for dissolution of the contract and distribution of the remaining property.

## Article 932. Obligation of Contribution

1. The participants shall make the contributions stipulated in the contract. If the amount of the contributions is not specified in the contract, then all participants shall be bound to make contributions of equal value.
2. The contribution may be made both in property and by rendering services.
3. Unless otherwise stipulated in the contract, the contributions shall be in the common ownership of the participants. Everything acquired on the grounds of the right under common ownership, as well as received as compensation for destruction, deterioration or seizure of common property, shall also be under the common ownership of the participants.

## Article 933. Transfer of Share to a Third Person Disallowed

Use of the term partnership is avoided, and the more cumbersome “joint activity” used instead, for two reasons. First, the drafter consistently uses the Georgian term for “joint activity” instead of the synonymous term for “partnership”. Second, the entrepreneurial form in the Law of Georgia on Entrepreneurs known as a “Society of Joint Responsibility” is also called a General Partnership, and we do not want to create confusion between the Joint Activity form of partnership recognized in the Civil Code, and the “Society of Joint Responsibility” recognized in the Law of Entrepreneurs. 140

1. A share, in the form of the property or the right, may not be transferred to a third person without the consent of the rest of the participants. Refusal to consent shall be allowed only for legitimate reasons.

2. The rest of the participants shall have the first option to purchase the share transferable to the third person.

#### Article 934. Obligation of Joint Management of Affairs

1. Unless otherwise stipulated in the contract, the [parties] to the contract [participants] shall jointly manage and shall represent the partnership [joint activity] in relations with third persons.

The consent of each participant shall be required for conclusion of any transaction. If the contract stipulates that a majority of votes shall be sufficient to make decisions, then this majority shall be determined according to the total number of participants and not according to the amount of contribution.

2. If the contract binds one or several contractual participants to manage the affairs [of the joint activity], so that each of them has the right to act independently, then each of them may dispute the other when concluding a transaction. In case of such a dispute, the transaction shall not be made.

3. If the contract binds one of the contractual participants to manage the affairs of the joint activity, then in case of doubt he shall represent the joint activity in relations with third persons, and the transactions made by him shall be valid.

4. A participant may be deprived of his authority to manage the affairs of the joint activity by a majority of votes, [but] only if he grossly breaches the obligations put on

him by the [joint activity] contract. A participant in the joint activity may refuse to participate in the management of the affairs [of the joint activity]. Such person may demand from the governing board information that he needs at any time.

5. Unless otherwise proceeding from the contract, the rights and duties of the managers shall be determined in accordance with the rules governing mandate.

#### Article 935. Procedure for Distribution of Income

1. Unless otherwise stipulated in the contract, the income shall be distributed among the participants proportionately to their shares.

2. Each participant may demand that all participants perform the obligations arising out of the joint activity in good faith.

#### Article 936. Transfer of Claims to Third Persons Not Allowed

The claims of the participants against each other arising out of the contract of joint activity may not be transferred to third persons.

#### Article 937. Joint Liability of the Participants

1. The parties to the contract shall be jointly liable for debts accrued as a result of the joint activity.

In their relations with each other the amount of liability shall be determined according to the shares of the participants, unless otherwise stipulated in the contract.

2. The participants in the joint activity shall be obligated not to disclose confidential information made known to them in the course of the joint activity.

#### Article 938. Repudiation of Joint Activity Contract

1. If the contract does not directly specify the duration of the joint activity, then each of the participants may refuse to participate in the joint activity at any time.

Withdrawal from the contract shall not be allowed when and under circumstances which would be prejudicial to the joint activity.

2. If by agreement of the participants a time period is fixed for the joint activity, then withdrawal from the contract shall be allowed only on legitimate grounds.

3. Withdrawal by one of the participants terminates the joint activity. The contract may provide for withdrawal by one of the participants without termination of the joint activity [however]. In such 141

case the share of the withdrawing participant shall be distributed among the

rest of the participants.

The withdrawing participant shall be paid for his share in money. At the same time, attention must be paid to any transactions not performed by the time of withdrawal. If at the moment of withdrawal the common property [of the joint activity] fails to pay its common debts, then the withdrawing participant shall be obligated to pay to the rest of the participants the [additional] sum corresponding to his share. The obligation of the withdrawing participant to the creditors existing at the moment of withdrawal shall remain unaltered.

4. Any agreement that excludes or limits the participant's right to withdraw from the contract shall be void.

#### Article 939. Grounds for Termination of the Joint Activity

1. The grounds for termination of the joint activity are as follows:

- a. Expiration of the agreed duration of the joint activity;
- b. The decision of the participants;
- c. The institution of bankruptcy proceedings against the property of the joint activity;
- d. The impossibility of accomplishment of the objects of the joint activity.

2. Unless otherwise stipulated in the contract, the grounds for termination of the joint activity also are:

- a. The death of one of the parties to the contract;
- b. The institution of bankruptcy proceedings against the property of one of the participants;
- c. Dissolution of the contract;

#### Article 940. Procedure for Termination of the Joint Activity

1. Upon termination of the joint activity, transactions not yet performed shall be completed, an inventory shall be drawn up, and the remaining property shall be distributed among the participants proportionately to their shares.

2. At the time of distribution of the property, the debts accrued during the joint activity shall be paid off. If the [joint activity] property is not adequate for payment of the debts, the parties to the contract shall be obligated to pay the debts proportionately to their shares.

### CHAPTER TWENTY-SIX

#### LIFETIME ANNUITY

##### Article 941. Concept

A person who undertakes the payment of a lifetime annuity (the patron) shall be obligated to pay it



to the recipient of the annuity (the annuitant) during the recipient's lifetime, unless otherwise stipulated in the contract. The lifetime annuity may be established in money or in kind (dwelling, nourishment, care or other necessary aid).

#### Article 942. Form of the Contract

A contract of lifetime annuity shall be concluded in writing. In the case of a transfer of immovable property, the contract shall be notarized.

#### Article 943. Amount of Annuity

The amount of the annuity shall be determined by the agreement of the parties.

#### Article 944. Time Periods for Annuity Payments

The periods of time for annuity payments shall be determined having regard to [the] nature and objectives [of the annuity], by agreement of the parties.

#### Article 945. Alienation of the Transferred Property Disallowed 142

1. During the annuitant's lifetime the patron has no right to alienate, pledge or otherwise encumber the transferred property without the written consent of the annuitant.

Attachment of this property

because of the patron's debts shall not be allowed.

2. When the annuitant transfers the immovable property to the patron, he shall have a right of lien in this property.

#### Article 946. Dispute Regarding Annuity Payment

The payment of a lifetime annuity may be disputed by other persons who were legally entitled to receive the annuity from the patron, but could not receive it because the patron pays the lifetime annuity [to someone else]. In the case of dissolution of the contract, the property shall be returned to the annuitant.

#### Article 947. In-Kind Payment of the Annuity

Under a contract of annuity paid in kind, the parties may take into account the substitution of the inkind annuity with money.

#### Article 948. The Risk of Accidental Loss or Deterioration of the Transferred Property

The accidental loss or deterioration of property transferred to the patron shall not release him from [liability for] payment of the annuity.

#### Article 949. Repudiation of the Contract of Lifetime Annuity

1. Both the patron and the annuitant may repudiate a contract of lifetime annuity if the relations

between the parties have become intolerable as a result of the breach of contractual obligations, or if other substantial reasons greatly complicate or make impossible its continuation.

2. Upon termination of the contract the immovable property transferred [to the patron] shall be returned to the annuitant, and the patron shall not be compensated for expenses incurred before the termination, unless otherwise stipulated in the contract.

#### Article 950. Effects of Death of the Patron

1. If the patron dies, the obligation of patronage shall pass to those of his heirs who received the transferred property.

2. In the case of the heir's refusal of this obligation, then the property shall be returned to the annuitant. The contract shall be terminated thereupon.

### CHAPTER TWENTY-SEVEN

#### GAMBLING. WAGERING

##### Article 951. Concept

1. Gambling or wagering shall not give rise to the right to [make a] claim. This rule shall extend to

loans and advances intentionally given for gambling or wagering, as well as to trading on the exchange or other similar transactions with respect to supply of securities that have the nature of gambling or wagering.

2. The performance given on the grounds of gambling or wagering may not be claimed back.

##### Article 952. Lottery

Contracts of lottery or similar games shall give rise to an obligation if they (raffling, casting or drawing of lots) are sanctioned by the state.

Though the statute says "right of lien," it should be understood to be an actual lien. The existence of such a lien is presumed by the first subparagraph of the article. 143

### TITLE TWO

#### STATUTORY OBLIGATIONS

##### CHAPTER ONE

#### RIGHTS IN COMMON

##### Article 953. Concept

If a right belongs in common to a number of persons, then the rules of this Chapter shall apply unless otherwise prescribed by law.

##### Article 954. Equality of Shares

Unless otherwise specially established, each shareholder shall be entitled to

an equal share.

#### Article 955. Right to Fruit

1. Each shareholder is entitled to the part of the fruit proportionate to his share.

2. Each shareholder shall have the right to use the common thing in such manner as not to

encroach on the use by the rest of the shareholders.

#### Article 956. Administration of a Thing Held in Common

1. The shareholders shall jointly administer a thing held in common.

2. Each shareholder shall have the right to undertake necessary measures for storage of the thing,

even without the consent of the rest of the shareholders.

#### Article 957. Decision Making on Administration of a Thing Held in Common

1. Decisions on the administration and use of a thing held in common in accordance with its peculiarities may be made by a majority of votes. The majority of votes shall be determined

according to the shares.

2. Each shareholder may, according to [fairness], claim that the thing be administered and used in

the interests of all shareholders, unless this is regulated by agreement or by decision of the majority.

3. The right of an individual shareholder to a share of use [of the thing] may not be impaired

without his consent.

#### Article 958. Transfer of the Procedure for Administration of the Common Thing to a

##### Successor in Title

If the shareholders determined the procedure for administration and use of the common thing, then

this procedure shall apply to their successors as well.

#### Article 959. Procedure for Disposition of a Thing Held in Common

Each shareholder may dispose of his share, while disposition of the common thing shall take place

only jointly. In case of sale of a share, the rest of the shareholders shall have a priority right to

purchase the share.

#### Article 960. Expenses of Maintenance of a Thing Held in Common

Each shareholder is obligated before the other shareholders to bear the expenses related to the thing

held in common, proportionately to his share.

#### Article 961. Revocation of the Right in Common

1. Any shareholder may demand revocation of the right in common at any time.

Relationships of obligation arising by operation of law.

“Share” here means interest or portion, not a security.

If all shares are equal, then in effect each shareholder has one vote of equal weight to each other shareholder’s vote.

See art. 954. If the share sizes vary, then each vote would be weighted.

That is, any shareholder may demand dissolution of the arrangement of holding rights in common property. 144

2. If the right to demand revocation is excluded forever or for a certain period of time, nevertheless

the revocation may be demanded if there is a legitimate reason for it.

3. An agreement which contrary to these rules excludes or limits the right to demand revocation

shall be void.

Article 962. Agreement on Revocation

If the shareholders have excluded the right to demand revocation for some period of time, then the agreement shall be annulled by the death of a shareholder unless otherwise stipulated.

Article 963. Revocation of the Right in Common upon Partition in Kind

The right in common shall be revoked upon partition in kind if the common thing may be divided

into equivalent parts without decreasing its value. Equal shares shall be partitioned [distributed]

among the shareholders by drawing lots.

Article 964. Revocation of the Right in Common by Sale

1. If partition in kind is excluded, then the right in common shall be revoked by sale of the

common thing, the pledged property or the [mortgaged] tract of land and by division of the

proceeds. In the case of a tract of land the rules governing foreclosure sale at auction shall apply. If

the alienation of the common thing to a third person is unacceptable, then the thing shall be sold at

auction among the shareholders.

2. If the thing is not sold, then any shareholder may demand a repeated auction. At the same time,

he shall bear the expenses if the repeated attempt is also unavailing.

Article 965. Joint Liability of the Shareholders

1. If the shareholders are liable as joint debtors for an obligation to be performed by them

proportionately to their shares under Article 600, or if they have undertaken performance of such an

obligation, then upon revocation of the right in common each shareholder may demand payment of

the debt from the [value of the] common thing.

2. If for the purpose of payment of the debt the sale of the thing is

necessary, then the sale shall be conducted according to Article 964.

#### Article 966. Satisfaction of a Claim Against a Co-shareholder

If a shareholder has against another shareholder a claim arising from the right in common, then upon revocation of the right in common he may demand satisfaction of his claim from that part of the common property to which the debtor is entitled [which belongs to the debtor].

#### Article 967. Liability of Shareholders Upon Revocation of the Right in Common

If, upon revocation of the right in common, the common thing is [transferred into the ownership of one] of the shareholders, then each remaining shareholder shall be liable, proportionately to his share, in the same manner as a seller is liable for a defect in a thing or a right.

#### Article 968. Limitation Period on the Right to Demand Revocation of the Right in Common

The right to demand revocation of the right in common shall not be subject to limitation.

### CHAPTER TWO

#### MANAGEMENT [PERFORMANCE] OF THE AFFAIRS OF ANOTHER WITHOUT MANDATE

#### Article 969. Management of the Affairs of Another Conscientiously

A person (manager) who manages the affairs of another person (principal) without having a mandate or other grounds to do so shall be bound to manage the affairs conscientiously.

#### Article 970. Obligation to Compensate Damage 145

1. If the management is aimed at the elimination of a danger threatening the principal, then the manager shall be liable only for [intentional misconduct] or gross negligence.

2. The manager who has sustained the damage in the course of eliminating a real danger to another person or property while elimination of the danger was not his legal duty, shall be compensated for his damages by the person who created the danger, or by the person whose property [or "good" ] the manager was trying to save.

#### Article 971. Obligation to Notify the Principal

The manager shall be bound to notify the principal as soon as possible that he has undertaken management of the [principal' s] affairs. The manager shall carry out the

affairs until the principal himself is able to act.

#### Article 972. Reporting on the Performed Work

The manager shall render an account of performance and hand over everything to the principal that the manager received as a result of the management.

#### Article 973. Right to Compensation of Incurred Expenses

The manager has the right to demand compensation for expenses incurred, which were deemed necessary having due regard to the circumstances of the matter.

#### Article 974. Claim for Compensation of Incurred Expenses Not Allowed

1. The manager may not claim compensation for expenses incurred if his management of the affairs was either against the will of, or not in the interests of, the principal. If the manager could have known of these facts, then he shall be bound to compensate the damage caused by the management.

2. This rule shall not apply if the will of the principal is contrary to the norms of law.

#### Article 975. Presumption of Management of Own Affairs

The rules of this Chapter shall not apply if the person, while managing the affairs of another, was presuming that they were his own affairs.

### CHAPTER THREE

#### UNJUST ENRICHMENT

#### Article 976. Grounds for Claim Against a Pseudo Creditor

1. A person who transferred something constituting performance of an obligation to another person

may claim from the pseudo creditor (recipient) its return if:

- a. the obligation, due to voidness or other grounds does not exist, will not arise, or was terminated later;
- b. a counterclaim has been asserted against the obligation such that that the assertion of the claim is excluded for a long period of time.

2. The revendication claim [referred to in paragraph (1)] shall be excluded if:

- a. the performance conformed with moral duties, or
- b. the limitation period has elapsed, or
- c. the recipient could presume that the person who gave performance was willing to transfer [the benefit to him], regardless of whether or not the conditions under paragraph (1) of this

Article exist, or

d. demanding revendication in the case of a void obligatory contract would contravene the

protective function of the norms governing voidness [of contracts].

#### Article 977. Revendication of Transferred Property Disallowed

Translates literally from Georgian, "as if" creditor. 146

1. A person who transfers something to another person not for performance of an obligation, but

for the purpose that the latter perform or not perform some action, may reclaim the transferred thing

if the transferee's action does not correspond to the expected purpose.

2. Revendication shall be excluded if:

a. accomplishment of the purpose was impossible from the beginning and the transferor knew

it, or

b. the transferor prevented accomplishment of the purpose in bad faith.

#### Article 978. Revendication of a Thing Transferred Under Duress or Threats

A person who transfers something to another person not for performance of an obligation but

because he is under duress or threats, may reclaim it except when the recipient had the legal right to

the thing.

#### Article 979. Limitations on the Right to Demand Revendication

1. The revendication claim shall extend to things acquired, and benefits received, as well as to

everything that the recipient has acquired as compensation for the destruction, deterioration or seizure of the received thing.

2. If return is impossible due to the condition of the transferred thing, or if the recipient cannot

return the thing for some reason, then he shall compensate the total value of the thing. The value

shall be determined as of the time of origin of the revendication claim.

3. The obligation to compensate shall not accrue if the recipient has not been enriched by the thing

or its value, either by use, alienation, perishing or deterioration of the thing or by other reason.

4. When the parties to a bilateral contract, on the grounds of its voidness, are bound to return

everything they have received from the contract, but one of the parties cannot return it because of

the grounds defined in paragraph (2) of this Article, then this party shall not be obligated to return

the [monetary value] if it follows from the essence of the norm of law according to which the

contract was voided.

5. Perishing or deterioration of the object of the performance, for which, if the contract were valid, the party who had to perform would have been liable, shall always release the recipient from the obligation to compensate.

#### Article 980. Procedure for Compensation of Expenses and Loss

1. If the recipient incurred expenses or suffered property loss because he believed that he had acquired the thing forever, then he shall be bound to return the thing [only] on condition that he be compensated for these expenses and loss. This rule shall not apply if the transferred thing could not reasonably have been considered to have been acquired forever.

2. The obligations of compensation under Articles 979 and 980 shall be performed simultaneously.

The expenses and risk of return shall be borne by the person who gave performance [and is demanding return of the property or benefit].

#### Article 981. Obligation to Compensate Damage

1. If the recipient knew of the defective legal ground at the time of receipt, or if this was unknown to him because of his gross negligence and he became aware of the defect later, or if the claim with respect to [revention of the] transfer is taken under consideration in court, then the recipient shall be liable from the time of receipt of information on the defect or from the time of submission of the claim for consideration in court under paragraphs (1) and (2) of Article 979, Article 980 and the rules defined below.

2. If the recipient has not received the benefits that he could have received by the proper management of the property, then he shall be bound by the obligation to compensate if there is fault on his part [that is, if fruits were not realized and therefore cannot be returned to the claimant]. In the case of a monetary debt, the interest shall be added to the sum [owed back]. The income derived from the thing shall be returned [to the claimant].<sup>147</sup>

3. In a case of perishing or deterioration of the transferred thing the recipient shall be liable to compensate the damage [to the claimant] only if there is a fault on his part. The recipient may, under the rules governing the management of the affairs of another without



mandate, demand

compensation for the expenses that he incurred with respect to the object of the performance. Other expenses shall not be compensated.

4. These rules shall not apply to the liability of a debtor exceeding a time period.

Article 982. Effects of "Encroachment" on Another's Legal "Goods"

1. A person who encroaches on the legal goods of another by their disposition, spending, use, joining, mixing, processing or other method shall be obligated to compensate the damage thereby arisen to the entitled person.

2. In case of a void disposition [of goods], the entitled person may demand from the encroacher immediate compensation.

Article 983. Receipt of Performance by a Non-entitled Person

If a non-entitled person receives the performance belonging to an entitled person, he shall be bound to return the received performance to the entitled person.

Article 984. Release from Liability

1. If the encroacher was not aware of the defect in the legal entitlement because of gross negligence, then he shall be released from liability [only] if by the time when the claim for damages is submitted for consideration in court, the signs of enrichment no longer exist.

2. Expenses incurred by the encroacher with respect to the used good shall not reduce the extent of his enrichment.

Article 985. Right to Claim Profits

1. If the encroacher disregarded the legal entitlement of another person by intent, then the latter may claim profits that exceed the [actual] property loss.

2. The encroacher must present information on the profits received by him through use of the other's property.

Article 986. Payment of Another's Debt by Mistake

A person who, either intentionally or by mistake, pays the debts of another person may claim from this person compensation for his expenses.

Article 987. Incurring Expenses on Another's Property by Mistake

1. A person who, either intentionally or by mistake, has incurred expenses with respect to another person's property may demand from this person compensation for the expenses

incurred, if the latter was enriched thereby.

2. The existence of enrichment shall be determined as of the moment at which the thing is returned to the debtor [the one who owed performance or delivery of the thing], or the moment at which [the non-entitled person] receives the benefit [of the performance] as a result of an increase in value [to his property].

3. The claim is excluded if:

a. The person against whom the claim is asserted is able to demand the withdrawal of the expenses and withdraws them, or

b. The person asserting the claim has culpably delayed notification of the claim for expenses, or

c. The person against whom the claim is asserted disputed the expenses before they were incurred.

“Encroachment” = infringement, trespass. “Goods” may be understood to include tangible and intangible things. 148

Article 988. Effects of Performance Rendered on the Instructions of a Pseudo Creditor

1. A person who, in accordance with Article 976, transfers something to a third person on the instruction of a pseudo creditor, may revendicate the performance from the pseudo creditor as if [the creditor had received the performance]. If the instruction of the pseudo creditor causes no doubt [i.e. was not false or unlawful], then revendication may be exercised only against the third person.

2. A person who, pursuant to Article 976, transfers something to a new pseudo creditor after assertion of a claim [of entitlement to the thing transferred], may revendicate it from the initial pseudo creditor as if he transferred something to him. If the instruction of the initial pseudo creditor causes no doubt [i.e. was not false or unlawful], then revendication may be exercised only against the new pseudo creditor.

3. Articles 979 and 980 shall accordingly apply to the obligation of compensation.

Article 989. Obligation of a Third Person to Return the Unjustly Received [Thing]

1. If, in the cases defined under Articles 976 and 988, the recipient who is

bound to return the thing, instead gratuitously transfers it to a third person, then, if satisfaction from the [initial] recipient is impossible, the third person shall likewise be bound to return the thing as if he has received something from the creditor [i.e., the initial recipient] without lawful grounds therefor.

2. Articles 979–981 shall accordingly apply to the compensation of damage.  
Article 990. Effects of Gratuitous Disposition of the Thing by a Non-entitled Person

1. If a non-entitled person gratuitously disposes of the thing and this disposition [would be] valid [if performed by] the entitled person, then the person who has received the direct legal benefit as a result of this disposition shall be bound to transfer the received thing to the entitled person.

2. If there is fault [culpability], then the requirements of Articles 984 and 985 shall apply accordingly.

Article 991. Effects of Unjust Enrichment at the Expense of Another  
A person who was unjustly enriched at the expense of another by methods other than those defined in this Chapter shall be bound to return the received [benefit].

### TITLE THREE

#### DELICTUAL OBLIGATIONS [TORTS]

##### CHAPTER ONE

##### GENERAL PROVISIONS

Article 992. Concept

A person who causes harm to another person by unlawful, intentional or negligent action shall be bound to compensate the latter for his harm.

Article 993. Effects of Disclosure of the Harmful Information

1. A person who intentionally or negligently publicizes or discloses facts causing property loss to another person shall be bound to compensate the loss thereby arisen if these facts are evidently wrong.

2. The obligation to compensate the loss shall not accrue in the case of such statements made for the protection of lawful public interests.

Article 994. Liability of a Minor for Harm Caused

1. A person under the age of ten years shall not be liable for harm that he causes to another person.

The parents or other persons [legally] obligated to care for the person under

the age of ten years

shall be bound to compensate the harm caused by this person to another by [the child' s] unlawful 149

act. Their liability shall be excluded when the persons responsible for supervision [of the child] could not have avoided the harm done.

2. A minor who has attained the age of ten years and older shall be liable for the harm that he

caused to another, except when he could not understand the significance of his action when causing

the harm. If the property or income of this person is not adequate for compensation of the harm

done, the uncovered liability shall be placed on his representatives as well.

Article 995. Compensation for Harm Caused by a Mentally Ill Person

1. If a mentally retarded or mentally ill person causes harm to another person by an unlawful act,

he shall not be obligated to compensate the harm.

2. If a person is charged with supervision of the wrongdoer, then he shall be obligated to

compensate the harm except when it was impossible for him to avoid this harm.

Article 996. Compensation of Harm Caused in a State of Temporary Mental Disorder

A person who causes harm while in a state of temporary unconsciousness or temporary mental

disorder is not liable for the harm. If the person put himself into such a state by using alcoholic

drinks or in some similar manner, he shall not be released from liability, unless he found himself in

this state through no fault of his own.

Article 997. Compensation of Harm Caused While Performing Official Duties

A person shall be bound to compensate the harm caused to a third person by his employee' s

unlawful act when the latter was on duty. The liability shall not accrue if the employee acted

without fault.

Article 998. Joint Liability for Harm Caused

1. If several persons participate in the infliction of the harm, they shall be liable as joint obligors.

2. Not only shall the person who directly caused the harm be liable, but also the person who

supported or assisted him, as well as one who consciously benefited from the harm caused to

another shall be liable for the harm.

Article 999. Compensation of Harm Caused as a Result of Operation of Means of Transport

1. The possessor of a means of transportation used for the carriage of passengers or freight shall be obligated to pay compensation if the operation of the means of transportation caused the death, bodily injury or disability of an individual, or damage to a thing.
2. The obligation to compensate, defined in paragraph (1) of this Article, shall not apply when:
  - a. transported freight is damaged, except when a passenger carries this freight with himself; or
  - b. the damaged thing was bailed for storage with the possessor of the transport.
3. The obligation to compensate for harm caused, defined in paragraph (1) of this Article, shall not apply if the harm was caused by force majeure except when the harm is caused during the operation of a means of air transportation.
4. If a person operates a means of transportation without the permission of the possessor, then he shall be bound to compensate the harm caused instead of the possessor. At the same time, the possessor shall be bound to compensate the harm caused if the operation of the transport [by the other person] was made possible through his fault. The first sentence of this paragraph shall not apply when the user is designated by the possessor for operation of the transport, or when this transport was handed over to the user by the possessor.

Article 1000. Compensation of Harm Caused by Increased Danger Associated With a Structure

1. If there is an increased danger associated with some structure because of the energy power, inflammable, explosive, poisonous or toxic substances produced by, put in or supplied through this structure, then the possessor of the structure shall be obligated to pay compensation if the realization of this danger causes the death, bodily injury or disability of an individual or damage to a thing. The same liability shall be put on possessors of inflammable, explosive, poisonous or toxic substances when there is an increased danger associated with these substances.
2. If there is an increased danger associated with some structure or thing for reasons other than

those defined in paragraph (1) of this Article, the possessor of the structure or the thing shall be obligated to compensate the harm analogously if the realization of such danger caused the harm.

3. The obligation to compensate damages defined in paragraphs (1) and (2) of this Article shall be excluded if the harm is caused by force majeure, except when the harm is caused by the breakdown of electric power transmission lines, or by the malfunction of oil, gas, oil products, or water supply facilities, [i.e., in such instances force majeure is not a defense].

4. The harm caused by the use of radioactive substances shall be compensated by their user.

#### Article 1001. Compensation of Harm Caused while Extinguishing Fire

The harm caused to other persons while extinguishing a fire and preventing it from spreading over neighboring apartments and structures shall be compensated by the person through whose fault the fire was set.

#### Article 1002. Prior Release from Obligation to Compensate Harm Disallowed

The obligation to compensate for harm set forth under Articles 999 and 1000 may not be excluded or limited beforehand if it relates to harm sustained by a person. The same rule applies to harm caused to a thing, except when the release from or limitation of the liability was agreed upon between the person liable for compensation of the harm on the one side, and a legal person of public law, public-law foundation or enterprise on the other. Any agreements or provisions to the contrary shall be void.

#### Article 1003. Compensation of Harm Caused by an Animal

The possessor of an animal shall be bound to compensate the harm caused to another by his animal.

It is of no importance if the animal was supervised, lost or it escaped. The obligation to compensate shall not apply if the possessor of the animal undertook [all] necessary measures for the protection of third persons.

#### Article 1004. Compensation of Harm Caused by Collapse of a Building

1. The owner of a building shall be bound to compensate the harm caused by collapse of the building or by the ruin of its individual parts, except when the harm is not caused by improper maintenance or defect of the building.

2. If the harm is caused by the throwing out, falling out or flowing out of a thing from the building, then the liability shall be on the person who occupies the dwelling, except when the harm occurred by force majeure or through fault of the victim.

#### Article 1005. Liability of the State for Harm Caused by its Employee

1. If a state employee [public servant] breaches his official duties before other persons by intent or gross negligence, then the state or that body [“organ”] in which the employee works shall be bound to compensate the harm incurred. In the case of intent or gross negligence, the employee and the state shall be liable jointly.

2. The obligation to compensate the harm shall not arise if the victim, either by intent or by gross negligence, did not try to avoid the harm through legal action.

3. The harm caused by illegal conviction of a rehabilitated person; illegal criminal prosecution; illegal application of enforcement measures in the form of detention or an order not to leave a place; or improper imposition of an administrative penalty in the form of imprisonment or correctional labor, shall be compensated by the state regardless of the fault of officials of inquiry or preliminary investigation agencies, the procurator’s office or the court. In the case of intentional misconduct or gross negligence, these persons and the state shall be liable jointly. 151

#### Article 1006. Compensation of Harm in Case of the Victim’s Death

1. In the case of the victim’s death the harm-doer shall compensate the harm by establishing an annuity for those persons who were dependants of the victim. This obligation shall be effective until expiration of the period for which the victim was obligated to pay annuity [i.e., support for his dependents].

2. Instead of an annuity the victim may claim lump-sum compensation if there is a substantial ground therefor.

#### Article 1007. Compensation of Harm Caused by a Medical Institution

The harm caused to a person’s health during his treatment at a medical institution (outcome of surgical operation or incorrect diagnosis, etc.) shall be compensated on a general basis. The harmdoer shall be released from liability if he proves that there was no fault on his part in the occurrence

of the harm.

#### Article 1008. Limitation Period on Claim for Damages

The limitation period on a claim for damages resulting from a tort is three years from the moment at which the victim became aware of the harm or [the identity of] the person liable for compensation of the harm.

### CHAPTER TWO

#### PRODUCTS LIABILITY

#### Article 1009. Liability of the Manufacturer of Substandard Products

1. The manufacturer of a substandard product shall be liable for harm caused by this product

regardless of whether or not he had a contractual relation with the victim, except when:

a. he did not put this product out for sale;

b. having due regard for the circumstances of the matter, it may be presumed that at the time

when the product was offered for sale it did not have the defect which caused the harm;

c. the manufacturer produced this product not for sale or any other commercial purpose, and

not within the scope of his professional activities;

d. the defect of the product did not violate standards in effect when it was offered for sale;

e. the defect could not be detected at the time it was offered for sale, taking into account the level of scientific and technical development at that time.

2. The liability of the manufacturer of a product's part shall likewise be excluded if the defect is

caused by the structure of the product with which this part was connected as a component.

3. The manufacturer's obligation to compensate for harm shall be reduced or completely excluded

if the harm was caused by the fault of the victim or of a person who answers for the victim.

4. The manufacturer's liability shall not be reduced if the harm was caused by the defect of the

product and simultaneously by the action of a third person.

#### Article 1010. Definition of a Substandard Product

1. A product shall be deemed substandard if it fails to secure the reliability that was expected from

this product having due regard for all the circumstances.

2. A product shall not be deemed substandard solely on the basis that a better and more recent

product has been put on the market.



## Article 1011. Definition of a Product

1. According to this Code, any movable thing even when it is a part of another movable or immovable thing, as well as electric power shall be deemed to be a product. However, the products of cattle-breeding, bee-keeping, fishing and farming not yet processed (natural agricultural products) shall not be included in the above category. The same rule applies to the products of hunting.

2. According to this Code, a person who has manufactured a final product, a principal element or part of a product shall be deemed to be a manufacturer. Any other person who appears as a manufacturer in his own name, trademark or other distinguishing mark shall also be deemed to be a manufacturer.

3. A person who puts a product out for economic purposes in the form of sale, renting out, leasing or otherwise within the scope of his business and by observing the rules prescribed by this Code shall also be deemed to be a manufacturer.

4. If the identity of the manufacturer cannot be established, then each supplier shall be deemed to be the manufacturer, except when such person, within one month following the presentation of a claim, presents to the victim the personality of the manufacturer or the person who supplied the product to him. This rule shall apply to imported goods when the identity of the initial [domestic] distributor cannot be established even though the manufacturer's name is known.

## Article 1012. Burden of Proof

In cases of liability for harm caused by a substandard product, the burden of proof is on the victim.

## Article 1013. Joint Liability of the Manufacturers of Substandard Products

If the obligation to compensate one and the same harm is put on several manufacturers, they shall be jointly liable.

## Article 1014. Compensation of Harm Caused by Injury to Health

The obligation to compensate for harm under Article 1009 shall extend to harm that results from death, bodily injury or disability.

## Article 1015. Limitation Period on Claims

1. The limitation period on claims under Article 1009 is three years from the moment at which the victim became aware or ought to have become aware of the harm, defect or identity of the person liable for compensation of the harm.

2. Any claim under Article 1009 shall be extinguished after ten years from the moment at which

the product that caused the harm was released for sale by the manufacturer.

Article 1016. Prior Release from Liability Disallowed

The manufacturer's liability for substandard products may not be excluded or limited beforehand.

Any agreement to the contrary shall be void. 153

BOOK FOUR

INTELLECTUAL PROPERTY LAW

TITLE ONE

COPYRIGHT LAW

[Revised] Article 1017. Protection of Copyright and Associated Rights

Protection of property rights and personal non-property rights in a work of authorship regulated by

copyright law, as well as protection of some associated rights related thereto, shall be exercised in

accordance with the Law of Georgia "On Copyright and Associated Rights".

Articles 1018-1099. Repealed by the Law of Georgia "On the Amendments to the Civil Code of

Georgia" of June 22, 1999, No. 2114 IIs.

TITLE TWO

INDUSTRIAL PROPERTY

Article 1100. Protection of Rights in Inventions, Utility Models and Industrial Designs

1. The protection of rights in inventions, utility models and industrial designs shall be exercised by

the issuance of a patent under the Patent Law of Georgia.

2. The right to acquire a patent shall belong to the author of the invention, utility model or

industrial design, or to his successor in title.

3. The authorship right in invention, utility model and industrial design is inalienable and unlimited in time.

4. During the effectiveness of the patent, the patentee shall enjoy the exclusive patent right.

Article 1101. Protection of Rights in [Artificial] Selection

Protection of the exclusive right in a species of plant or animal (achievement of [artificial]

selection) shall be exercised by the issuance of a certificate under the corresponding law.

## Article 1102. Protection of Exclusive Rights in a Trademark

The protection of exclusive rights in a trademark shall be exercised under the corresponding law, on the grounds of registration of the trademark. The right to obtain a trademark certificate shall belong to the entrepreneur.

## Article 1103. Right to Indicate a Geographically Distinctive Designation and Place of Origin

The right to indicate a geographically distinctive designation and place of origin of the goods (services) shall be regulated by corresponding law.

## Article 1104. Protection of Tradename

This Code, the Law on Entrepreneurs and other legislative acts regulating industrial property shall protect the exclusive right to a tradename.

## Article 1105. Protection of a Trade Secret

1. An entrepreneur who possesses a trade secret (know-how), which consists of technological, organizational or commercial information of extraordinary importance that justifies the taking of necessary and adequate measures for keeping it in secrecy, shall have the exclusive right to this information.

2. This Code and other legislative acts regulating industrial property shall protect the exclusive right in know-how. 154

## BOOK FIVE

### FAMILY LAW

#### TITLE ONE

#### MARRIAGE

##### CHAPTER ONE

##### PROCEDURE AND PRECONDITIONS OF SOLEMNIZATION OF MARRIAGE

## Article 1106. Marriage Defined

Marriage is the voluntary union of a woman and a man for the purpose of creating a family, which is registered with an agency of the State Register of Civil Status of Citizens.

## Article 1107. Preconditions of Marriage

Marriage shall require:

- a. [Attainment of the legal] age of marriage [consent];
- b. The consent of the prospective spouses.

## Article 1108. The Age of Marriage

1. The age of marriage shall be defined as eighteen years.
2. In exceptional cases marriage is allowed from the age of sixteen years,

subject to the preliminary consent of the parents or other statutory representatives.

3. In case of refusal of consent by the parents or other statutory representatives, a court, on the petition of the prospective spouses, may grant the permission to marry provided there are legitimate reasons therefor.

#### Article 1109. Consent of the Prospective Spouses. Engagement

1. Prior consent of the prospective spouses (engagement) shall not create the obligation to marry thereafter.

2. An engagement shall not be grounds for bringing an action for forced marriage.

3. If a planned marriage is cancelled, gifts given in connection with the engagement shall be returned to the parties.

#### Article 1110. Marriage Ceremony

1. The marriage ceremony takes place after the expiration of one month from the date at which the prospective spouses file an application with an office of the Register of Civil Status. The application

shall be effective for two months after the lapse of the one-month period.

2. In individual cases an office of the Register of Civil Status may reduce the one-month period, provided there are legitimate reasons therefor.

3. In exceptional circumstances, such as the birth of a child, a real danger to the life of one of the parties or the like, the marriage may be registered on the same day as the filing of the application.

#### Article 1111. Registration of Marriage

A marriage is registered with an office of the Register of Civil Status at the place chosen by the prospective spouses.

#### Article 1112. Filing of an Application for Marriage

The persons willing to marry shall personally file the application with an office of the Register of

Civil Status. In the application they shall confirm that there are no impediments to the marriage defined under Article 1120, that they know of the marital status of each other, and they know how many times each party was married before and whether or not they have children.

#### Article 1113. Duties of an Office of the Register of Civil Status 155

1. The office of the Register of Civil Status that accepts the application of the prospective spouses

shall be bound to inform them of the procedure and preconditions of marriage registration, as well as to explain to them the rights and duties of spouses and parents defined in this Code and to warn them that they shall be liable for concealing any impediments to the marriage.

2. The office of the Register of Civil Status shall be bound to assure itself that there are no impediments to the marriage of the prospective spouses and that the prospective spouses know of the state of health and the marital status of each other.

Article 1114. Registration of Marriage outside the Domicile of an Office of the Register of Civil Status

At the request of the prospective spouses, and if legitimate reasons exist therefor, the marriage may be registered outside the domicile of the office of the Register of Civil Status.

Article 1115. Marriage in a Festive Ceremony

By consent of the prospective spouses, the marriage is held in a festive ceremony.

Article 1116. Duty to Provide Information on the State of Health

At the registration of the marriage the prospective spouses shall declare that they know of the state of health of each other.

Article 1117. Participation of Witnesses at the Registration of Marriage

The registration of a marriage shall be carried out in the presence of two adult witnesses.

Article 1118. Procedure of Marriage of Foreigners

1. Marriage of foreigners in Georgia shall require an official certificate issued by the corresponding bodies of their countries, verifying that there are no impediments to the marriage.

2. This rule shall not apply to stateless persons or to the citizens of those states where the abovementioned official papers are not issued.

Article 1119. Appeal Against Refusal of Registration

The refusal by an office of the Register of Civil Status to register a marriage may be appealed to a court.

Article 1120. Impediments to Marriage

1. Marriage shall not be allowed:

- a. between persons at least one of whom is married;
- b. between lineal ascendants and descendants [parents and children];
- c. between a sister and a brother, regardless of whether they are siblings by

blood or not;

d. between an adoptive parent and an adoptee;

e. between persons at least one of whom has been declared by a court to be a person without

legal capacity by reason of mental illness or mental retardation;

2. Subparagraphs (b), (c) and (d) of paragraph (1) of this Article shall apply even if the

relationship has been dissolved by placement for adoption.

Article 1121. Procedure of Remarriage

1. In case of remarriage, a person shall be obligated to present at the registration of the marriage

the certificate of the termination of the former marriage.

2. In case of the death of either spouse, the registration of remarriage of the other spouse shall

require presentation of the death certificate of the decedent. 156

CHAPTER TWO

TERMINATION OF MARRIAGE

Article 1122. Termination of Marriage; Grounds

Marriage is terminated upon:

a. the death of either spouse;

b. the declaration of either spouse as dead, in accordance with the procedure prescribed by law;

c. divorce.

Article 1123. Divorce Not Allowed

1. Divorce is granted pursuant to court proceedings, and those cases within Articles 1124 and 1125

at an office of the Register of Civil Status.

2. During pregnancy of the wife, and within one year from the birth of the child, the husband has

no right to petition for divorce without consent of the wife.

Article 1124. Procedure of Divorce

1. Divorce at the office of the Register of Civil Status located according to the place of residence

of one of the spouses shall be allowed, subject to the mutual consent of spouses who have no minor

children, and who file a joint application for divorce.

2. In the application for divorce, the spouses shall be obligated to confirm not only their mutual

consent, but also the fact that they have no minor children.

3. Divorce may be granted in the absence of one of the spouses, provided he or she has a

legitimate reason for non-appearance in the office of the Register of Civil Status, and a duly verified

declaration in his or her name confirming the consent to the divorce is presented.

4. Divorce shall be granted within one month from the date of filing of the application for divorce

by the spouses, except in a case within paragraph (3) of Article 1110.

5. The marriage shall be deemed terminated from the moment of registration of the divorce by the

office of the Register of Civil Status.

Article 1125. Divorce Granted upon Petition of One of the Spouses

At an office of the Register of Civil Status, a divorce shall be granted on the petition of one of the

spouses if the other spouse:

a. is declared to be a missing person under the procedure prescribed by law;

b. is declared a person without legal capacity by reason of mental illness or mental retardation;

c. has committed a felony and has been sentenced by a court to imprisonment for a period of

not less than three years.

Article 1126. Divorce in the case of a Dispute Between the Spouses

If there be a dispute between the spouses, or if they have a minor child, a proceeding for divorce

shall be carried out in a court.

Article 1127. A Proceeding for Divorce in a Court

1. A proceeding for divorce in a court shall be carried out in accordance with the procedure for

adversary proceedings prescribed by the Civil Procedure Code of Georgia.

2. The court shall undertake measures for reconciliation of the spouses. It shall have the right to

postpone the proceeding and fix a period of time for reconciliation of the spouses that may not

exceed six months.

In these family law articles we have resorted to the cumbersome “he/she,” “him/her,” because it is necessary to be

clear where provisions relate to spouses of both sexes, or only to one or the other. Use of the generic “he” pronoun to

cover male, female and neuter (legal person) subjects would be inappropriate and lead to confusion. 157

3. A decree of divorce shall be issued if the court resolves that the matrimonial cohabitation of the spouses and the preservation of the family is no longer possible, in spite of the measures undertaken for reconciliation.

4. When issuing the divorce decree, the court, where necessary, shall undertake measures for the

protection of the interests of minor children and, if relevant, the disabled spouse.

#### Article 1128. Court Decision on Custody and Child Support

1. If the spouses do not agree on the place of residence of the children of the marriage and the expenses for child support, then the court shall be bound, simultaneously with rendering the divorce decree, to determine which parent shall be awarded the custody of which child, as well as which parent shall be ordered to provide the child support and the amount thereof.

2. In a case within this Article, where necessary, an agency of guardianship and curatorship shall be called to participate in the proceeding.

#### Article 1129. Court Decision on Spousal Support

At the request of a spouse entitled to maintenance payments from another spouse, the court shall be bound, simultaneously with the rendering of the divorce decree, to determine the amount of maintenance that the other spouse shall be ordered to pay.

#### Article 1130. Court Decision on the Partition of Community Property

1. At the request of either or both of the spouses, the court shall be bound, simultaneously with the rendering of the divorce decree, to consider the issue of partition of property owned in common by the spouses [community property].

2. If such partition concerns the rights of third persons, then the dispute with respect to partition of the property may not be settled simultaneously with the divorce case.

#### Article 1131. Fee for Issuing Divorce Certificate

Upon rendering the divorce decree, the court shall determine an amount from 50 to 200 Lari as the fee to be paid by either or both of the spouses for issuing the divorce certificate. If the court deems that both spouses must pay the fee, it shall determine the amounts to be paid by each spouse.

#### Article 1132. Execution of a Divorce Decree

1. A final judgment of divorce that has entered into legal force through registration of the judgment with the office of the Register of Civil Status shall be executed upon the request of either or both of the spouses not later than three years from the date of entry of the judgment into legal force through the registration.

2. The marriage shall be deemed terminated from the moment of the registration of the divorce with the office of the Register of Civil Status.

#### Article 1133. Right to Restoration of Premarital Surname



The spouse who changed his or her surname at the time of the marriage shall have the right to continue bearing the same surname or, upon his or her request, the premarital surname shall be restored.

#### Article 1134. Application for Restoration of the Former Surname

The spouse who wishes to bear the former surname shall file the corresponding application with the office of the Register of Civil Status at the time of the registration of the divorce. The offices of the Register of Civil Status shall make corresponding entries on the restoration of the premarital surname.

#### Article 1135. Restoration of Marriage in the Event of Reappearance of a Spouse Declared

##### Dead or Missing 158

1. If a spouse reappears who was declared dead or missing under the procedure prescribed by law, and the marriage was terminated on those grounds, then, provided the court decree on the declaration of death or missing status of this person is vacated, an office of the Register of Civil Status may restore the marriage upon the joint application of the spouses. If the divorce was granted in a court proceeding, then the court shall vacate the divorce decree on the spouses' joint application.

2. The marriage may not be restored if the spouse of the person declared dead or missing has already married another person.

#### Article 1136. Right to Reenter into Marriage

Divorced spouses shall have the right to reenter into marriage.

#### Article 1137. Divorce to be Registered According to Place of Residence

A divorce shall be registered in the office of the Register of Civil Status according to the place of residence of one or both of the spouses.

#### Article 1138. Registration of Divorce

1. An office of the Register of Civil Status registers the divorce on the grounds of the court decree of divorce, upon application of either or both spouses.

2. In case of registration of the divorce on the application of one of the spouses, an office of the Register of Civil Status shall notify the other spouse, provided that the address of the latter, as well

as the address of the office of the Register of Civil Status that registered the marriage, is known.

#### Article 1139. Procedure of Divorce from a Sentenced Spouse

1. A spouse who wishes to divorce on the grounds stated in Article 1125 shall be obligated to present to the office of the Register of Civil Status a duly authenticated, legally effective court judgment on recognition of the other spouse to be a missing person or a person without legal capacity, or the court sentence or extract from the sentence that pronounces that the other spouse has been condemned to imprisonment for a period of not less than three years.
2. The office of the Register of Civil Status shall give notice of the application to the imprisoned spouse or to the guardian of the spouse without legal capacity. The notice shall fix the time period for a notice in response, stating whether or not there is a dispute regarding the children, partition of community property or the recovery of alimony payments in favor of the disabled spouse who is in need of support. The time period for service of the response notice may not exceed three months.
3. If a notice is received stating that there is no such dispute, or if the response has not been received within the fixed period, then the office of the Register of Civil Status shall register the divorce.

### CHAPTER THREE

#### VOIDNESS OF MARRIAGE

##### Article 1140. Voidness of Marriage Grounds

1. A marriage may be declared void if the provisions prescribed by Articles 1107, 1108 and 1120 are violated, and also if the purpose of registration of the marriage was not the creation of a family (sham marriage).

2. Only a court may declare a marriage void.

##### Article 1141. Presumption of Validity of Marriage

If at [the time of] the marriage ceremony the spouses did not know of [the existence of] the impediments that constituted the grounds for invalidity of their marriage, then the marriage shall be terminated from the moment of finding of these impediments in a court; nevertheless, until that moment the marriage gives rise to all the legal effects that follow from a valid marriage. 159

## Article 1142. Invalidity of Marriage with an Underage Person

1. Marriage with a person who has not yet attained the age of marriage or who was not granted an exception from the age of marriage [requirement], may be declared invalid if this is in the interests of the spouse who entered into the marriage before attainment of the age of marriage.
2. A declaration of invalidity of marriage may be sought by the minor spouse, his or her parents or guardian (curator), as well as by a guardianship and curatorship agency.
3. If by the time of the proceeding the minor spouse has attained the age of marriage or is pregnant, the marriage may be declared invalid only upon request of the spouse who was under-age at the time of marriage, or who is pregnant.

## Article 1143. Declaration of Invalidity of Marriage for the Reason of Impediments to the Marriage

1. A marriage made in violation of the provisions under Article 1120 may be declared void by a court.
2. If by the time of the proceeding the impediments to the marriage no longer exist, the court may validate the marriage from the moment at which these impediments ceased to exist. A declaration of invalidity of marriage for such reasons may be sought by the spouses and by the persons whose rights have been impaired by solemnization of this marriage, as well as by guardianship and curatorship agencies.
3. In a proceeding for declaration of invalidity of marriage with a mentally ill or mentally retarded person the participation of his or her guardian shall be required.

## Article 1144. Declaration of Voidness of a Marriage Made under Duress

1. If the entry into marriage was induced by force or duress, the spouse(s) may bring a legal action for a declaration of the voidness of the marriage.
2. A finding of fact of entry into marriage under duress shall be made by a court.

## Article 1145. Declaration of Invalidity of a Sham Marriage

1. A marriage made with no intent to create a family may be declared void.
2. An action for declaration of voidness of a sham marriage may be brought by an office of the Register of Civil Status, or, if one of the spouses entered into the marriage

with no intent to create a family, then the other spouse may bring such an action as well.

3. A marriage may not be deemed to be a sham marriage if the registered persons have actually created a family before the commencement of the court proceeding.

#### Article 1146. The Moment of Invalidity of a Marriage

1. A marriage declared void shall be deemed void from the day of its registration and shall not give rise to marital rights and duties.

2. Property relations between persons whose marriage has been declared void shall be regulated by the rules governing the common-property regime prescribed by this Code.

3. When entering a judgment on declaration of the invalidity [or voidness] of a marriage, the court shall have the right to award the spouse who did not know and could not have known of the impediments to the marriage (the spouse in good faith) alimony from the other spouse, in accordance with Articles 1182 and 1186, and to apply the rules prescribed by Articles 1158 and

Compare § 1141. Under that article, the invalidity of the marriage begins from the moment of discovery, not from the moment of registration, and the legal consequences of marriage are deemed to have existed up to that point. Where the rule indicates invalidity from the moment of marriage, which cannot be made valid, we have tried to use the word

“void.” Where the law indicates that the marriage may be either validated or, as in § 1141, considered valid up to the moment of its invalidation, we have tried to use the word “invalid” and its derivatives. In all of these articles, however, the same Georgian word is used for the term that we have variably translated as “voidness” or “invalidity” according to the context.

Known in American usage as “putative spouse.” 160

1171 to the partition of property acquired prior to the declaration of invalidity [or voidness] of the marriage.

4. A declaration of invalidity [or voidness] of a marriage shall in no way impair the rights of a child born of that marriage.

#### Article 1147. Compensation for Damages Sustained by the Putative Spouse

A putative (good faith) spouse who has sustained property [economic] damage as a result of a marriage which has been declared [void or] invalid has the right to claim these damages.

Article 1148. Only a Court May Invalidate [Void] a Marriage

No one may claim that a marriage is invalid [or void] unless so declared by a court.

Article 1149. Declaration of Invalidity [Voidness] of a Marriage after Death of the Spouses

Disallowed

In no event may a declaration of invalidity [or voidness] of a marriage be sought after the death of

both spouses.

Article 1150. Reentry into a Marriage in the Case of an Invalid Marriage

Persons whose marriage has been invalidated [voided] may reenter into marriage under the usual

procedure, provided that the grounds for which the marriage was invalidated [voided] no longer

exist.

## CHAPTER FOUR

### MARITAL RIGHTS AND DUTIES

#### I. General Provisions

Article 1151. The Role of Registration of a Marriage

Only a marriage registered with an office of the Register of Civil Status shall give rise to the marital

rights and duties of spouses.

Article 1152. Equality of Spouses

In domestic relations the spouses shall enjoy equal personal and property rights and shall bear equal

duties.

Article 1153. Discrimination Prohibited

When entering into a marriage and in domestic relations, no direct or indirect restriction of rights

shall be allowed and there shall be no direct or indirect preference for origin, social and property

status, racial and ethnic background, sex, education, language, attitude to religion, kind and nature

of activities, place of residence and other factors.

#### II. Personal Rights

Article 1154. Right to Choose Surname

At the marriage ceremony the spouses may, as they wish, choose the surname of either spouse as

their common surname, or each spouse may either retain his or her premarital surname, or may add

the other spouse's surname to his or her surname. The surnames may not be added if either or both

of the spouses [already] has a double [hyphenated] surname.

Article 1155. Joint Settlement of Domestic Affairs

The spouses shall jointly determine the children's upbringing and other domestic affairs.

#### Article 1156. Freedom of Choice of Activity 161

Each spouse is free to choose his or her activity and occupation.

#### Article 1157. Freedom of Choice of Place of Residence

Each spouse is free to choose his or her place of residence unless to do so would contravene the interests of the family.

### III. Property Rights and Duties Prescribed by Law

#### Article 1158. Community Property of Spouses

1. Property acquired by the spouses during the marriage shall constitute property owned by them in common (community property), unless otherwise stipulated in a marital agreement concluded between the spouses.

2. The community-property regime shall likewise arise if one of the spouses has been keeping the household, has been providing care for the children, or was lacking an independent source of income for other legitimate reason.

#### Article 1159. Administration of Community Property by Mutual Agreement

The spouses shall have equal rights to the community property. Possession, use and disposition of this property shall be exercised by mutual agreement of the spouses.

#### Article 1160. Disposition of Community Property by Mutual Agreement

The disposition of community property of the spouses shall be exercised by mutual agreement of

the spouses, regardless of which spouse disposes of this property. A transaction made by one of the

spouses for disposition of the property may be rendered void upon request of the other spouse, only

if the spouse having disposed of the property had no such authority and it is proved that he or she

knew or ought to have known that he or she had no such right.

#### Article 1161. Separate Property of the Spouses

The following shall constitute the separate property of each spouse:

- a. Property that this spouse owned before the marriage;
- b. Property that is acquired during the marriage by inheritance or by gift.

#### Article 1162. Things of Individual Use Acquired During Marriage

Things of individual use, except jewelry, shall be deemed to be the separate property of the spouse

who uses these things, even if they were acquired during the marriage at the common expense of the

spouses.

#### Article 1163. Recognition of Separate Property of a Spouse as Community

## Property

The separate property of either spouse may be deemed to be community property of the spouses if it is determined that this property has significantly increased in value as a result of expenses incurred during the marriage (re-planning, completion of construction, reconstruction etc.). This rule shall not apply if a marital agreement between the spouses stipulates otherwise.

### Article 1164. Partition of Community Property

Community property may be partitioned upon the request of either spouse, both during the marriage and after termination of the marriage.

### Article 1165. Fate of Things Required for Professional Activities upon Partition of the Community Property

The partition of community property shall be effected by mutual agreement of the spouses, or, if no such agreement has been reached by a court. The court shall determine which thing shall belong to which spouse. Things required for professional activities (musical instruments, medical equipment, a book collection etc.) shall be transferred to the spouse who needs them for his or her professional activities, even if they were acquired during the marriage at the common expense of the spouses.

### Article 1166. Compensation in the Case of Disparity in Partition

If, in the partition of community property, one of the spouses receives things, the value of which exceeds his or her share, then the other spouse shall be awarded corresponding compensation in either monetary or other form.

### Article 1167. Partition of Community Property During Marriage

If the partition of community property is effected during the marriage, then the part of the property that is not partitioned as well as the property acquired by the spouses thereafter shall be deemed to be community property, unless otherwise stipulated in a marital agreement.

### Article 1168. Partition of Community Property Taking into Account the Interests of Minor Children

#### Children

1. Community property shall be divided into equal shares between the spouses unless otherwise stipulated in a marital agreement.

2. The court may make an exception to the rule of partition into equal shares, taking into account the interests of minor children or the noteworthy interests of one of the spouses; in particular, the share of one of the spouses may be increased if the minor children reside with him or her, or if he or she is a disabled person, or if the other spouse has dissipated the community property to the detriment of the interests of the family.

3. Based on such grounds, the court may award each spouse the property acquired by him or her following de facto termination of the marriage, or while they lived separate and apart.

Article 1169. Division of Community [common, joint] Debts of the Spouses  
Liability for the community debts of the spouses shall be divided between the spouses proportionately to their shares in the community property.

Article 1170. Rule for Payment of the Debt of One of the Spouses

1. Payment of a debt of one of the spouses may be recovered from his or her property and/or from him or her share in the community property which he or she would have received in the partition of the community property.

2. Payment of the said debts may be recovered from the community property if the court finds that the [benefits, revenue, property] obtained by undertaking the obligation have been used in the common interests of the family.

3. In the event that compensation must be paid [to a third party] as a result of harm caused by the offense [crime] committed by one of the spouses, then the compensation may be recovered from community property only if the verdict finds that this property was acquired with the fruits of the committed offense.

Article 1171. Limitation Period on Claims for Partition of Community Property  
The limitation period on a claim for partition of the community property of divorced spouses is three years.

IV. Contractual Property Relations of the Spouses

Article 1172. Marital Agreement

This clause appears to presume continuation of the marriage after partition and would not apply after a divorce. 163

The spouses may enter into a marital agreement that shall determine their property rights and duties



both during the marriage and in the event of divorce.

#### Article 1173. Formation of a Marital Agreement

1. A marital agreement may be made both prior to the registration of the marriage (pre-nuptial agreement) and at any time following the registration (postnuptial agreement).
2. A prenuptial agreement shall be effective upon registration of the marriage.

#### Article 1174. Form of the Agreement

A marital agreement shall be made in writing and shall be notarized.

#### Article 1175. Making of a Marital Agreement by a Person with Limited Legal Capacity

A person with limited legal capacity may enter into a prenuptial agreement only with the consent of his or her statutory representative.

#### Article 1176. Content of a Marital Agreement

1. A marital agreement may be made for both already available property and property to be acquired in the future.
2. The community-property regime prescribed by statute may be altered by a marital agreement of the spouses.
3. The spouses may either unite all their property so as to include therein the property acquired during marriage as well (common property), or they may decline such unity, in whole or in part, and determine the shared or separate ownership of the property by each spouse.

#### Article 1177. Rule of Bearing Family Expenses

The spouses shall have the right to determine in the marital agreement the conditions regulating their participation in incomes, the rule for bearing family expenses by each of them, and the property to be transferred to each spouse in the event of termination of the marriage.

#### Article 1178. Limitation of Rights and Duties Stipulated by Marital Agreement

The rights and duties stipulated in the marital agreement may be limited for a certain period of time, or conditioned upon the occurrence of certain contingencies.

#### Article 1179. Duties That May not be Altered by Marital Agreement

1. A marital agreement may not alter the duty of reciprocal support of the spouses, parental rights and duties towards children, child support obligations and the right to take legal action in court in the event of a dispute.

2. Likewise, a marital agreement may not include a clause that puts one of the spouses in hardship.

#### Article 1180. Termination of Marital Agreement

1. A marital agreement may be altered or terminated at any time subject to the mutual agreement of the spouses.

2. Unilateral repudiation of a marital agreement shall not be allowed.

3. A marital agreement terminates upon divorce.

#### Article 1181. Alteration of Terms of Marital Agreement by Court

“Marital agreement” is used when the drafter has not indicated “pre-nuptial” or “post-nuptial,” so applicability to both should be assumed.

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See §§ 1128 and 1139(2). The Georgian word used for child support is very close to the English word “alimony,”

but it means child support as used, not support to the spouse. 164

On the application of the interested spouse, and if there are legitimate reasons for it, a court may

alter those terms of the marital agreement that put one of the spouses in an extremely unfavorable position.

### CHAPTER FIVE

#### DUTY OF RECIPROCAL SUPPORT OF THE SPOUSES

##### Article 1182. A Person Entitled to Receive Maintenance

The spouses are obligated to give material support to each other. In the event of refusal of such

support, and/or if there is no agreement between the spouses on providing support, the following

persons shall be entitled to receive support by a court ruling:

a. A disabled spouse who is in need of material support;

b. A wife during pregnancy and for a period of three years after the birth of a child.

##### Article 1183. Disabled Spouse's Right to Maintenance

A disabled spouse who is in need of support from the other spouse shall retain the right to receive

maintenance after divorce, if he or she became disabled before the divorce or within a period of one year after the date of divorce.

##### Article 1184. Release from the Duty of Support by a Court

A court may release a spouse from the duty of support, or alter this duty for a certain period of time,

if the spouses were married for only a short period of time, or if the spouse seeking material support

committed an indecent act against the spouse who pays the maintenance, or if the disability of the

spouse seeking material support has been caused by abuse of alcohol or narcotic drugs or by his or her commission of an intentional offense.

#### Article 1185. Determination of the Amount of Maintenance

1. The amount of maintenance payable to the spouse shall be determined in the form of a monetary sum to be paid monthly, with due regard given to the material and marital status of the spouses.

2. In the event of a change in the material or marital status of one of the spouses, then either spouse may bring an action in a court for changing the amount of the maintenance.

#### Article 1186. Extinguishment of the Right to Receive Maintenance

The right to receive maintenance from a spouse shall be extinguished if the grounds defined in Articles 1182 and 1183 no longer exist, or if the spouse receiving the maintenance remarries.

### TITLE TWO

## RELATIONS AMONG PARENTS, CHILDREN AND OTHER RELATIVES

### CHAPTER ONE

#### ESTABLISHING THE PARENTAGE OF CHILDREN [FILIIATION]

#### Article 1187. Grounds Giving Rise to the Rights and Duties of Parents and Children

The reciprocal rights and duties of parents and their children shall arise from the parentage (filiation) of the children, proved in accordance with the procedure prescribed by law.

#### Article 1188. Proof of Filiation of a Child in the Event of the Death of his Father

In the event of the death of the father, a child shall be deemed to have been born of the married parents, if he is born not later than ten months following the death of the father.

Article 1189. Confirmation of Filiation Between a Child and Married Parents  
The filiation between a child and married parents shall be confirmed by the documentary record of the marriage of the parents. 165

#### Article 1190. Proof of Filiation Between a Child and Unwed Parents

1. Filiation between a child and parents not married to each other shall be determined by joint application of the parents, filed with an office of the Register of Civil Status.

2. If the parents do not make a joint application, then paternity may be established in a court

proceeding on the application of one of the parents, the guardian (curator) of the child or the person who provides maintenance for the child, as well as on the application of the child himself or herself, having attained the age of majority.

3. When establishing paternity, the court takes into account the facts of cohabitation and a jointly kept household of the mother and the defendant prior to the birth of a child, or the joint upbringing and maintenance of the child, or an evidentiary document that certifies the recognition of paternity by the defendant.

4. Upon establishment of paternity under the rules prescribed in this article, the children are entitled to the same rights and duties with respect to the parents and their relatives as are children born of married parents.

#### Article 1191. Recording of the Married Parents in the Register of Births

1. A married mother and father shall be recorded in the register of births on the application of either one of them.

2. A person recorded as the mother or the father of a child may contest the record within one year from the moment at which he or she learned or ought to have learned of the record. If [at the time of registration] the person recorded as the mother or the father was a minor, then the one-year period shall be computed from the moment of attainment of the age of majority.

#### Article 1192. Rule of Recordation of Unwed Parents

1. If the parents are not married to each other, then the record with respect to the mother of the child shall be made on the application of the mother, and the record with respect to the father, on the joint application of the spouses or by a court ruling.

2. If the mother has died, is declared legally incapable, is deprived of parental rights or her place of residence cannot be located, then recordation of the father of the child shall be made on the application of the father.

#### Article 1193. Recordation of the Father In Case of Indeterminate Paternity

When a child is born of an unmarried mother, and if there is neither a joint application of the parents nor a court judgment establishing paternity, then in the register of births the surname of the mother shall be recorded as the paternal surname of the child, and the

child's patronymic shall be recorded as the mother instructs.

#### Article 1194. Given Name of a Child

The first name of a child is given by mutual agreement of the parents.

#### Article 1195. Surname of a Child

The surname of a child shall be determined according to the surname of the parents. If the parents have no common surname, then the child takes the surname of the mother or the father, or the combined surname by agreement of the parents.

#### Article 1196. Change of Surname of a Child

1. Termination of the marriage of the parents shall not change the surname of the child.

2. The parents with whom the minor child lives after the termination or declaration of invalidity of the marriage may, in the interests of the child, request the court to assign their surname to the child.

If the child is ten years of age or older, the change of surname shall require his consent as well.

Use of plural "parents" appears intentional, indicating that the article applies as well to a situation where the child is in the custody of a remarried parent, or of another couple, whether related or not. 166

### CHAPTER TWO

#### RIGHTS AND DUTIES OF THE PARENTS WITH RESPECT TO CHILDREN

#### Article 1197. Equality of Parental Rights with Respect to Children

Parents shall have equal rights and duties with respect to their children. The child shall have the right to live and grow up in the family.

#### Article 1198. Duties of Parents with Respect to Children

1. Parents shall be entitled and obligated to rear their children, to take care of their physical, intellectual, spiritual and social development, and to raise them as decent members of society,

taking into account the best interests of the children.

2. Parents shall be bound to protect the rights and interests of their minor children.

3. Parents shall be the statutory representatives of their children and shall act for the protection of the children's rights and interests in relations with third persons, and inter alia in court, without any special authorization to do so.

4. Parental rights may not be exercised to the prejudice of the interests of the children.

## Article 1199. Rights and Duties of Divorced Parents with Respect to Their Children

Parents shall enjoy equal rights and bear equal duties with respect to their children, even if they are divorced.

## Article 1200. Upbringing of Children by Mutual Agreement of the Parents

1. Parents shall determine all issues of rearing their children by mutual agreement.

2. In the event of disagreement between the parents, a court shall settle the subject [of the dispute]

with the participation of the parents.

## Article 1201. Place of Residence of Minor Children in Case of Divorce of the Parents

1. If the parents live separate and apart because of divorce or some other reason, then the custody of a minor child shall be determined by their agreement.

2. In the event of disagreement between the parents, a court shall resolve the dispute taking into account the interests of the child.

## Article 1202. Duties of a Parent Living Separate and Apart from the Child

1. A parent who lives separate and apart from his or her child shall have the right to have relations with the child and shall be obligated to participate in his or her upbringing.

The parent with whom

the child lives has no right to obstruct the other parent in having relations with the child and participating in the rearing of the child.

2. A court shall have the right to deprive the parent living separate and apart from the child of his or her right to have relations with the child, if such relations impede the normal upbringing of the child and have a negative influence on the child.

## Article 1203. Rights of Grandparents with Respect to Minor Grandchildren

Grandparents shall have the right to have relations with their minor grandchildren even when they

do not participate in the upbringing of the grandchildren directly. If the parents disallow relations

between the grandparents and the grandchildren, a court may oblige the parents to enable the

grandparents to have relations with the grandchildren in accordance with a procedure to be

established by the court, unless such relations will impede the normal upbringing of the children

and have a negative influence on them.

## Article 1204. The Right to Claim Return of a Minor Child 167

1. Parents shall have the right to demand in court the return of their child from a person who holds the child without any legal grounds or a court ruling therefor.
2. The court may disallow such a claim by the parents if the claim is prejudicial to the interests of the child.

#### Article 1205. Deprivation of Parental Rights

1. As an extraordinary measure, the deprivation of parental rights may be effected only by a court proceeding.
2. The parents (or one of the parents) may be deprived of their parental rights if it is found that they (or one of them) systematically evades performance of the duty of rearing the children or abuses the parental rights mistreating the children with cruelty, having a negative influence on them by immoral behavior, as well as if the parents are chronic alcoholics or drug addicts.
3. If both parents are deprived of their parental rights, then the child shall be placed in the custody of a guardianship and curatorship agency.
4. Deprivation of parental rights shall not release the parents from the duty of maintenance of the child.

#### Article 1206. Ordering Child Support Payment from the Parent Deprived of Parental Rights

Simultaneously with the entry of the judgment on deprivation of the parent of his or her parental rights, the court shall resolve the issue of ordering child support payments from this person.

#### Article 1207. Rights of the Child of Parents Deprived of Parental Rights

The parent deprived of his or her parental rights shall lose all rights arising out of the relationship with the child with respect to whom he or she has been deprived of parental rights. The child whose parent has been deprived of parental rights shall retain the right to [remain at] the place of residence, as well as to property rights arising out of the relationship with the parent(s), including the right of succession.

#### Article 1208. Award of Visitation Rights

A guardianship and curatorship agency may allow the parent deprived of parental rights to visit the child, unless this would negatively influence the child.

## Article 1209. Restoration of Parental Rights

1. Parental rights may be restored only in a court proceeding [initiated upon] the application of the child, one of the parents or a guardianship and curatorship agency.
2. Parental rights may be restored only if it is found that the behavior and living conditions of the parent have changed, and he or she is able to rear the child, and also if the restoration of parental rights is in the interests of the child.
3. If the child is ten years of age or older, the court shall take into account the child's preference as well.
4. Restoration of parental rights with respect to a child adopted by another person shall not be allowed.

## Article 1210. Removal of a Child Without Deprivation of Parental Rights

1. If leaving the child in the custody of one or both parents is prejudicial to the child for the reasons beyond the control of the parents, a court by its ruling may remove the child from one of the parents or from both parents without deprivation of their parental rights and place the child in the custody of a guardianship and curatorship agency.
2. If the grounds for removal of the child from the parents cease to exist, then on the application of the parent(s) the court may enter judgment on return of the child to the parent(s), taking into account the interests of the child. 168

## Article 1211. Rights of the Parent whose Child Has Been Removed

The parent(s) whose rights have been limited by removal of the child may be allowed to have relations with the child, unless this would negatively influence the child.

## CHAPTER THREE

### DUTIES OF SUPPORT OF PARENTS AND CHILDREN

## Article 1212. Duty of Maintenance of the Child

Parents are bound to maintain their minor child, as well as their disabled child who is in need of support.

## Article 1213. Determination of Amount of Child Support by the Parents

The amount of child support payments in favor of a minor child or an adult disabled child is determined by mutual agreement of the parents.

## Article 1214. Determination of Amount of Child Support by a Court

If the parents could not reach agreement as to the amount of child support, a court shall settle the



dispute. The court shall determine the amount of child support on the grounds of a reasonable and fair assessment regarding the necessary requirements for normal maintenance and upbringing of the child. In determining the amount of child support, the court shall take into account the actual material status of the parents and the child.

#### Article 1215. Duty to Participate in Extra Expenses

The parent who pays child support to the minor child may be obligated to participate in extra expenses created by extraordinary circumstances (serious illness, injury of the child etc.)

#### Article 1216. Maintenance Expenses for Children Placed in a Child-Care Institution

Parents may be ordered to pay to a child-care institution the maintenance expenses of their child placed in such an institution.

#### Article 1217. Court Order Directing Payment of Maintenance of the Child

If the defendant is recorded as the parent of a child in the office of the Register of Civil Status, in accordance with Articles 1191 and 1192, a court may, before considering the essence of the case, issue an order on payment of the maintenance of the child.

#### Article 1218. Duties of Children with Respect to Parents

1. Children are bound to take care of their parents and to provide assistance to them.
2. Adult children able to work are bound to maintain disabled parents who are in need of support.
3. Children may be released from the duty of maintenance of their parents if a court finds that the parents were evading their parental duties.
4. A parent who is deprived of his or her parental rights shall lose the right to demand support from the children.

#### Article 1219. Participation of Children in the Maintenance of Disabled Parents

1. A court shall determine the participation of each child in the maintenance of a parent who is in need of support, in the form of a sum to be paid monthly, taking into account the material and marital status of the parents and the children.
2. In determining this sum, the court shall take into account the duties of all adult children of the parents, regardless of whether the action is brought against some or all of

the children, or against one child.

#### Article 1220. Participation of the Children in Extra Expenses 169

Unless there is an agreement to the contrary, children paying support to their disabled parents may be obligated to participate in extra expenses caused by extraordinary circumstances (serious illness, injury of the parents etc.)

#### Article 1221. Lawsuit for Reduction of Support

1. A parent who pays support in favor of a minor child may sue for reduction of the amount of support determined by the court.

2. In the event of a change in the material or marital status of parents who are paying a fixed amount of child support, a court shall have the right to reduce or increase the amount of the support upon request of an interested person.

#### Article 1222. Change of the Amount of Support by Reason of Change in Material or Marital

#### Status

If the material or marital status of the children or the parents changes after the court has determined

the amount to be paid either by the parents in favor of an adult disabled child, or by the children in favor of disabled parents in need of support, the court may change the previously determined

amount of support pursuant to a legal action filed by either party.

### CHAPTER FOUR

#### SUPPORT DUTIES OF OTHER FAMILY MEMBERS

#### Article 1223. Siblings' Reciprocal Duty of Maintenance

Siblings having sufficient means are bound to maintain their minor sisters and/or brothers who are

in need of support and are unable to receive maintenance from their parents.

Siblings shall bear the

same duty with respect to those adult disabled sisters and/or brothers who are in need of support and

are unable to receive maintenance from their own parents, spouse or children.

#### Article 1224. Duty of Support from a Grandchild to Disabled Grandparents

A grandchild having sufficient means is bound to maintain his or her disabled grandparents who are

in need of support, if they are unable to receive maintenance from their children or from each other.

#### Article 1225. Duty of Support from Grandparents to Grandchildren

Grandparents having sufficient means are bound to maintain their minor grandchild who is in need

of support, if he is unable to receive maintenance from his parents. Grandparents shall bear the same duty with respect to an adult disabled grandchild who is in need of support, if he is unable to receive maintenance from his own parents, spouse or children.

#### Article 1226. Duty of Support by Stepparents

A stepfather or a stepmother, having sufficient means, is bound to maintain his or her minor and/or disabled stepchild who is in need of support, if the child is in his or her custody for upbringing or maintenance and has no [biological] parents, or is unable to receive maintenance from the [biological] parents.

#### Article 1227. Duty of Support by a Stepchild

1. A stepchild having sufficient means is bound to maintain his disabled stepfather and/or stepmother who is in need of support if he or she had been rearing or maintaining the child previously.

2. A court may release a stepchild from the duty of maintenance of a stepfather and/or stepmother if they had been rearing or maintaining him for less than five years, and also if they failed to perform properly the duty of upbringing of the stepchild. 170

#### Article 1228. Duty of Maintenance of a Child Taken into Permanent Upbringing and Maintenance

1. A person who takes a child for permanent upbringing and maintenance but later refuses to raise and maintain the child, shall be bound to maintain both the disabled adult who is need of support, and the minor child, if they have no parents or are unable to receive maintenance from their parents.

2. The rule prescribed in this article shall not extend to a guardian and/or curator.

#### Article 1229. Support Duties With Respect to De Facto Foster Parent

A person who was under permanent upbringing and maintenance is bound to maintain his de facto foster parent, if the latter is disabled, or is in need of support, but is unable to receive it from his own children or spouse.

#### Article 1230. Rule for Determining the Amount of Support

1. The amount of support to be paid to persons referred to in this Chapter in every individual case

shall be determined by a court in the form of a sum to be paid monthly, taking into account the material and marital status of the payer and the recipient of the support.

2. If the maintenance of a family is the joint duty of several persons, then the court shall determine the share of each in the performance of this duty, taking into account their [respective] material and marital statuses. At the same time, the court shall take into account all [potential] payers of [respective] support, regardless of whether support is sought from all of them, one of them or some of them.

#### Article 1231. Change in the Amount of Support

If the material or marital status of the payer or the recipient of support changes after the court has determined the amount of support to be paid in favor of a person referred to in this Chapter, then the court shall have the right to change the previously determined amount of support on the basis of a lawsuit filed by either party [to the support relationship].

### CHAPTER FIVE

#### PROCEDURES OF PAYMENT AND ENFORCEMENT OF PAYMENT OF SUPPORT

##### Article 1232. Voluntary Payment of Support

1. A person who is bound to pay support shall make voluntary [support] payments according to the place where he or she receives personal income.
2. The voluntary-payment regime shall not exclude the right of the recipient of support to file a lawsuit in a court at any time for payment of the support.

##### Article 1233. Duty of the Administration of an Employer Organization With Respect to Support Payment

1. On the grounds of a written application or a writ of execution, the administration of an employer organization shall withhold support payments on a monthly basis from the salary (pension, allowance etc.) of the support payer, and pay it or send the payment to the person referred to in the application or in the writ of execution, not later than three days from the date of disbursement of the salary (pension, allowance etc.)
2. The written application of a person who is willing to pay support voluntarily must be filed with the administration of his or her employer organization according to the place of employment of the

applicant, or the place where he or she receives the pension or allowance.

#### Article 1234. Claim for Enforcement of Support

1. A person entitled to demand enforcement of support payments, under the procedure prescribed by law, at any time before the loss of this right, may demand in court that payment of support be enforced, regardless of the time elapsed from the moment at which the right to demand the support accrued.

2. The order directing payment of support shall apply only to the payments to be made after the moment of filing of the lawsuit with the court. Past support payments may be recovered for a period of up to three years if the court finds that prior to filing of the lawsuit, measures to collect the maintenance had been undertaken, but the support was not received because the obligor was evading its payment.

#### Article 1235. Recovery of Arrears in Support Payments

1. Support payments accrued in the past may be recovered by means of a writ of execution for a period of up to three years before submission of the writ of execution for payment.

2. In cases where withholding of the support payments could not be managed because of the search for the location of the obligor, recovery of arrears in support payments shall be ordered for the whole period elapsed, regardless of expiration of the limitation period and/or attainment of the age of majority of the recipient of the support payments.

#### Article 1236. Determination of Arrears in Support Payments

1. The arrears in support payments shall be determined on the basis of the actual salary (income) received by the obligor during the period in which the payments were not collected.

2. If the obligor was unemployed during this period and he or she fails to present documents evidencing salary (income), then the arrears shall be determined on the basis of the salary (income) that he or she was receiving at the time of ordering the payment of the arrears.

#### Article 1237. Release from Payment of Support

1. Release from the payment of support or reduction of its arrears may be had only upon the order

of a court.

2. The court may release the support payer from the payment of arrears in whole or in part if it finds that the non-payment of support was caused by the illness of this person or by some other legitimate reason.

#### Article 1238. Termination of Support Obligation

An obligation of support arising out of the agreement of the parties may terminate upon the death of one of the parties, the lapse of the term of the agreement, or for some other reason specified in the agreement.

### CHAPTER SIX

#### ADOPTION

#### Article 1239. Concept

1. Adoption shall be allowed only for the welfare and in the interests of a minor child, provided it is expected that the relationship of parent and child will be created between the adoptive parent and the adoptee.

2. Adoption of an adult person is possible if a de facto parent-child relationship has already existed between the adoptive parent and the prospective adoptee, if it is not prejudicial to the interests of the adoptive parent and the prospective adoptee, and if the adoption is morally justified.

#### Article 1240. Confirmation of Adoption in the Event of the Death of a Foster Parent

In the event of the death of a foster parent, the fact of adoption may be established in court only if the minor has been accepted in the family as their child, and if the adoptive parent had filed a petition for adoption in court when he or she was alive. 172

#### Article 1241. Adoption in the Event of Death of a Child Not Allowed

Adoption shall not be allowed in the event of the death of a child.

#### Article 1242. Rendering the Decree of Adoption

A court seated according to the place of residence of an adoptive parent or a prospective adoptee may issue the decree of adoption upon petition of the adoptive parent, after a guardianship and curatorship agency provides an evaluation.

#### Article 1243. Adoption Through an Agent Not Allowed

Adoption may not be conditional, subject to specification of a time period, or obtained through an agent.

#### Article 1244. Registration of the Decree of Adoption

1. A decree of adoption shall be registered with an office of the Register of Civil Status, according to the place where the decree is issued.
2. The court shall be bound to notify the office of the Register of Civil Status of its decree, within one month from the date of entry of the decree into legal force.
3. The adoption shall be valid from the date of the entry of the court decree into legal force.

#### Article 1245. Adoptive Parent

Any adult person with legal capacity may be an adoptive parent, except a person who has been deprived of parental rights, or who had adopted before but the adoption was dissolved because of his or her failure to perform properly the duties of an adoptive parent. Nor may a person be an adoptive parent if he or she is unable to exercise parental rights because of illness, moral or other personal characteristics.

#### Article 1246. Adoption by Spouses

1. Spouses may adopt a child jointly. Adoption of one child by two persons other than spouses shall not be allowed.
2. [A father may] adopt his child born out of wedlock, [and either spouse may adopt] a child of [the other] spouse.

#### Article 1247. Consent of the Spouse for Adoption

If one of the spouses adopts a child, consent of the other spouse shall be required. Such consent is not required if the other spouse is declared a person without legal capacity, or if the marriage of the spouses has been de facto terminated for a period of more than one year, or if the place of residence of the other spouse is unknown.

#### Article 1248. Adoption by One of the Spouses

If the spouses jointly adopt a child, or if one of the spouses adopts a child of the other spouse, then the child shall acquire the legal status of a legitimate child of the marriage of the spouses.

#### Article 1249. Adoption of a Married Person

Adoption of a married person shall require the consent of his or her spouse.

#### Article 1250. The Age of an Adoptive Parent

i.e., a post-mortem adoption.

In Georgian, the first clause of the sentence says “either spouse” may

adopt "its" [Georgian pronouns are gender neutral] child born out of wedlock. Because maternity automatically confers parenthood, while paternity out of wedlock does not unless proven or accepted, we have altered the phrase to make it clear that it is only the father of a child born out of wedlock, or the male spouse who is not the father, who would have to adopt "its" child born out of wedlock. 173

An adoptive parent must be at least sixteen years older than a prospective adoptee. If legitimate reasons exist therefor, a court may dispense with this requirement and reduce the required age difference.

#### Article 1251. Consent of the Parents to Adoption

1. Placement for adoption of a child who has parents shall require the consent of the parents. The consent of the parents to the adoption shall be given in writing.
2. The parents may give their consent to the adoption to specific person(s), or give their consent to the placement for adoption without naming specific person(s), and thereby entrust the selection of a prospective adoptive parent to a guardianship and curatorship agency.
3. If the consent to adoption names a specific person, then a guardianship and curatorship agency shall make an evaluation of whether this adoption is in the interests of the child.

#### Article 1252. Adoption of a Child Born out of Wedlock

Adoption of a child born out of wedlock shall require the consent of the mother. If the adoption of this child is sought by a third person, the decree of adoption shall not be issued if the father has filed a petition for establishment of paternity, or for adoption of the child.

#### Article 1253. Adoption of a Ward

1. The adoption of a child who is under guardianship (curatorship) shall require the consent of the guardian (curator), if the child has no parents, and adoption of a child placed in a child-care institution shall require the consent of the administration of the child-care institution.
2. The administration of the child-care institution must ascertain, at the [time of] initial acceptance of the child, whether or not the parent agrees to place the child for adoption.

#### Article 1254. Placement for Adoption without Consent of the Parent

1. Consent of the parent is not required for placement of a child for adoption



if the parent is incapacitated or declared to be missing.

2. Adoption of a child whose parents have been deprived of parental rights shall be allowed after one year from the day of deprivation of these rights.

Article 1255. Adoption of a Child who has Attained Ten Years of Age

1. A child who has attained ten years of age may not be adopted without his or her consent.

2. The consent of the child shall be ascertained by a guardianship and curatorship agency.

3. If, prior to the filing of the petition for adoption, the child has lived in the family of the adoptive parent and has regarded the adoptive parent as his own parent, then the adoption may be granted, as an exception, without consent of the prospective adoptee.

Article 1256. Adoption Refused

Until a court issues the decree of adoption, a person placing a child for adoption, an adoptive parent, or a prospective adoptee who has attained ten years of age, may withdraw his or her consent to the adoption.

Article 1257. Assigning a Surname to an Adoptee

1. At the request of the adoptive parent, his or her surname is assigned to the adoptee.

2. At the request of the adoptive parent, the first name of the adoptee may be changed. The first name of a child who has attained ten years of age may be changed only subject to the consent of the child.

3. The surname assigned to the adoptee, as well as any change of the first name, shall be specified in the decree of adoption.

Article 1258. Record of the Parents of an Adoptee 174

1. At the request of the adoptive parents, they may be recorded in the register of births as the [natural] parents of the adoptee, [and if granted this] shall be specified in the decree of adoption.

2. The recordation defined in paragraph (1) of this Article shall be subject to the consent of the adoptee if he or she has attained ten years of age.

Article 1259. Adoptee's Relations with Relatives

An adoptee and his or her descendants in relation to an adoptive parent and his or her relatives, as

well as the adoptive parent and his or her relatives in relation to the

adoptee and his descendants,  
shall be equivalent to blood relatives as to their property and personal  
rights and duties.

#### Article 1260. Adoptee's Relations with Natural Parents

1. An adoptee shall lose property and personal rights and shall be released  
from duties with respect

to his natural parents and blood relatives.

2. In the event of adoption of the child by one person, the adoptee shall  
retain the said rights and  
duties subject to either the [birth] mother's wish if the adoptive parent is  
a man, or the [natural]  
father's wish if the adoptive parent is a woman.

#### Article 1261. Dissolution of Adoption

1. An adoption may be dissolved if the adoptive parent evades the performance  
of the parental  
rights laid on him or her, mistreats the adoptee with cruelty, is a drug  
addict or a chronic alcoholic.

2. In the interests of the adoptee, if there are legitimate reasons therefor,  
a court may dissolve the  
adoption on other grounds as well.

#### Article 1262. Dissolution of Adoption; Other Grounds

Adoption may also be dissolved if the adoptee mistreats the adoptive parent  
and his relatives with  
cruelty, expresses evident disrespect towards them, or leads a criminal or  
debauched life.

#### Article 1263. Disclosure of Information on Adoption Not Allowed

1. The collection and disclosure of information regarding an adoption without  
the consent of the  
adoptive parent is prohibited.

2. A person who discloses the fact of adoption without authorization from the  
adoptive parent shall  
be held accountable according to the rules prescribed by law.

#### Article 1264. Securing the Confidentiality of Adoption

At the request of the adoptive parent, the place, month and day of birth of  
the adoptee may be  
changed in order to secure the confidentiality of the adoption.

#### Article 1265. Only Court to Declare Invalidity of Adoption

An adoption may be dissolved [or] declared void only in a court proceeding.

#### Article 1266. Dissolution of the Adoption Granted without Consent

1. Upon petition filed by the [biological] parents, a court may dissolve an  
adoption granted without  
the consent of the parents where such consent was required, if it finds that  
the return of the child to  
the [biological] parents is in the interests of the child.

2. If the adoptee has attained ten years of age, dissolution of the adoption upon request of the

[biological] parents shall be allowed only by consent of the adoptee.

#### Article 1267. Petition to Dissolve Adoption

The word in Georgian is more literally translated as “cancellation” or “annulment.” However, the substance of the clause and others like it is closer to dissolution, like “divorce” (dissolution of marriage) as opposed to “voidance” (annulment of marriage). Annulment, or voidance of the adoption, is addressed in specific articles, such as 1265, 1272 and 1273. 175

1. A petition for dissolution of an adoption is presented to the adoptive parent, and, if his or her identity is unknown to the [biological] parents, then to the court seated at the place where the decree of adoption was issued.

2. In the case of bringing an action under paragraph (1) of this Article, the adoptive parent must be notified of the action, and he or she shall have the right to call for the participation of, or to entrust the protection of his interests to, a guardianship and curatorship agency.

3. The court, as necessary, may summon the adoptive parent as the defendant.

#### Article 1268. Dissolution of Adoption on Demand of a Guardianship and Curatorship Agency

1. A guardianship and curatorship agency may at any time claim dissolution of an adoption in court, if this is in the interest of a minor adoptee.

2. Individuals who presume that the adoption is not in the interests of the child and that it must be dissolved may give notice thereof to a guardianship and curatorship agency, which shall decide whether or not to petition for dissolution of the adoption.

#### Article 1269. Dissolution of Adoption Not Allowed

An adoption may not be dissolved after the adoptee attains the age of majority, except when the adoptee, his or her parents, and the adoptive parent have consented to the dissolution of the adoption.

#### Article 1270. Effects of Dissolution of Adoption

1. Upon dissolution of an adoption, the reciprocal rights and duties existing between the adoptee and the adoptive parent (and among their relatives) shall be extinguished, and the reciprocal rights and duties between the child and his [biological] parents (and their blood

relatives) shall be restored.

2. By court order, the child shall be placed in the custody of the [biological] parents, or, if that is not in the interests of the child, then in the custody of a guardianship and curatorship agency.

3. The court, in the interests of the child, shall also resolve the issue of retaining the name and the surname designated to the child at the adoption. If the child has attained ten years of age, the court shall take into account his or her preference as well.

4. If the adoption is dissolved on the grounds of improper performance of the duty of the child's upbringing by the adoptive parent, then the child shall retain the right to claim support from the adoptive parent.

#### Article 1271. Moment of Termination of the Adoption

1. The adoption terminates from the day of entry into legal force of the court decree dissolving the adoption.

2. A court that has issued a decree dissolving or voiding an adoption shall be bound to deliver the decree to the office of the Register of Civil Status, located according to the place of issuance of the decree and the registration of the adoption, within one week after the decree entered into legal force.

#### Article 1272. Declaration of Voidness of Adoption Grounds

1. An adoption may be declared void if:

- a. The decree of adoption is based on a forged document;
- b. The adoption is fictitious [a sham];
- c. The adoptive parent had been declared by a court to be a person without legal capacity;
- d. The adoptive parent had been deprived of parental rights.

2. A declaration of the voidness of an adoption shall be allowed only if it is in the interests of the adoptee.

3. When declaring an adoption void, the court must ascertain whether or not the adoptee, if he or she has attained ten years of age, agrees to the declaration of voidness; 176

4. An adoption may be declared void on the request of a person whose right has been impaired by

the adoption, and also upon request of a guardianship and curatorship agency.

#### Article 1273. The Moment of Voidness of the Adoption

1. An adoption shall be deemed void from the moment of issuance of the decree of adoption.

2. Upon a declaration of voidness of the adoption, the personal and property rights and duties of the child with respect to his or her natural parents and blood relatives shall be restored.

3. If an adoption is declared void, then by court order the child shall be placed in the custody of the [biological] parents, or, if that is not in the interests of the child, in the custody of a guardianship and curatorship agency.

Article 1274. Participation of a Guardianship and Curatorship Agency in a Proceeding for the Declaration of Voidness of an Adoption

In all cases, a guardianship and curatorship agency shall participate in the proceeding for the declaration of the voidness of adoption.

## TITLE THREE

### GUARDIANSHIP AND CURATORSHIP

#### CHAPTER ONE

##### GENERAL PROVISIONS

Article 1275. Concept

1. Guardianship and curatorship shall be established for the protection of the personal and property rights and interests of a minor child left without parental care because of the death of the parents, the deprivation of parental rights from his parents, the declaration of the parents as persons without legal capacity, their illness or for other reasons.

2. Guardianship and curatorship shall also be established for the protection of personal and property rights and interests of an adult person who is unable to exercise his rights and perform his duties independently because of the state of his health.

Article 1276. Guardianship

Guardianship is established over a minor who has not attained seven years of age, or over a person who has been declared by a court to be a person without legal capacity by reason of mental illness or mental retardation.

Article 1277. Curatorship

1. Curatorship is established over a minor from the age of seven years to the age of eighteen years.

Curatorship is also established over an adult person who has legal capacity, at that person's request, if he is unable to exercise his rights and perform his duties independently

because of his state of health.

2. Article 16 shall apply accordingly.

Article 1278. Guardianship and Curatorship Agencies

Guardianship and curatorship of a minor is assigned to the local organ of public education; of a person without legal capacity, to the local health care organ; and of an adult person with legal capacity who needs assistance because of the state of his health, to the local social security organ.

Article 1279. Establishment of Guardianship and Curatorship

Guardianship and curatorship may be established in a case when the child does not live with his parents, and the parents evade the duty of rearing the child. If the child lives with parents who fail to perform the duty to rear him, then a guardianship and curatorship agency may petition a court to remove the child from such parents and place him in the custody of a guardian or a curator. 177

Article 1280. Appointment of a Guardian Over a Person Declared Legally Incapable

A court that has entered a judgment declaring a person to be legally incapable shall be bound, not later than three days from the entry of the judgment into legal force, to so notify a guardianship and curatorship agency located according to the place of residence of the person who needs a guardian by reason of his declaration to be a person without legal capacity.

Article 1281. Appointment of a Guardian or a Curator

1. To exercise the duties of a guardian or a curator, guardianship and curatorship agencies shall appoint a guardian or a curator.

2. A guardian or a curator may be appointed only with his consent.

3. A curator for an adult person with full legal capacity, who is unable to protect his rights and perform his duties independently because of the state of his health, may be selected only by consent of the ward.

Article 1282. Procedure of Appointment of a Guardian or a Curator

1. A guardian or a curator shall be appointed not later than one month from the moment at which a guardianship and curatorship agency becomes aware of the necessity to establish the guardianship or curatorship.

2. A guardian or a curator shall be selected taking into account his personal

characteristics, his ability to perform the duty to be laid on him, reciprocal relations existing between him and the prospective ward and, whenever possible, the preference of the prospective ward as well.

#### Article 1283. Persons That May Not Be Appointed as Guardians or Curators

The following persons may not be appointed as guardians or curators:

- a. A person who has not attained eighteen years of age.
- b. A person who is declared by a court to be without legal capacity;
- c. A person who has been deprived of his or her parental rights;
- d. An adoptive parent if the adoption was dissolved because he or she failed to perform properly the duties of an adoptive parent;
- e. A person who has been removed from the duty of guardian or curator because he failed to perform this duty properly.

#### Article 1284. Supervision Over the Activities of a Guardian or a Curator

1. The activities of a guardian or a curator shall be supervised by a guardianship and curatorship agency located according to the place of residence of the ward.
2. The procedure and terms of the supervision shall be stipulated in the regulations of the guardianship and curatorship agencies.

#### Article 1285. Duties of a Child-Care Institution

1. The administration of a child-care or other appropriate institution that has custody of a child or of a person needing guardianship or curatorship, shall be bound to perform the duties of the guardian or the curator of the child or of the person.

2. If necessary, a property guardian may be appointed for the protection of property interests

(receipt of a pension, administration of property) of the persons referred to in paragraph (1) of this Article.

#### Article 1286. Appointment of a Property Guardian

If the property of the ward is at another place, then the guardianship and curatorship agency may, as necessary and subject to the consent of the guardian or the curator, appoint a guardian of such property according to its location. 178

### CHAPTER TWO

#### RIGHTS AND DUTIES OF A GUARDIAN AND A CURATOR

#### Article 1287. Rights of a Guardian and a Curator

A guardian and a curator shall have the right to demand in court return of a

child in wardship from

anyone who holds the child without legal grounds therefor.

Article 1288. Gratuitous Performance of Guardianship and Curatorship

The duties of a guardian or a curator shall be performed gratuitously.

Article 1289. Duties of a Guardian and a Curator

1. A guardian and a curator shall be bound to take care of the maintenance of the ward, create

necessary living conditions for him, provide him with care and medical treatment, and protect his rights and interests.

2. In addition to the duties defined in paragraph (1) of this Article, the guardian of a mentally ill person is bound to monitor the constant medical services provided to the ward.

Article 1290. Representational Authority of a Guardian and a Curator

A guardian and a curator shall represent the ward's rights and interests in relations with third

persons, including in court, without any special authorization for it.

Article 1291. Duty of Residence With a Minor Ward

1. A guardian and a curator shall be bound to reside with the minor ward. In individual cases, the guardian [and the curator] and the ward may live separately by consent of the guardianship and

curatorship agency if this agency determines that their separate residence will not negatively affect the upbringing and the protection of the rights and interests of the ward.

2. A guardian and a curator shall be bound to notify the guardianship and curatorship agency of a change of their place of residence.

3. A guardian of an adult ward without legal capacity and a curator of an adult ward with legal capacity shall not bear the duties defined in paragraph (1) of this Article.

Article 1292. Duty of a Guardian upon Recovery of a Mentally Ill Ward

In the event of recovery of a mentally ill ward, his guardian shall be bound to immediately petition a court to declare the ward as a person with legal capacity and to remove the wardship.

Article 1293. Consent of a Guardian and a Curator to the Making of Transactions

1. A guardian shall be the statutory representative of a ward, and he shall make all necessary

transactions for and on behalf of the ward in the interests of the latter.

2. Upon consent of his curator, a minor of seven to eighteen years of age [may] make transactions that he has no right in law to make independently.



Article 1294. Limitation of Authority of a Guardian and a Curator  
When acting on behalf of a ward, without the prior consent of the guardianship and curatorship agency, the guardian has no right to make, and the curator has no right to consent to the making of, any transaction that concerns alienation, pledging, renting out for a period of more than ten years, [or] gratuitous lending of property; issuance of promissory notes [or a] bill of exchange; renunciation of the rights belonging to the ward; the joining of an entrepreneurial entity; borrowing or property partition; as well as [any other] transactions that may cause reduction of the property [of the ward].

Article 1295. Rule for Alienation of Highly Perishable Property 179  
Highly perishable goods or other property that by its nature is intended for sale may be sold without the permission of the guardianship and curatorship agency.

Article 1296. Transfer of Gift on Behalf of a Ward Disallowed  
The entering into a contract of gift on behalf of a ward shall not be allowed.

Article 1297. Representation by a Guardian and a Curator Disallowed  
A guardian and a curator, their spouses, and near relatives have no right to enter into a transaction with the ward, nor may these persons act as representatives of the ward in transactions or in litigation between the ward and the spouse or a near relative of the guardian or the curator.

Article 1298. Appeal Against Actions of a Guardian and a Curator  
The actions of a guardian and a curator may be appealed by an interested person, including the ward, to the guardianship and curatorship agency located according to the place of residence of the ward.

Article 1299. Release of a Guardian or a Curator from Their Duties

1. A guardianship and curatorship agency shall release a guardian and a curator from their duties in the event of return of the child to the custody of his parents, adoption, or placement of the ward in the custody of a special institution.
2. A guardian and a curator may also be released from their duties on the grounds of their personal request, if the guardianship and curatorship agency acknowledges that the request is caused by legitimate reasons (illness, change of material status, incompatibility with

the ward, etc.)

#### Article 1300. Effects of Failure of Proper Performance

1. If a guardian or a curator fails to perform properly his duties, then the guardianship and curatorship agency shall remove or release the guardian or curator from the performance of his duties.

2. If a guardian (curator) abuses the guardianship (curatorship) for selfish reasons or abandons the ward without care and the required assistance, he shall be held accountable according to the rule prescribed by law.

#### Article 1301. Release of a Curator from Duties at the Request of a Ward

The curator of an adult person may be released from his duties at the request of the ward. In this case the guardianship and curatorship agency may appoint another person as a curator by agreement with the ward.

#### Article 1302. Termination of Guardianship Grounds

1. Guardianship is terminated upon:

- a. The death of the ward;
- b. The attainment of seven years of age by a minor ward, except when he is declared to be a person without legal capacity under the procedure prescribed by law;
- c. The return of a minor ward under seven years of age to the custody of his parents;
- d. The restoration by a court of the full legal capacity of a ward previously declared legally incapable.

2. In the cases within paragraph (1) of this Article, a guardianship shall be terminated by decision of a guardianship and curatorship agency.

#### Article 1303. Termination of Guardianship by Reason of Attainment of the Age of Curatorship

But see Art. 1303. 180

If a minor ward attains seven years of age, the guardianship shall be terminated and the guardian shall become the curator thereupon, without any special decision of the guardianship and curatorship agency.

#### Article 1304. Termination of Curatorship Grounds

1. Curatorship is terminated:

- a. Upon the death of the ward;

- b. Upon attainment of the age of majority by a minor ward;
- c. Upon marriage of a minor ward;
- d. With respect to other wards upon extinguishment of the grounds for which the curatorship was established.

2. In the cases within paragraph (1) of this Article, a curatorship shall be terminated by decision of a guardianship and curatorship agency.

#### Article 1305. Appeal to a Court on Guardianship and Curatorship Issues

The decision of a guardianship and curatorship agency concerning the appointment, removal and release of a guardian (curator), as well as any other issue relating to guardianship and curatorship, may be appealed to the court by an interested person. 181

### BOOK SIX

## LAW OF INHERITANCE

### CHAPTER ONE

#### GENERAL PROVISIONS

##### Article 1306. Concept

1. The property of a decedent (an intestate or a testator) shall be transferred to other persons

(heirs) by operation of law or by a will, or based on both grounds.

##### 2. Hereditary succession

transfer of the decedent's property to the persons defined by law shall operate if the decedent has died without a will, or if the will disposes of [only] a part of the estate, or if the will is rendered void in full or in part.

##### Article 1307. Heirs

The following persons may inherit:

a. In the event of hereditary succession the persons who survived the decedent as of the moment of his death, as well as the decedent's children born alive after his death.

b. In the event of testamentary succession

the persons who survived the decedent as of the moment of his death, as well as those conceived during the decedent's lifetime and born after his death, regardless of their filiation with the decedent, and also legal persons.

##### Article 1308. Legal Person as an Heir

In a testamentary succession, a legal person may be called upon to receive the inheritance, provided

the legal person was created by the time of the opening of the estate.

##### Article 1309. Child Born out of Wedlock as the Heir of His or Her Father

A child born out of wedlock shall be deemed to be the heir of his or her

father if paternity is established under the procedure prescribed by law. And if he or she does not survive the father, then his or her children may claim the portion of the estate to which their father [sic] was entitled.

#### Article 1310. Unworthy Heir

A person may not inherit, neither by operation of law nor by will, if he intentionally obstructed the decedent in the exercise of the last wish of the latter, and thereby promoted the invitation of himself or persons near to him as heirs, or promoted the increase of their portion of the estate; or if he committed an intentional wrong or other immoral action against the last wish of the testator expressed in the will, provided these circumstances are found by a court (unworthy heir).

#### Article 1311. Parents That May Not Inherit

Parents deprived of their parental rights, which rights are not restored as of the day of the opening of the inheritance, may not be the legal heirs of their child. Nor may persons be legal heirs if they have maliciously evaded their duty to maintain the decedent, provided these circumstances are found by a court.

#### Article 1312. Disinheritance by a Court

There is only one word in the parentheses in the original text, which encompasses both "intestate" and "testator."

In Georgian, literally, "inheritance by law."

The word "heirs" is used to refer to persons who inherit by law or by a will (testament), unless otherwise indicated.

Similarly, "inheritance" refers to inheritance by law or by will, unless otherwise indicated. "Legal heirs" refers to persons who take by hereditary succession. "Testamentary heirs" to heirs who take by will.

In Georgian, "inheritance by will."

The last use of the word "father," noted with [sic], is probably a mistake. The illegitimate child who dies before the father may be either male or female, and therefore the illegitimate child's children will take the portion of the estate to which their parent was entitled. 182

A circumstance that constitutes grounds for disinheritance of an unworthy heir shall be found by a court, on the petition of the person who will be affected in a material sense by disinheritance of the

unworthy heir.

#### Article 1313. Vindication of an Unworthy Testamentary Heir

A person guilty of committing actions [that may lead to] disinheritance may nevertheless be allowed to inherit if the testator forgives him and explicitly states this decision in his will. The act of forgiveness may not be withdrawn.

#### Article 1314. Inheritance by Right of Representation

Disinheritance shall not prevent inheritance by relatives by virtue of the right of representation.

#### Article 1315. Right of Inheritance with Respect to Another Decedent's Property

Disinheritance shall not prevent the disinherited person from inheriting another decedent's property.

#### Article 1316. Duty of a Person Declared an Unworthy Heir

If, after receiving the inheritance, a person is declared by a court to be an unworthy heir, then he shall be bound to return everything he received from the inheritance, including the fruits and income derived therefrom.

#### Article 1317. Limitation Period on a Lawsuit to Declare an Heir Unworthy

A lawsuit to declare an heir unworthy must be filed by the interested persons within five years from the moment the heir came into possession of the inheritance.

#### Article 1318. Disinherited Person's Portion in Estate

1. A disinherited person's portion in the estate passes to the rest of the heirs and is divided into equal shares among them.

2. The rule defined in paragraph (1) of this Article shall not apply if the disinherited person had designated an heir.

#### Article 1319. Opening of Estate

The estate of a person opens by his death or when he is declared dead by a court.

#### Article 1320. Date of Opening of Estate

The day of the death of the decedent or the day on which a court's declaration of the death of the person takes effect, shall be deemed to be the date of the opening of the estate.

#### Article 1321. Inheritance of Persons Deceased on the Same Day

If the rightful heirs of each other have died on the same day, then the estate of each opens independently from the other's estate.

#### Article 1322. Opening of Estate upon Declaration of Death

The result stated in Article 1321 shall likewise apply when a court declares

the persons dead as a result of their disappearance under one and the same circumstance. The effective date of the declaration of their deaths is of no importance.

We interpret this clause to mean that disinheritance of a person will not prevent that person's relatives from inheriting property from the same intestate or testator, simply because the person disinherited was a representative in some sense of those relatives.

We use the word "estate" when the clause may apply to the whole corpus of the decedent's property that may be passed by law or by will. See § 1328. "Inheritance" is used to refer to one heir's part. In Georgian, only one word exists to describe both concepts. 183

Article 1323. Opening of Estate in an [Agricultural] Household  
Inheritance of the common property of [an agricultural] household opens after the death of the last member of the household.

Article 1324. Place of Opening of the Estate

1. The place of residence of the decedent shall be deemed to be the place of the opening of the estate, and if it is not known, then the location of the estate shall be deemed to be the place of its opening.

2. If the estate is located in different places, then the location of real estate or of its [most] valuable part shall be deemed to be the place of its opening, or, if there is no real estate, then the location of movable property [of the estate] or its principal part shall be deemed to be the place of opening of the estate.

Article 1325. Opening of Estate of Persons Residing Abroad

The estate of a citizen of Georgia who temporarily resided and has died abroad shall open at the place of residence in Georgia where the decedent had lived prior to leaving the country, or, if it is not known, then the location of the estate or its principal part shall be the place of opening of the estate.

Article 1326. Opening of the Estate of Persons Permanently Residing Abroad

The foreign country where a person permanently resided shall be deemed to be the place of the opening of the estate upon the death the person.

Article 1327. Opening of Estate Abroad

A citizen of Georgia permanently residing in Georgia shall receive an inheritance in a foreign state in accordance with the legislation of that state.

#### Article 1328. Property of the Estate

1. An estate (inheritance property) includes the aggregate of both property rights (assets of the estate) and liabilities (liabilities of the estate) of a decedent as of the moment of his death.

2. The estate includes any share in common property to which the decedent was entitled, or, if the property is not divisible in kind, then the value of this share.

#### Article 1329. Future Estate

A testator may include in his will property not yet owned by him when making the will, provided that this property will belong to him by the time the estate opens.

#### Article 1330. Devolution of Rights and Duties of a Personal Nature by Inheritance Not

Allowed

An estate includes neither property rights nor duties that are of a personal nature and which may belong only to the decedent, nor the rights and duties stipulated by law or by contract that are effective only for the lifetime of the creditor and the debtor, and cease to exist by their death.

#### Article 1331. Protection of Non-property Rights of a Decedent

Subject to the procedures prescribed by law, the heirs may exercise and protect non-property rights of the decedent that are not included in the estate.

#### Article 1332. Property Not Included in the Estate

1. Ancestral books (or records), family chronicles, memorial and other cult objects, and the grave itself, shall not be included in the estate. These objects shall be transferred to an heir, with the

The history and context of the Georgian word used connotes an agricultural household, or even a commune, but

contains the nuance that the members are related to each other. See also § 1463. 184

ownership title thereto, in accordance with the established custom. The heir may receive these objects even if he renounces the estate.

2. The documents related to the individuality of the decedent, his family or the whole estate, shall remain as common property.

#### Article 1333. The Effect of an Increase in Real Estate Accounted for in a Will

If, after the making of a will, the testator has increased the real estate accounted for in the will, the property so added, although affixed to the devised immovable property, shall not be included in the estate unless there is a new instruction with respect to the property acquired after the making of the will.

#### Article 1334. Coheirs

If there are several heirs, the estate, until it is partitioned among them, shall belong to all the coheirs [coparcenars] as a coparcenary. The expenses of the care and final medical treatment of the decedent, funeral, preservation and administration of the estate, payment of wages and required expenses of the execution of the will may be paid from this property. These claims shall be satisfied out of the value of the estate in the order of their priority over all other claims, including claims secured by a mortgage or other lien.

#### Article 1335. Right to Revendicate the Thing from the Estate

1. If a testator wrongfully devised or bequeathed a thing to an heir, the owner of this thing may claim it back in accordance with the common procedure.
2. If the decedent's property covertly includes the property of another person, it shall be required to reveal this part of the property and to transfer it to the appropriate person.

### CHAPTER TWO

#### INHERITANCE BY LAW

##### [INTESTATE INHERITANCE]

#### Article 1336. Legal Heirs

In the event of inheritance by law [intestate inheritance], the following persons shall be deemed to be heirs entitled to inherit in equal shares:

- I. In the first class the decedent's children, a child of the decedent born after his death, the decedent's spouse, and his parents (including adoptive parents). An adopted child and his descendants, as the successors of the adoptive parent and his relations, shall be equal to the adoptive parent's children and their descendants. And after the death of his natural parents and other blood relatives in the ascending line, as well as after the death of his siblings by blood, the adoptive child shall no longer be deemed to be a legal



heir [of these relatives].

Grandchildren, great grandchildren and great-great grandchildren shall be deemed to be legal heirs if, at the time of the opening of the estate, their parent who ought to have been the heir of the decedent is no longer alive, and they shall equally take the portion to which their deceased parent would have been entitled by inheritance.

Grandchildren, great grandchildren and great-great grandchildren may not inherit if their parents renounced the estate.

An adoptive parent and his relatives, as the heirs of the adopted child and his descendants, shall be equal to the adopted child's natural parents and other blood relatives. And the natural

"Estate" here probably refers only to the testamentary estate and not the entire estate at law.

It is not clearly stated in the original text that the adoptive child loses his right of inheritance only with respect to his blood relatives, but any other interpretation would contradict the previous sentence. See Art. 1260. 185

parents, other blood relatives in the ascending line and the siblings by blood, may no longer

inherit by law after the death of the adopted child or of his descendants.

II. In the second class the siblings of the decedent. The nieces and nephews and their children

shall be deemed to be legal heirs if, at the time of the opening of the estate, their parent who

would have been the heir of the decedent is no longer alive. They shall equally take the portion

of the estate to which their deceased parents would have been entitled by inheritance.

III. In the third class both maternal and paternal grandparents, and great grandparents. The great

grandparents shall be deemed to be the legal heirs if at the time of opening of the estate, the

grandparents are no longer alive.

IV. In the fourth class uncles and aunts.

V. In the fifth class first cousins, and, if they are no longer present [alive] then their children.

Article 1337. Order of Inheritance

The existence of at least one heir of any foregoing class shall exclude inheritance by the subsequent class.

### Article 1338. Rights of Disabled Persons in Inheritance

Disabled persons who were dependents of the decedent and are unable to maintain themselves independently shall have the right to demand support from the estate if they are mentioned in the will. The amount to be paid as an allowance may be reduced taking into account the extent of the assets of the estate.

### Article 1339. Right of the Surviving Spouse to a Share of Community Property

The right of inheritance of the surviving spouse has no connection with the part of the property that

belongs to him or her as a share of the community property [of the marriage].

### Article 1340. Status of Divorced Spouses with Respect to Inheritance

A divorced spouse may not be an heir [at law] after the death of the other spouse.

### Article 1341. Disinheritance in the Event of De Facto Divorce

A spouse may be disinherited by court decree if it is found that the marriage with the decedent had

been de facto terminated for a period of not less than three years prior to the opening of the estate,

and the spouses had lived separate and apart.

### Article 1342. Loss of the Right of Inheritance Because of the Invalidity of the Marriage

The surviving spouse shall lose the right of inheritance if there existed a ground for voiding the

marriage and the decedent had filed a legal action to that effect.

### Article 1343. Transfer of Property without Heirs to the Treasury

1. If neither legal nor testamentary heirs exist, or if all of the heirs have renounced the estate, or if

all the potential heirs have been disinherited, then estate property without heirs shall pass to the

Treasury [state budget]; and if the decedent had been maintained by an old people's home, a home

for invalids, [or by] medical or foster care or other institutions of social security, then ownership of

the property without heirs shall be transferred to these institutions.

2. Property without heirs in the form of a share or stock in a business entity or a cooperative shall

be transferred to [the business entity or cooperative], unless otherwise prescribed by law.

## CHAPTER THREE

### TESTAMENTARY SUCCESSION

#### Article 1344. Concept

Again, all ascending and descending rights of inheritance at law are

extinguished by the adoption. Art. 1260. 186

A natural person, for the occasion of his death, may leave his property or a part thereof by will to

one or more persons, be they legal heirs or other persons.

Article 1345. Person Who may be a Testator

An adult person with legal capacity, who at the time of making his will is able to reasonably judge

his actions and clearly express his wishes, may be a testator.

Article 1346. Making a Will Personally

A testator shall draw up the will personally. The making of a will through an agent shall not be

allowed.

Article 1347. Joint Will

A will shall contain the assignments of one testator. A joint will made by two or more persons shall

not be allowed. Only spouses may make a joint will disposing of their estates in favor of each

other, which may be revoked only during the lifetime of both spouses on demand of one of the

spouses [mutual will].

Article 1348. Determination of Portions by the Testator

1. A testator may specify in the will the portion of the estate to be left to each testamentary heir, or

he may indicate the specific property to be transferred to each heir. If no such specification is made

in the will, then the estate shall be partitioned in equal shares among the heirs.

2. If there are several testamentary heirs, but the will specifies the portion of only one of them with

no dispositions as to the rest of the heirs, then the rest of the heirs shall take the remainder of the

estate in equal shares.

Article 1349. Distribution of the Estate among Testamentary Heirs

If a will designates several testamentary heirs and the property left to one of them encompasses the

entire estate, then all the testamentary heirs shall take [from it] in equal shares.

Article 1350. Inheritance of Property Remaining Outside of the Will

If the aggregate of portions of all testamentary heirs does not encompass the entire estate, then the

property left outside the testamentary disposition shall be subject to the regime for inheritance at

law, which shall apply as well to those legal heirs to whom part of the property was left [in the

will], unless the will stipulates otherwise.

Article 1351. Pro Rata Increase in the Portions of Testamentary Heirs  
If only testamentary heirs exist, then their respective portions shall be increased proportionately, if the portion of each is devised, but the aggregate of all portions fails to amount to the entire estate.

Article 1352. Participation of a Third Person in Determination of the Portions Disallowed

When making a will, a testator may not delegate to another person the determination of who and in what amount shall take portions of the estate.

Article 1353. Impossibility of Identification of an Heir

If a testator specified such characteristics of a testamentary heir that may equally define several persons, and identification of the one person meant by the testator is impossible, then all such persons shall be deemed to be heirs entitled to equal shares.

Article 1354. Deprivation of the Right to Inherit by Will

Articles 1336 and 1337 would apply to this distribution. 187

1. A testator may by his will disinherit one, some, or all of his legal heirs, and he shall not be

bound to indicate any reason therefor.

2. When a person is deprived of the right of inheritance by a direct instruction specified in the will,

then he may neither inherit by law the property left outside the will, nor be an heir if the testamentary heirs renounce the estate.

Article 1355. Retaining the Right of Inheritance [By Law]

Legal heirs that are not mentioned in the will shall retain the right of inheritance with respect to that

part of the estate which is not disposed of by the will; they shall also take the property devised by

the will if, at the time of the opening of the estate, the testamentary heirs are no longer alive or have all renounced the estate.

Article 1356. Hereditary Succession [Inheritance by Law] Disallowed

If an entire estate was divided among testamentary heirs but at the time of the opening of the estate

one of these heirs is no longer alive, then the hereditary [intestate] succession regime shall not arise,

and the portion of the deceased heir shall be divided among the rest of the heirs.

## CHAPTER FOUR

### FORM OF A WILL

Article 1357. Notarial Form

1. A will shall be drawn up in writing. At the same time, a written will is permitted to be made in notarial or other form.

2. The notarial form shall require that the will be drawn up and signed by the testator and authenticated by a notary, or, where a notary is not available by a local self-government organ.

#### Article 1358. Will Drawn up by a Notary

1. A will may be drawn up by a notary in the words of the testator and in the presence of two witnesses. A generally accepted technical device may be used for the drawing up of the will.

2. The testator shall read the will drawn up in his words by the notary and sign it in the presence of the notary and the witnesses.

#### Article 1359. Persons Equivalent to a Notary

In authentication of a will, any one of the following persons may act as a notary:

a. The head physician or head of a hospital or other medical institution, his deputy in medical

affairs, the doctor on duty, the director or head physician of an old people' s home or a home

for invalids, if the testator is being treated or is living in such an institution;

b. The head of a search, geographical or other similar expedition, if the testator is participating in such an expedition;

c. The captain of a ship or commander of an aircraft, if the testator is on the ship or the aircraft;

d. The head (commander) of a military unit, formation, establishment or school if there is no

notary available at the stationing of these military units, and if the testator is a member of

the armed services, a civilian employed by the military unit, or a family member of such

person.

e. The head of a penitentiary facility, if the testator is in the custody of such a facility.

#### Article 1360. Will Signed by Another Person

Local government bodies in Georgia "rayon" [county] administrations and the like, are always referred to as local self-governance bodies.

i.e., a typewriter or a word processor. 188

If the testator for some reason is unable to sign the will himself, then at his request another person

may sign the will. In this case, the reason must be indicated for which the testator was unable to sign the will himself.

#### Article 1361. The Will of a Deaf-Mute or Blind Person

1. If the testator is a deaf-mute or illiterate deaf-mute person, then he shall make the testamentary disposition before a notary in the presence of two witnesses, [as well as] a person able to make him understand the essence of the matter and verify by his own signature that the content of the will corresponds to the intention of the testator.
2. A blind or illiterate testator shall make a testamentary disposition before a notary in the presence of three witnesses; a special record thereof shall be made that must be read to the testator.
3. The recorder [stenographer] and the reader may be witnesses themselves, but the recorder may not be a reader.
4. The record shall indicate who made the record and who read it to the testator. The record shall be attested to by the witnesses and authenticated by the notary.

#### Article 1362. Witnesses to a Will

A minor, a legally incapacitated person, a testator, or his lineal ascendant or descendant, sibling or spouse, as well as an heir, may not be a witness to a will.

#### Article 1363. Confidentiality of a Will

The notary or other person who authenticated the will, the witnesses, and the person who signed the will for and on behalf of the testator, shall have no right to disclose prior to the opening of the estate any information concerning the content of the will, its making, amendment or revocation.

#### Article 1364. Holographic Will

A testator may make his will in his own handwriting and sign it.

#### Article 1365. Will Deposited with a Notary

1. A testator may hand over his holographic will in a sealed envelope to a notary (or to another appropriate official) in the presence of three witnesses, who shall be confirmed by signatures attached to the envelope.
2. The safekeeping of this form of a will shall be secured by officially depositing it with a notary (or with another appropriate official).

#### Article 1366. Drawing up of a Will using Technical Means

The text of a will may be produced by using a generally accepted technical device, but it must be signed by the testator. In this case, the will shall be drawn up and signed by the testator in the presence of two witnesses who shall attest that the will has been made by using the technical device in their presence. The witnesses shall attest to the will immediately after the testator signs it, by making the appropriate notes thereon and indicating their names, surnames and places of residence.

#### Article 1367. Closed Will

1. At the request of a testator the witnesses shall attest to the will without knowledge of its content (closed will). In such a case the witnesses must be present when the will is being drawn up.

2. When attesting to a closed will, the witnesses shall indicate that the testator drew it up personally but the content of the will was not disclosed to them.

#### Article 1368. Date of Making of a Will 189

A will shall indicate the date of its making. The absence of the date will invalidate the will only upon the failure to extinguish doubt as to the legal capacity of the testator for making, amending or revoking the will, or in view of several existing wills.

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Article 1369. Disclosure of the Content of the Will to Interested Persons  
After the death of the testator the notary shall fix the date and disclose the content of the will to the interested persons, and appropriate minutes [or a protocol] of the meeting shall be made. If the envelope containing the will was sealed, then a note regarding the intactness of the seal shall be made [in the minutes or protocol].

### CHAPTER FIVE

#### DESIGNATION OF THE HEIR OF AN HEIR

#### Article 1370. Substitute Devisee

1. A testator has the right to designate in a will another heir (substitute heir) entitled to receive the inheritance if the primary heir designated in the will predeceases the opening of the estate, renounces the estate or is disinherited.

2. A testamentary heir may not renounce the estate in favor of a substitute heir who is the heir of a person who is not an heir of the estate.

3. Any person qualified under Articles 1307-1309 may be a substitute

testamentary heir.

## CHAPTER SIX

### FORCED PORTION [LEGITIME]

#### Article 1371. Concept

Regardless of the content of a will, the children, parents and spouse of a decedent shall be entitled to forced portions [of the estate] that in each case shall be one-half of the portion to which each of them would have been entitled by inheritance at law (forced portions).

#### Article 1372. The Moment at Which the Right to Demand a Forced Portion Arises

The right to demand a forced portion shall arise from the moment of the opening of the estate. This right is inheritable.

#### Article 1373. Determination of the Amount of the Forced Portion

The total amount of a forced portion shall be determined on the basis of the entire estate, including any property intended for performance of a testamentary obligation [“legacy”] or of some action for a socially useful objective.

#### Article 1374. Determination of the Forced Portion of Each Heir

The forced portion of each heir shall be determined taking into account all legal heirs that would have been called to succeed to the estate in the event of intestate inheritance. Testamentary heirs shall be ignored.

#### Article 1375. Already Received Property to be Included in Forced Portion

A person entitled to a forced portion shall be bound to include in this portion everything he received from the decedent during the lifetime of the latter, with instructions to count the received [property] in the forced portion.

#### Article 1376. Effect of Renunciation of a Legacy

In other words, even in the absence of a date, the will is presumed valid unless doubt cannot be eliminated regarding the legal capacity of the testator to make the will, or if there are several existing wills.

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See the next chapter Testamentary Obligation (Legacy) §§ 1383–1397 and accompanying footnote. 190

A person who is entitled to a forced portion and who simultaneously is a legatee [recipient of the “legacy” testamentary obligation] may claim the forced portion if he



renounces the testamentary inheritance [ "legacy" ]; and if he does not renounce the testamentary inheritance, then he shall lose the right to the forced portion to the extent of the value of the testamentary inheritance.

#### Article 1377. Allocation of a Forced Portion from Property Left Outside the Will

If a will does not dispose of the entire estate, then forced portions shall first be allocated out of the property left outside the will and, if that is not sufficient, then [the forced portion shall be filled out by adding the necessary quantity of property from that] devised by the will.

#### Article 1378. Forced Portion Adjusted at the Expense of Gift

If the decedent had transferred a thing to a third person by gift, then the person entitled to a forced portion may claim that his portion be adjusted by adding the amount by which his forced portion would increase if the thing transferred by gift was included in the estate. A gift shall not be counted in if, by the time of the opening of the estate, ten years have elapsed from the time of its giving.

#### Article 1379. Right to Claim Adjustment of Forced Portion

If the property devised by will to a person entitled to a forced portion is less than one-half of the portion that he would have received by inheritance at law, then this person may claim a portion of the estate in the amount by which the portion to which he is entitled by will is less than one-half of the portion that he would have received by inheritance at law.

#### Article 1380. Renunciation of a Forced Portion

1. An heir entitled to a forced portion may renounce it, but this shall not cause an increase in the forced portions of the rest of the coheirs. The renounced portion shall pass to the testamentary heirs.
2. Acceptance or renunciation of a forced portion must be exercised within the time limits prescribed for acceptance or renunciation of an inheritance.

#### Article 1381. Deprivation of the Right to a Forced Portion

1. Deprivation of the right to a forced portion may be exercised on the same grounds that cause disinheritance in general.
2. The testator may deprive an heir of the right to a forced portion by initiating the appropriate court action during his lifetime.
3. The court decree on deprivation of a person's right to a forced portion

shall take effect from the moment of the opening of the estate. The same rule shall apply when the decedent had filed the petition before his death, but the court decree was rendered after his death. Article 1382. Passing of a Forced Portion to Testamentary Heirs The portion of the heir who has been deprived of the right to a forced portion passes to the testamentary heirs [of the main testator].

## CHAPTER SEVEN

### TESTAMENTARY OBLIGATION (LEGACY)

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#### Article 1383. Concept

The Georgian drafter chose a short-hand term “legati” which is close to the English “legacy.” In U.S. law a legacy is any property or benefit passed by will to a named person (a legatee). Here, legacy refers to the assignment to an heir of a particular duty. The legacy is not what the heir receives, but what he must do for someone else. That third person, the recipient of the legacy in the Georgian sense, is the “legatee” in the Georgian Civil Code. Accordingly, in this Code, we have used the word legatee in the narrower Georgian sense, and used the term “testamentary heir” for any person named as an heir in a will. In U.S. usage, however, “testamentary heir” and “legatee” would be largely synonymous. 191

A testator may bind an heir to perform some obligation, at the expense of the estate, in favor of one or more persons (testamentary obligation legacy).

#### Article 1384. Object of a Legacy

The following may be objects of a legacy: transfer of things from the estate to the recipient of the legacy (legatee) into his ownership, use or other right in rem; purchase of a thing not included in the estate and its transfer to the legatee; and performance of a specific work or providing services to him etc.

#### Article 1385. Use of Dwelling Lodgings on the Grounds of a Legacy

A testator has the right to bind the heir who inherits a dwelling-house, apartment or other lodgings to transfer the right of life tenancy in the dwelling or its part to a person who lived together with the testator for a period of not less than one year prior to the opening of the estate. The life tenancy in

the dwelling shall remain effective in the event of subsequent transfers of ownership.

#### Article 1386. Inalienability of the Right of Life Tenancy

1. The right of life tenancy in a dwelling is inalienable and may not devolve to the legatee's heirs.

2. The right of life tenancy in a dwelling shall not give residence to the legatee's family members

in this dwelling, unless otherwise stipulated in the will.

#### Article 1387. Scope of Performance of a Legacy

An heir who is bound to perform a legacy shall perform it within the limits of the actual value of the

devised estate, minus the portion of the testator's debts payable by this heir.

#### Article 1388. Performance of a Legacy by Other Heirs

If the heir who was bound to perform the legacy predeceased the opening of the estate, or if he

renounced the estate, then the obligation to perform the legacy shall be placed on the other heirs

who received his portion, unless otherwise stipulated in the will.

#### Article 1389. Termination of Performance of a Legacy

The obligation to perform a legacy shall be terminated upon the death of the heir who was bound to

perform it, if the obligation cannot be performed without him.

#### Article 1390. Performance of a Legacy Proportionately to the Portions of the Estate

If several heirs are bound to perform a legacy, then each of them shall perform it proportionately to

his portion in the estate, unless otherwise stipulated in the will.

#### Article 1391. Limitation Period on Claim for Performance of a Legacy

A legatee may demand performance of the legacy within a limitation period of three years, which

shall be computed from the day of the opening of the estate.

#### Article 1392. Legacy and an Heir Entitled to a Forced Portion

If a testamentary heir bound to perform the legacy is simultaneously entitled to a forced portion,

then he shall perform the legacy only to the extent of that part of the estate which he has received in

excess of the amount of the forced portion.

#### Article 1393. Liability of a Legatee

A legatee shall not be liable for the testator's debts.

#### Article 1394. Renunciation of a Legacy

A legatee may renounce the legacy. In this case the corresponding part of the estate shall remain

with the heir who was bound to perform the legacy. 192

#### Article 1395. Release from Obligation to Perform Legacy

If a legatee renounces the legacy, the heir who was bound to perform it shall be released from the obligation to perform the legacy.

#### Article 1396. Devolution of a Legacy to Heirs

If a legatee has died after the opening of the estate but he did not manage to consent to acceptance of the legacy, then the right to receive the legacy shall devolve to his heirs, who will receive it instead of the legatee.

#### Article 1397. Legacy for a Common and Useful Objective

1. A testator may bind an heir to perform some action for a common and useful [socially useful]

objective, be it of a property or non-property nature.

2. If the action to be performed concerns a property interest, then the norms regulating a legacy shall apply.

3. In the event of the death of the heir who was bound to perform the legacy for a socially useful objective, then the obligation of performance shall devolve to other heirs who inherited the estate.

4. The executor of a will, or, if there is no executor then any heir, as well as interested public and religious organizations, foundations, and state and local self-government bodies, may demand in court the performance of the testamentary action from the heir who was bound to perform it.

### CHAPTER EIGHT

#### AMENDMENT OR REVOCATION OF A WILL

##### Article 1398. Methods of Amendment of a Will

A testator may amend or revoke a will at any time by:

a. Making a new will that explicitly revokes the former will or the part of the former will

contravening the new will;

b. Filing a petition with a notarial office;

c. Destroying all existing copies of the will, either by the testator himself or by the notary at the order of the testator.

##### Article 1399. Restoration of Revoked Will Not Allowed

A will revoked by a subsequent will may not be restored, even if the later will is revoked by filing a petition thereafter.

##### Article 1400. Several Wills

If a testator has made several wills, but they complement and do not completely replace each other,

then all these wills shall remain effective. An earlier will shall be effective to the extent its dispositions are not amended by a subsequent will.

#### Article 1401. Priority of a Notarial Will

1. If one person has made several wills, one of which is made in a notarial form, while the others are not, preference is given to the notarial will.

2. A notarial will may not be revoked by a will made otherwise.

#### Article 1402. Grounds for Vitiating of a Will

A will shall be vitiated if:

- a. The person in favor of whom the will was made predeceased the testator;
- b. The devised property is lost during the lifetime of the testator, or the testator alienated it;
- c. The sole heir has renounced the estate. 193

#### Article 1403. Voidness of a Will

1. A will shall be deemed void upon the existence of the same conditions that cause the voidness of transactions in general.

2. Testamentary dispositions that contravene law or public interests, as well as dispositions that are incomprehensible or irreconcilable, shall be void.

3. A court may render a will void if it was made in violation of the rules prescribed by law or made by a person who was in such a condition that he could not understand the consequences of his action and manage it.

#### Article 1404. Voidness of Individual Testamentary Dispositions

1. A testamentary disposition that devises a thing which is not in the estate shall be void.

2. If a testamentary disposition devises to someone a monetary sum that is not in the estate, then this disposition shall be void.

3. A testamentary disposition that stipulates that an heir shall take the estate for a specified period, or not from the day of the death of the testator but later, as well as a disposition that specifies a person to whom the estate is to be transferred after the death of an heir, shall be void.

#### Article 1405. Testamentary Disposition Void for Impossibility of its Execution

A testamentary disposition that cannot be executed by the heir because of his state of health or other good cause may be rendered void on the petition of the heir.

#### Article 1406. Effects of Voidness of One of the Testamentary Dispositions

If one of several testamentary dispositions is void or vitiated and the testator has not left another disposition thereon, then the other testamentary dispositions shall remain effective.

Article 1407. Inheritance of the Estate in the Event of Voidness of the Will  
If a will is declared void, an heir who is thereby deprived of the right to inherit by this will shall have the right to succeed to the estate on general grounds.

Article 1408. Contesting the Validity of a Will  
Legal heirs or other interested persons may contest the validity of a will, based on the circumstances that cause the voidness of a transaction.

Article 1409. Limitation Period on Lawsuits

1. A lawsuit for declaring a will void must be filed within two years from the day of the opening of the estate.

2. This limitation period shall not apply to the lawsuit of an owner whose property was wrongfully devised by the testator as his own property.

## CHAPTER NINE

### EXECUTION OF A WILL (SETTLEMENT OF THE ESTATE)

Article 1410. Subjects of Execution of a Will

In the absence of testamentary instructions, the execution [carrying out] of a will shall be the duty of the testamentary heirs. By mutual agreement, they may entrust the execution [settlement of the estate] to one of the heirs or to another person.

Compare art. 1370. A testator may designate the disposition of property in the event that a testamentary heir is not living at the time of the testator's death, but he may not say that a part of the estate, having been received by the designated testamentary heir, will then be passed on to another specified person upon the testamentary heir's death. To do so would invade the testamentary heir's right to dispose of his own estate.

“Execution” of the will means here its carrying out, its performance.

“Settlement of the Estate” the process by which the dictates of the will are carried out, is the usual term in American legal usage.