

GENERAL LAWS
OF THE
TERRITORY OF DAKOTA.

CIVIL CODE.

AN ACT TO ESTABLISH A CIVIL CODE.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

GENERAL DEFINITIONS AND DIVISIONS.

- SECTION** 1. Title of Code.
 2. Definition of law.
 3. Action of sovereign power.
 4. Two kinds of law.
 5, 6. Common law.
 7. Two kinds of civil rights.
 8. Rights, how modified.
 9. Divisions of the Civil Code.

Section 1. This act shall be known as the **CIVIL CODE OF** Title of Code.
THE TERRITORY OF DAKOTA.

Sec. 2. Law is a rule of property and of conduct prescribed Definition of law.
by the sovereign power of the Territory.

Sec. 3. The will of the sovereign power is expressed : Action of sovereign power.
1. By statutes, which are the acts of the Legislature, or by
the ordinances of other and subordinate legislative bodies;
2. By the judgments of the tribunals enforcing those rules
which, though not enacted, form what is known as customary
or common law.

Two kinds of
law.

Sec. 4. The common law is divided into ;

1. Public law, or the law of nations;
2. Domestic, or municipal law.

Common law.

Sec. 5. The evidence of the common law is found in the decisions of the tribunals.

Id.

Sec. 6. In this Territory there is no common law in any case where the law is declared by the CODES.

Two kinds of
civil rights.

Sec. 7. All original civil rights are either :

1. Rights of person ; or,
2. Rights of property.

Rights, how
modified.

Sec. 8. Rights of property and of person may be waived, surrendered or lost by neglect, in the cases provided by law.

Divisions of the
Civil Code.

Sec. 9. This CODE has four general divisions :

1. The first relates to Persons ;
2. The second to Property ;
3. The third to Obligations ;
4. The fourth contains General Provisions relating to Persons, Property and Obligations.

DIVISION FIRST.

PERSONS.

PART I. Persons.

II. Personal Rights.

III Personal Relations.

PART I.

PERSONS.

SECTION 10. Minor, what.

11. Adult, what.

12. Unborn child.

SECTION 13. Persons of unsound mind.

- 14. Custody of minors, etc.
- 15. Power of minors.
- 16. Contracts of minors.
- 17. When minor may disaffirm.
- 18. Cannot disaffirm contract for necessities.
- 19. Nor certain obligations.
- 20. Contracts of persons without understanding.
- 21. Contracts of other insane persons.
- 22. Powers of persons whose incapacity has been adjudged.
- 23, 24. Wrongs.
- 25. Minors may enforce their rights.
- 26. Indians.

Sec. 10. A minor is a person under the age of twenty-one years. Definition of a minor.

Sec. 11. All other persons are adults. Definition of an adult.

Sec. 12. A child conceived, but not born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth. Unborn child.

Sec. 13. Persons of unsound mind, within the meaning of this Code, are idiots, lunatics and imbeciles. Persons of unsound mind.

Sec. 14. The custody of minors and persons of unsound mind is regulated by Part III of this Division. Custody of minors, &c.

Sec. 15. A minor cannot give a delegation of power. Powers of minors.

Sec. 16. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this Title, and to the provisions of the Title on MARRIAGE. Contracts of minors.

Sec. 17. In all cases other than those specified by sections 18 and 19, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority, or within a reasonable time afterwards, or, in case of his death within that period, by his heirs or personal representatives. When minor may disaffirm.

Sec. 18. A minor, or a person of unsound mind of whatever degree, cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or for that of his family, entered into by him when not under the care of a parent or guardian able to provide for him. Cannot disaffirm contract for necessities.

Nor certain obligations.

Sec. 19. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

Contracts of persons without understanding.

Sec. 20. A person entirely without understanding has no power to contract, except in the case mentioned in section 18, unless expressly authorized by statute.

Contracts of other insane persons.

Sec. 21. A person of unsound mind, but not entirely without understanding, may make a conveyance or other contract, before his incapacity has been judicially determined, subject to rescission, as provided in the chapter on RESCISSION.

Powers of persons whose incapacity has been adjudged.

Sec. 22. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined.

Wrongs.

Sec. 23. A minor, or a person of unsound mind, of whatever degree, is liable for a wrong done by him, in like manner with any other person.

Sec. 24. A minor, or person of unsound mind, cannot be subjected to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.

Minors may enforce their rights.

Sec. 25. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must be appointed to conduct the same.

Indians.

Sec. 26. Indians resident within this Territory have the same rights and duties as other persons; except that:

1. They cannot vote or hold office; and that,
2. They cannot grant, lease, or incumber Indian lands, except in the cases provided by special laws.

PART II.

PERSONAL RIGHTS.

SECTION 27. General personal rights.

28. Defamation, what.

29. Libel, what.

SECTION 30. Slander, what.

31. What communications are privileged.
32. Protection to personal relations
33. Right to use force.

Sec. 27. Besides the personal rights mentioned or recognized in the **POLITICAL CODE**, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

Sec. 28. Defamation is effected by :

**Defamation,
what.**

1. Libel ; or,
2. Slander.

Sec. 29. Libel is a false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation.

Libel, what.

Sec. 30. Slander is a false and unprivileged publication, other than libel, which :

Slander, what.

1. Charges any person with crime, or with having been indicted, convicted or punished for crime ;
2. Imputes in him the present existence of an infectious, contagious or loathsome disease ;
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit ;
4. Imputes to him impotence or a want of chastity ; or,
5. Which, by natural consequence, causes actual damage.

Sec. 31. A privileged publication is one made :

**What communi-
cations are
privileged.**

1. In the proper discharge of an official duty ;
2. In testifying as a witness, in any proceeding authorized by law, to a matter pertinent and material, or in reply to a question allowed by the tribunal ;
3. In a communication, without malice, to a person interested therein, by one who was also interested, or who stood in such a relation to the former as to afford a reasonable ground

for supposing his motive innocent, or who was requested by him to give the information ; or,

4. By a fair and true report in a newspaper, without malice, of a judicial, legislative or other public official proceeding, or of anything said in the course thereof.

Protection to
personal
relations.

Sec. 32. The rights of personal relation forbid :

1. The abduction of a husband from his wife, or of a parent from his child ;

2. The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody, or of a servant from his master ;

3. The seduction of a wife, daughter, orphan sister, or servant ; and,

4. Any injury to a servant, which affects his ability to serve his master.

Right to use
force.

Sec. 33. Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent or other relative to the third degree, a ward, servant or master.

PART III.

PERSONAL RELATIONS.

TITLE I. Marriage.

II. Parent and Child.

III. Guardian and Ward.

IV. Master and Servant.

TITLE I.

MARRIAGE.

CHAPTER I. The Contract of Marriage.

II. Divorce.

III. Husband and wife.

CHAPTER I.

THE CONTRACT OF MARRIAGE.

ARTICLE I. Validity.

II. Authentication.

ARTICLE I.

VALIDITY.

SECTION 34. Definition of marriage.

35. Consent, how proved.

36. Persons capable of marriage.

37. Consent must be given to a present marriage.

38. Certain marriages incestuous.

39. Certain marriages, when to be deemed void.

40. Polygamy forbidden.

41. Conjugal rights, &c., not restored by pardon.

42. Marriages of Indians

43. Certain parts of Code not applicable.

44. Promise of marriage.

Sec. 34. Marriage is a personal relation, arising out of a civil contract, to which the consent of parties capable of making it is alone necessary.

Definition of
marriage.

Sec. 35. Consent to a marriage may be manifested in any form, and may be proved like any other fact.

Consent, how
proved.

Sec. 36. Any unmarried male of the age of fourteen years or upwards, and any unmarried female of the age of thirteen years or upwards, and not otherwise disqualified, is capable of consenting to marriage; subject however, to the provisions of section 54 of this Code.

Persons capa-
ble of marriage.

Sec. 37. The consent to a marriage must be to one commencing instantly, and not to an agreement to marry afterwards.

Consent must
be given to a
present mar-
riage

Sec. 38. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as of the whole blood, are incestuous, and void from the beginning; whether the relationship is legitimate or illegitimate.

Certain mar-
riages incestu-
ous.

Sec. 39. If either party to a marriage is incapable of consent for want of age or understanding, or is incapable from physical causes, of entering into the marriage state, or if the consent of either is obtained by fraud or force, the marriage is

Certain mar-
riages when to
be deemed void.

void from the time its nullity is adjudged by a competent tribunal.

Polygamy forbidden.

Sec. 40. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless ;

1. The former had been annulled or dissolved for some cause other than the adultery of such person ; or,

2. Unless such former husband or wife had been finally sentenced to imprisonment for life ; or,

3. Unless such former husband or wife was absent, and not known to such person to be living, for the space of five successive years immediately preceding such subsequent marriage ; in which case the subsequent marriage is void only from the time its nullity is adjudged by a competent tribunal.

Conjugal rights, &c., not restored by pardon.

Sec. 41. No pardon granted after the approval of this act, to any person sentenced to imprisonment for life in this Territory, restores such person to the rights of any previous marriage, or to the guardianship of any issue of such marriage.

Marriages of Indians.

Sec. 42. Indians contracting marriage according to the Indian custom, and cohabiting as husband and wife, are lawfully married.

Certain parts of Code not applicable.

Sec. 43. The provisions of other portions of this Code in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

Promise of marriage.

Sec. 44. A promise of marriage is subject to the same rules as contracts in general, except that neither party is bound by a promise made in ignorance of the other's want of personal chastity, and that either is released therefrom by unchaste conduct on the part of the other.

ARTICLE II.

AUTHENTICATION.

SECTION 45. Mode of authenticating marriages.

46. Form of marriage.

47, 48. Duties of the officer before whom a marriage is solemnized.

SECTION 49. Certificate to be given to either contracting party, if desired.

50. The certificate.
51. The entry thereof.
52. Authentication of the certificate.
53. Certificate, entry, &c., evidence.

Sec. 45. For the purpose of authentication, according to the provisions of this article, a marriage must be solemnized in this Territory, in the manner herein prescribed, by one or more of the following persons, namely: Ministers of the gospel or priests of any denomination; mayors, recorders or aldermen of cities; judges of the county courts or justices of the peace; and, in case of Indians, also the peacemakers acting within their respective jurisdictions.

Mode of authenticating marriages.

Sec. 46. No particular form is required upon a marriage, but the parties must solemnly declare, in the presence of the person solemnizing the marriage, and of at least one witness, that they take each other as husband and wife.

Form of marriage.

Sec. 47. The person solemnizing a marriage must ascertain, to his satisfaction :

Duties of the officers before whom a marriage is solemnized.

1. The identity of the parties ;
2. Their real and full names, and places of residence ;
3. That they are of sufficient age to be capable of contracting marriage ; and,
4. The name and place of residence of the witness, or of two witnesses, if more than one is present.

Sec. 48. The person solemnizing a marriage must enter the facts ascertained by him pursuant to the last section, and the date of the solemnization, in a book to be kept by him for that purpose.

Sec. 49. The person solemnizing a marriage must furnish to either party, on request, a certificate thereof, signed by him, specifying :

Certificate to be given to either contracting party, if desired.

1. The names and places of residence of the parties married ;
2. That they were known to him, or were satisfactorily proved, by the oath of a person known to him, to be the persons described in such certificate ;
3. That he had ascertained that they were of sufficient age to contract marriage ;

4. The name and place of residence of the attesting witness or of two witnesses ;

5. The time and place of such marriage ; and,

6. That, after due inquiry made, there appeared to be no lawful impediment to such marriage.

The certificate. Sec. 50. The certificate mentioned in the last section may, within six months after the marriage, be filed with the clerk of the city or town where the marriage was solemnized, or where either of the parties reside, or the register of deeds of such county and when thus filed, must be entered in a book to be provided by such officer, in the alphabetical order of the name of each party, and in the order of time in which it is filed.

The entry thereof. Sec. 51. The entry required by the last section must specify :

1. The name and place of residence of each party ;
2. The time and place of marriage ;
3. The name and official station of the person signing the certificate ; and,
4. The time when the certificate was filed.

Authentication of the certificate. Sec. 52. If a certificate of marriage is signed by a minister or priest, there must be indorsed or annexed, before filing, a certificate of a magistrate residing in the same county with the clerk, that the person by whom it is signed is personally known to such magistrate, and has acknowledged the execution of the certificate in his presence ; or, that the execution of the certificate, by a minister or priest of some religious denomination has been proved to the magistrate, by the oath of a person known to him, and who saw the certificate executed.

Certificate, entry, &c., evidence. Sec. 53. A certificate of marriage, or the entry thereof, made as above directed, or a copy of the certificate or entry, duly certified, is presumptive evidence of the fact of the marriage.

CHAPTER II.

DIVORCE.

ARTICLE I. Nullity.

II. Dissolution.

ARTICLE III. Separation.
IV. General Provisions.

ARTICLE I.

NULLITY.

SECTION 54. Cases where marriages may be annulled.

55. Application for a decision of nullity.

56. Children of annulled marriage.

57. Custody of children.

58. Effect of judgment of nullity.

Sec. 54. A marriage may be annulled for any of the following causes, existing at the time of the marriage :

Cases where
marriages may
be annulled.

1. That the party seeking to have the marriage annulled was under the age of legal consent ; unless after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife ;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force ;

3. That the wife was under the age of fourteen years, and that the marriage was without the consent of the person having the legal charge of her person, and was a punishable offense on the part of the husband, and has not been followed by cohabitation, nor ratified by any mutual assent of the parties since the wife attained the age of fourteen years ;

4. That either party was of unsound mind ; unless such party, after coming to reason, freely cohabited with the other as husband or wife ;

5. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife ;

6. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife ; or,

7. That either party was, at the time of marriage, physically incapable of entering into the married state ; and such incapacity continues, and appears to be incurable.

Application for
a decision of
nullity.

Sec. 55. Within the time limited by law for the commencement of actions, application to annul a marriage may be made:

1. If for the cause that a former husband or wife was living; by either party during the life of the other, or by such former husband or wife;

2. If for the cause of idiocy; by any relative of the idiot, interested to avoid the marriage, during the life of either party;

3. If for the cause of insanity other than idiocy; by any relative of the insane party interested to avoid the marriage, and at any time during such insanity, or after the death of the insane party in that condition, and during the life of the other party; or by the insane party after the restoration of reason;

4. If for the cause of fraud or force; by the injured party, or the parent or guardian of such party, or a relative of such party interested to avoid the marriage, during the life of either party;

5. If no application has been made by the party or a relative, application may be made in any of the foregoing cases, at any time during the life of both parties, by a guardian of the insane or injured party, appointed by the court for the purpose;

6. If for the cause of physical incapacity; application can only be made by the injured party against the incapacitated party, and in all cases must be made within two years from the time of contracting the marriage;

7. If for the cause specified in subdivision 3 of section 54, by the wife only.

Children of annulled marriage.

Sec. 56. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith, and with the full belief of the parties that the former husband or wife was dead, or where a marriage is annulled on the ground of insanity, children begotten before the judgment must be specified in the judgment, and are entitled to succeed in the same manner as legitimate children to the estate of the parent, who, at the time of the marriage, was competent to contract.

Custody of children.

Sec. 57. The court must award the custody of the children of a marriage annulled on the ground of fraud or force, to the

innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Sec. 58. A judgment of nullity of marriage rendered during the life of the parties, is conclusive evidence of nullity ; but if rendered after the death of either party to the marriage, it is conclusive only as against the parties to the action, and those claiming under them. Effect of judgment of nullity

ARTICLE II.

DISSOLUTION.

SECTION 59. Marriage, how dissolved.

60. Divorce for adultery.

61. Cases in which divorce for adultery is denied.

62, 63. Legitimacy of issue.

64. When re-marriage is forbidden.

Sec. 59. Marriage is dissolved :

1. By the death or sentence to imprisonment for life of either of the parties ; or
2. By the judgment of a competent tribunal.

Marriage, how dissolved.

Sec. 60. The dissolution of a marriage may be adjudged, whenever adultery has been committed by husband or wife, in any of the following cases : Divorce for adultery.

1. Where both husband and wife were actual inhabitants of this Territory at the time of the commission of the adultery ;
2. Where the marriage took place within the Territory ;
3. Where the injured party, at the time of the commission of adultery, and at the commencement of the action, was an actual inhabitant of this Territory ;
4. Where the adultery was committed in this Territory, and the injured party, at the commencement of the action, was an actual inhabitant of this Territory.

Sec. 61. Although the fact of adultery is established, a judgment of divorce may be denied : Cases in which divorce for adultery is denied.

1. Where the application for divorce was not made within five years after the discovery by the applicant of the adultery charged ;
2. Where the adultery appears to have been committed by

the procurement, or with the connivance of the party asking the divorce ;

3. Where the injured party has expressly forgiven the adultery charged, or has voluntarily cohabited with the guilty party as husband or wife, with full knowledge of the fact ; and has ever since been treated by the latter party with conjugal kindness ; or,

4. Where it appears that the applicant has also been guilty of adultery, without the procurement or connivance of the other party.

Legitimacy of
issue.

Sec. 62. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage, begotten of the wife before the commencement of the action, is not affected.

Sec. 63. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected ; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children, begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

When re-
marriage is
forbidden.

Sec. 64. When a divorce is granted for adultery, the innocent party may marry again during the life of the other ; but the guilty party cannot marry any person except the innocent party, until the death of the other.

ARTICLE III.

SEPARATION.

SECTION 65. When separation may be adjudged.

66. Causes for separation.

67. When denied.

68. Relief may be adjudged in some cases where separation is denied.

69 Judgment of separation, when revoked.

When separa-
tion may be
adjudged.

Sec. 65. A separation of husband and wife from bed and board, for life or for a limited time, may be adjudged for the causes mentioned in the next section :

1. When the husband and wife are both actual inhabitants of this Territory ;

2. When the marriage took place within this Territory, and the applicant is an actual inhabitant at the time of the application ; or,

3. When the marriage did not take place within this Territory, but the parties have since been actual inhabitants of this Territory for at least one year, and the applicant is an actual inhabitant at the time of the application.

Sec. 66. A separation of husband and wife may be adjudged for any of the following causes : Causes for separation.

1. Cruel treatment of one party by the other ;

2. Conduct on the part of one towards the other, rendering cohabitation unsafe or improper ; or,

3. Abandonment, accompanied by refusal to fulfill the obligations of husband or wife, as they are prescribed by the chapter on HUSBAND and WIFE.

Sec. 67. Notwithstanding the existence of a cause for separation as declared in section 66, a judgment of separation may be denied, when it appears that the applicant has been guilty of a cause of divorce. When denied.

Sec. 68. Though judgment of separation be denied, the court may, in an action for divorce, provide for the maintenance of the wife and her children, or any of them by the husband, or out of his property. Relief may be adjudged in some cases where separation is denied.

Sec. 69. A judgment for separation, whether for life, or for a limited period, may be at any time revoked, under such regulations as the court may impose, upon the joint application of the parties, with satisfactory evidence of their reconciliation. Judgment of separation, When revoked.

ARTICLE IV.

GENERAL PROVISIONS.

SECTION 70. Residence of wife.

71. Expense of action.

72. Orders respecting custody of children.

73. Support of wife and children on divorce or separation granted to wife.

74. Security for maintenance and alimony.

Residence of
wife.

Sec. 70. A wife who resides in this Territory at the time of applying for a divorce, under article II or III, is to be deemed an actual inhabitant, though her husband resides elsewhere.

Expense of
action.

Sec. 71. While an action for divorce is pending, the court may, in its discretion, require the husband to pay any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

Orders respect-
ing custody of
children.

Sec. 72. In an action for divorce, the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage, as may seem necessary or proper, and may at any time vacate or modify the same.

Support of wife
and children on
divorce or sep-
aration granted
to wife.

Sec. 73. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife, for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

Security for
maintenance
and alimony.

Sec. 74. The court may require the husband to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

CHAPTER III.

HUSBAND AND WIFE.

SECTION 75. Mutual obligations of husband and wife.

76. Rights of husband as head of the family.

77. Duties of husband to wife as to support.

78. In other respects their interests separate.

79. Husband and wife may make contracts.

80. How far may impair their legal relation.

81. Consideration.

82. May be joint tenants, etc.

83. Neither answerable for the acts of the other.

84. Support of wife.

85. Abandonment of husband by the wife.

Sec. 75. Husband and wife contract towards each other obligations of mutual respect, fidelity and support.

Mutual obligations of husband and wife.

Sec. 76. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

Rights of husband as head of the family.

Sec. 77. The husband must support himself and his wife out of his property or by his labor. If he is unable to do so, she must assist him so far as she is able.

Duties of husband to wife as to support.

Sec. 78. Except as mentioned in section 77, neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

In other respects their interests separate

Sec. 79. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the Title on TRUSTS.

Husband and wife may make contracts.

Sec. 80. A husband and wife cannot by any contract with each other alter their legal relation, except that they may agree to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

How far may impair their legal relations.

Sec. 81. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

Consideration.

Sec. 82. A husband and wife may hold real or personal property together, jointly or in common.

May be joint tenants, etc.

Sec. 83. Neither husband nor wife, as such, is answerable for the acts of the other.

Neither answerable for the acts of the other.

Sec. 84. If the husband neglects to make adequate provision for the support of his wife, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

Support of wife.

Sec. 85. If the wife abandons the husband he is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him.

Abandonment of husband by the wife.

TITLE II.

PARENT AND CHILD.

CHAPTER I. By birth.

II. By adoption.

CHAPTER I.

CHILDREN BY BIRTH.

- SECTION 86. Legitimacy of children born in wedlock.
 87. Legitimacy of children born out of wedlock.
 88. Who may dispute the legitimacy of a child.
 89. Obligation of parents for the support and education of their children.
 90. Custody of legitimate child.
 91. Custody of an illegitimate child.
 92. Allowance to parent.
 93. Parent cannot control the property of child.
 94. Remedy for parental abuse.
 95. When parental authority ceases.
 96. Remedy when a parent dies without providing for the support of his child.
 97. Reciprocal duties of parents and children in maintaining each other.
 98. When a parent is liable for necessaries supplied to a child.
 99. When a parent is not liable for support furnished his child.
 100. Husband not bound for the support of his wife's children by a former marriage.
 101. Compensation and support of adult child.
 102. Parent may relinquish services and custody of child.
 103. Wages of minors.
 104. Right of parent to determine the residence of child.
 105. Parent not liable for acts of child.
 106. Wife in certain cases may obtain custody of minor children.

Legitimacy of
children born
in wedlock.

Sec. 86. All children born in wedlock are presumed to be legitimate.

Sec. 87. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate. But if during such period she marries again, and afterwards has a child, it is presumed to be her legitimate offspring by the second husband.

Legitimacy of children born out of wedlock.

Sec. 88. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Who may dispute the legitimacy of a child.

Sec. 89. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

Obligation of parents for the support and education of their children.

Sec. 90. The father of a legitimate unmarried minor is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, if she is living and capable of consent. If the father is dead, or is unable, or refuses to take the same, or has abandoned his family, the mother is entitled thereto.

Custody of legitimate child.

Sec. 91. The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings.

Custody of an illegitimate child.

Sec. 92. The district court may direct an allowance to be made to a parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Allowance to parent.

Sec. 93. The parent, as such, has no control over the property of the child.

Parent cannot control the property of child.

Sec. 94. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisor of the town where the child resides; and when the abuse is established, the child may be free from the dominion of the parent, the parent punished, and the duty of support and education enforced.

Remedy for parental abuse.

Sec. 95. The authority of a parent ceases :

When parental authority ceases.

1. Upon the appointment by a court of a guardian of the person of the child ;
2. Upon the marriage of the child ; or,
3. Upon its attaining majority.

Remedy when a parent dies without providing for the support of his child.

Sec. 96. If a parent chargeable with the support of a child dies, leaving it chargeable to the town, and leaving an estate sufficient for its support, the supervisor of the town may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate, and against the heirs, devisees and next of kin of the parent.

Reciprocal duties of parents and children in maintaining each other.

Sec. 97. It is the duty of the father, the mother, and the children, of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability.—The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

When a parent is liable for necessities supplied to a child.

Sec. 98. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent.

When a parent is not liable for support furnished his child.

Sec. 99. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

Husband not bound for the support of his wife's children by a former marriage.

Sec. 100. A husband is not bound to maintain his wife's children by a former husband ; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services.

Compensation and support of adult child.

Sec. 101. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

Parent may relinquish services and custody of child.

Sec. 102. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

Sec. 103. The wages of a minor employed in service may be paid to him, unless, within thirty days after the commencement of the service, the parent or guardian entitled thereto gives the employer notice that he claims such wages.

Wages of minors.

Sec. 104. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

Right of parent to determine the residence of child.

Sec. 105. Neither parent nor child is answerable, as such, for the act of the other.

Parent not liable for acts of child.

Sec. 106. When a husband and wife live in a state of separation, without being divorced, any court or officer of competent jurisdiction, upon application of the wife, if she is an inhabitant of this Territory, may grant the proper writ to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of the child to either party for such time, and under such regulations, as the case may require. The decision of the tribunal is to be guided by the rules prescribed in section 127.

Wife in certain cases may obtain custody of minor children.

CHAPTER II.

ADOPTION.

Section 107. Child may be adopted.

108. Who may adopt.

109. Consent of wife necessary.

110. Consent of child's parents.

111. Consent of child.

112. Proceedings on adoption.

113. Judge's order.

114. Effect of adoption.

115. Effect on former relations of child.

116. Adoption of illegitimate child,

Sec. 107. Any minor child may be adopted by any adult person, in the cases, and subject to the rules, prescribed in this chapter.

Child may be adopted.

Sec. 108. The person adopting a child must be at least twenty years older than the person adopted.

Age of person adopting.

Sec. 109. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife.

Consent of wife necessary.

Consent of
child's parents.

Sec. 110. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child, on account of cruelty or neglect.

Consent of
child.

Sec. 111. The consent of a child, if over the age of twelve years, is necessary to its adoption.

Proceedings on
adoption.

Sec. 112. The person adopting a child, and the child adopted, and the other persons whose consent is necessary, must appear before the probate judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted, and treated in all respects as his own lawful child should be treated.

Judge's order.

Sec. 113. The probate judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

Effect of
adoption.

Sec. 114. A child, when adopted, takes the name of the person adopting, and the two thenceforth sustain towards each other the legal relation of parent and child, and have all the rights, and are subject to all the duties, of that relation.

Effect on former
relations of
child.

Sec. 115. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards and of all responsibility for the child so adopted, and have no right over it.

Adoption of
illegitimate
child.

Sec. 116. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such: and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

TITLE III.

GUARDIAN AND WARD.

- SECTION 117. Guardian, what.
 118. Ward, what.
 119. Kinds of guardians.
 120. General guardian, what.
 121. Special guardian, what.
 122. Appointment by parent.
 123. No person guardian of estate without appointment.
 124, 125. Appointment by court.
 126. Jurisdiction.
 127. Rules for awarding custody of minor.
 128. Powers of guardian appointed by court.
 129. Duties of guardian of the person.
 130. Duties of guardian of estate.
 131. Relation confidential.
 132. Guardian under direction of court.
 133. Death of a joint guardian.
 134. Removal of guardian.
 135. Guardian appointed by parent, how superseded.
 136. Guardian appointed by court, how superseded.
 137. Release by ward.
 138. Guardian's discharge.
 139. Insane persons.

Sec. 117. A guardian is a person appointed to take care of Guardian, what.
 the person or property of another.

Sec. 118. The person over whom, or over whose property, Ward, what.
 a guardian is appointed, is called his ward.

Sec. 119. Guardians are either :

Kinds of
guardians.

1. General; or,
2. Special.

Sec. 120. A general guardian is a guardian of the person, General guar-
dian, what.
 or of all the property of the ward within this Territory, or of
 both.

Sec. 121. Every other is a special guardian.

Special guar-
dian, what.

Sec. 122. A guardian of the person of a child born, or like-
 ly to be born, may be appointed, by will, or by deed, to take
 effect upon the death of the parent appointing:

Appointment by
parent.

1. If the child is legitimate, by the father, with the written

consent of the mother; or by either parent, if the other is dead, or incapable of consent;

2. If the child is illegitimate, by the mother.

No person
guardian of
estate without
appointment.

Sec. 123. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

Appointment
by court.

Sec. 124. A guardian of the person or property, or both, of a person residing in this Territory, who is a minor, or of unsound mind, may be appointed in all cases by the district court, when there is no such guardian, and by a judge of probate in the cases provided by law.

14.

Sec. 125. A guardian of the property within this Territory of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the district court.

Jurisdiction,

Sec. 126. In all cases, the court first making the appointment of a guardian has exclusive jurisdiction to appoint and control him, except in case of a removal pursuant to section 134.

Rules for
awarding custody
of minor.

Sec. 127. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child, in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor or business, then to the father;

3. Of two persons equally eligible in other respects, preference is to be given as follows:

(1.) To a relative;

(2.) To one who was indicated by the wishes of a deceased parent;

(3.) To one who already stands in the position of a trustee of a fund to be applied to the child's support.

Sec. 128. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

Powers of guardian appointed by court.

Sec. 129. A guardian of the person is charged with the custody of the ward, and must look to his support, health and education. He may fix the residence of the ward at any place within the Territory, but not elsewhere, without permission of the court.

Duties of guardian of the person.

Sec. 130. A guardian of the property must keep safely the property of his ward. He must not suffer any sale, waste or destruction of the real property, but must maintain the inheritance, its buildings and appurtenances, out of the moneys of the estate, and deliver the same to the ward at the close of his guardianship, in as good condition as he received them, inevitable decay and injury only excepted.

Duties of guardian of estate.

Sec. 131. The relation of guardian and ward is confidential, and is subject to the provisions of the Title on TRUST.

Relation confidential,

Sec. 132. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Guardian under direction of court.

Sec. 133. On the death of one of two or more joint guardians, the power continues to the survivor, until a further appointment is made by the court.

Death of a joint guardian.

Sec. 134. A guardian may be removed by the district or probate court for any of the following causes :

Removal of guardian.

1. For abuse of his trust;
 2. For continued failure to perform its duties ;
 3. For incapacity to perform its duties ;
 4. For gross immorality ;
 5. For having an interest adverse to the faithful performance of his duties ;
 6. For removal from the Territory ;
 7. In the case of a guardian of the property, for insolvency ;
- or,
8. When it is no longer proper that the ward should be under guardianship.

Sec. 135. The power of a guardian appointed by a parent is superseded:

Guardian appointed by parent; how superseded.

1. By his removal, as provided by section 134 ;
2. In the case of a female ward, by her marriage ; or,
3. By the ward's attaining majority.

Guardian
appointed by
court, how,
superseded.

Sec. 136. The power of a guardian appointed by a court is superseded only :

1. By the order of the court ; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority.

Release by
ward.

Sec. 137. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Guardian's
discharge.

Sec. 138. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

Insane persons.

Sec. 139. A person of unsound mind may be placed in an asylum for such persons, upon the order of the probate judge of the county in which he resides, as follows :

1. The judge must be satisfied, by the oath of two reputable physicians, that such person is of unsound mind, and unfit to be at large ;
2. Before granting the order, the judge must examine the person himself, or if that is impracticable, cause him to be examined by an impartial person ;
3. After the order is granted, the person alledged to be of unsound mind, his or her husband or wife, or relative to the third degree, may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy.

TITLE IV.

MASTER AND SERVANT.

SECTION 140. Who may bind themselves as apprentices.

141. Who to consent to such binding.

142. Parent or guardian, when liable for breach of indenture.

143. Pauper children may be bound to service.

144. Special provision as to Indian children.

145. Age of infants to be inserted in indentures.

146. Pecuniary consideration to be inserted.

- SECTION 147. Special agreement to be inserted in certain cases.
 148. Certain indentures, where to be filed.
 149, 150. Indentures by foreigners, being minors.
 151. How assigned.
 152. Indentures, when invalid.
 153. County overseers to be guardians of servants.
 154. Penalty on apprentices absenting themselves from service.
 155. No servant or apprentice bound by any restriction as to time and place where he shall work when free.
 156, 157. When the executor or administrator of a deceased master may assign a contract of service.
 158. Assignment by court.

Sec. 140. Male minors, and unmarried females under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may bind themselves, by a writing called an indenture, as fully as if they were of age, to serve as clerks, apprentices or servants, in a particular calling, until majority (except in the case of females, who cannot bind themselves further than until the age of eighteen), or for any shorter time.

Who may bind themselves as apprentices.

Sec. 141. Consent to an indenture of apprenticeship must be given by certificate at the end thereof, or indorsed thereon, signed :

Who to consent to such binding.

1. By the father and mother of the apprentice ;
2. If the father lacks capacity to consent, or has abandoned or neglected to provide for the family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the county, then by the mother ;
3. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor ;
4. If the mother is dead, or lacks capacity to consent, then by the father ;
5. If there is no parent of capacity to consent, and no such executor, then by the guardian ; or,
6. If there is no such parent, executor or guardian, then by the officers of the poor of the town or county, or by any two justices of the peace of the county, or by the probate judge.

Parent or guardian, when liable for breach of indenture.

Sec. 142. A parent, executor or guardian, consenting to an indenture, is not liable for a breach thereof by the apprentice, unless the indenture or consent expresses an intention to bind him therefor.

Pauper children may be bound to service.

Sec. 143. Any child who is chargeable, or whose parents are chargeable, to a county, town, or city poor house, or who is in such poor house, may be bound to service until attaining twenty-one years, or if a female, until attaining eighteen years, by the officers of the poor of such county, town or city, as effectually as by the child himself with the parents' consent; but such binding, by the officers of a county or city, must be with the consent, in writing, of two justices of the peace of the county, or of the mayor, recorder and alderman of the city, or any two of them.

Special provisions as to Indian children.

Sec. 144. No child of an Indian woman can be bound, under this Title, except in the presence, and with the consent of a justice of the peace; and his certificate of consent must be filed with the probate judge of the county, where the indenture is executed.

Age of infants to be inserted in indentures.

Sec. 145. In every indenture of apprenticeship the age of the apprentice must be stated, and such statement is presumptive evidence thereof; and before an officer executes an indenture, or consents thereto, he must inform himself of the age of the apprentice.

Pecuniary consideration to be inserted.

Sec. 146. If there is any pecuniary consideration for an indenture of apprenticeship on either part, it must be stated therein.

Special agreement to be inserted in certain cases.

Sec. 147. The indenture of an apprentice, executed by officers of the poor, must bind the master to cause him to be taught reading, writing and the general rules of arithmetic, and to give him a new bible at the expiration of his term of service.

Certain indentures, where to be deposited.

Sec. 148. Every officer executing an indenture of apprenticeship must file a counterpart thereof with the probate judge of the county in which he is an officer.

Indentures by foreigners, being minors.

Sec. 149. An immigrant minor may bind himself to service, until he attains majority, or for a shorter term, in such manner as may be prescribed by the law of the country in

which the contract is made. If the indenture is made for the purpose of enabling him to pay his passage to this country, it may be for the term of one year, although such term extends beyond his majority; but in no case for a longer term.

Sec. 150. Every indenture under section 149 must be acknowledged by the minor on a private examination before a mayor, recorder, or alderman of a city, or a justice of the peace and a certificate of the acknowledgment must be indorsed upon the indenture.

Sec. 151. The master, under an indenture specified in section 149, may assign it, by writing indorsed thereon, and with the approval, also indorsed, of a magistrate mentioned in section 150. How assigned.

Sec. 152. No indenture or contract for the service of an apprentice is binding upon him, unless made as hereinbefore prescribed. Indentures, when invalid.

Sec. 153. The county overseer of the poor, and the overseers of the poor of cities and towns, must see that every apprentice or other servant in their respective counties, cities or towns, is properly treated, and that the terms of the contract are fulfilled in his favor; and it is their duty to redress any grievance of such persons in the manner prescribed by law. County superintendents and overseers to be guardians of servants,

Sec. 154. If an apprentice, for whose instruction the master receives no pecuniary compensation, willfully absents himself from service without leave, he may be compelled to serve double the time of such absence, unless he makes satisfaction for the injury; but such additional term of service cannot extend more than three years beyond the original term. Penalty on apprentices absents themselves from service.

Sec. 155. No person may accept from an apprentice or servant, an agreement, oath or promise not to exercise his vocation in any particular place; nor may any person exact from an apprentice or servant, any consideration for exercising his vocation in any place after his term of service has expired. No servant or apprentice bound by any restriction as to time and place where he shall work when free.

Sec. 156. Any consideration exacted contrary to the last section, may be recovered back with interest, and every person accepting such agreement or exacting such consideration, is liable to the apprentice or servant in a penalty of one hundred dollars. Penalty.

When the executor or administrator of a deceased master may assign a contract of service.

Sec. 157. The executors or administrators of the master of any apprentice bound by officers of the poor, may assign the indenture, with the written consent of the apprentice, acknowledged before a justice of the peace.

Assignment by court.

Sec. 158. If an apprentice refuses consent to an assignment under the last section, the probate or district court may authorize such assignment without his consent, upon application after fourteen days' notice to the apprentice, or to his parents or guardian, if he has any in the county.

DIVISION SECOND.

PROPERTY.

PART I. Property in General.

II. Real, or Immovable Property.

III. Personal, or Movable Property.

IV. Acquisition of Property.

PART I.

PROPERTY IN GENERAL.

TITLE I. Nature of Property.

II. Ownership.

III. General Definitions.

TITLE I.

NATURE OF PROPERTY.

SECTION 159. Property, what.

160. In what property may exist.

161. Wild animals.

162. Real and personal.

163. Real property.

164. Land.

165. Fixtures.

166. Appurtenances.

167. Personal property.

Sec. 159. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing, of which there may be ownership, is called property.

Sec. 160. There may be ownership of all inanimate things which are capable of appropriation, or of manual delivery ; of all domestic animals ; of all obligations ; of such products of labor or skill, as the composition of an author, the good will of a business, trade-marks and signs, and of rights created or granted by statute.

Sec. 161. Animals wild by nature are the subjects of ownership while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

Sec. 162. Property is either :

1. Real or immovable ; or,
2. Personal or movable ;

Sec. 163. Real or immovable property consists of :

1. Land ;
2. That which is affixed to land ; and,
3. That which is incidental or appurtenant to land.

Sec. 164. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

Sec. 165. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs ; or imbedded in it, as in the case of walls ; or permanently resting upon it, as in the case of buildings ; or permanently attached to what is thus permanent, as by means of nails, bolts or screws.

Appurtenances.

Sec. 166. A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit; as in the case of a way, or watercourse, or of a passage for light, air or heat from or across the land of another.

Personal property.

Sec. 167. Every kind of property that is not real is personal.

TITLE II.

OWNERSHIP.

CHAPTER I. OWNERS.

II. Modifications of ownership.

III. Rights of owners.

IV. Termination of ownership.

CHAPTER I.

OWNERS.

SECTION 168. Owner.

169. Property of the state.

170. Who may own property.

owners.

Sec. 168. All property has an owner, whether that owner is the state, and the property public, or the owner an individual, and the property private. The state may also hold property as a private proprietor.

Property of the state.

Sec. 169. The state is the owner of all land, below high water mark, bordering upon tide water; of all land below the water of a lake or stream which constitutes an exterior boundary of the state; of all property lawfully appropriated by it to its own use; of all property dedicated to the state, and of all property of which there is no other owner.

Who may own property.

Sec. 170. Any person, whether citizen or alien, may take and hold property, real or personal.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

- ARTICLE I. Interests in property.
 II. Conditions of ownership.
 III. Restraints upon alienation.
 IV. Accumulations.

ARTICLE I.

INTERESTS IN PROPERTY.

- SECTION 171. Ownership, absolute or qualified.
 172. When absolute.
 173. When qualified.
 174. Several ownership, what.
 175. Ownership of several persons.
 176. Joint interest, what.
 177. Partnership interest, what.
 178. Interest in common, what.
 179. What interests are in common.
 180. Interests as to time.
 181. Present interest, what.
 182. Future interest, what.
 183. Perpetual interest, what.
 184. Limited interest, what.
 185. Kinds of future interests.
 186. Vested interests.
 187. Contingent interests.
 188. Two or more future interests.
 189. Certain future interests not to be void.
 190. Posthumous children.
 191, 192. Qualities of expectant estates.
 193, 194. Interests in real property.
 195. What future interests are recognized.

Sec. 171. The ownership of property is either :

1. Absolute ; or,
2. Qualified.

Ownership,
absolute or
qualified,

Sec. 172. The ownership of property is absolute, when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

when absolute

- When qualified.** **Sec. 173.** The ownership of property is qualified :
1. When it is shared with one or more persons ;
 2. When the time of enjoyment is deferred or limited; or,
 3. When the use is restricted.
- Several ownership, what.** **Sec. 174.** The ownership of property by a single person is designated as a sole or several ownership.
- Ownership of several persons.** **Sec. 175.** The ownership of property by several persons is either :
1. Of joint interests ;
 2. Of partnership interests ; or,
 3. Of interests in common.
- Joint interest, what.** **Sec. 176.** A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer which confers a right of survivorship.
- Partnership interest, what.** **Sec. 177.** A partnership interest is one owned by several persons, in partnership, for partnership purposes.
- Interest in common, what.** **Sec. 178.** An interest in common is one owned by several persons, not in joint ownership or partnership.
- What interests are in common.** **Sec. 179.** Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation, expressly or by necessary implication, to be a joint interest, with a right of survivorship.
- Interests as to time.** **Sec. 180.** In respect to the time of enjoyment, an interest in property is either :
1. Present or future ; and,
 2. Perpetual or limited.
- Present interest, what.** **Sec. 181.** A present interest entitles the owner to the immediate possession of the property.
- Future interest, what.** **Sec. 182.** A future interest entitles the owner to the possession of the property only at a future period.
- Perpetual interest, what.** **Sec. 183.** A perpetual interest has a duration equal to that of the property.
- Limited interest, what.** **Sec. 184.** A limited interest has a duration less than that of the property.
- Sec. 185.** A future interest is either :

1. Vested; or,
2. Contingent.

Kinds of future interest.

Sec. 186. A future interest is vested, when there is a person in being, who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

Vested interest, what.

Sec. 187. A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect, remains uncertain.

Contingent interest, what.

Sec. 188. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Two or more future interests.

Sec. 189. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

Certain future interests not to be void.

Sec. 190. When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

Posthumous children.

Sec. 191. Future interests pass by succession, will and transfer, in the same manner as present interests.

Qualities of future interests.

Sec. 192. A mere possibility, such as the expectancy of an heir-apparent, is not to be deemed an interest of any kind.

Mere possibility.

Sec. 193. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in Part II of this Division.

Interests in real property.

Sec. 194. The names and classification of interests in real property have only such application to interests in personal property as is in this Division of the Code expressly provided.

Id.

Sec. 195. No future interest in property is recognized by the law, except such as is defined in this Division of the Code.

What future interests are recognized.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

SECTION 196. Fixing the time of enjoyment.

197. Conditions.

198. Certain conditions precedent, void.

199. Conditions restraining marriage, void.

200. Conditions restraining alienation, void.

Fixing the time
of enjoyment.

Sec. 196. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

Conditions.

Sec. 197. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right.

Certain condi-
tions precedent,
void.

Sec. 198. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

Conditions
restraining mar-
riage, void.

Sec. 199. Conditions imposing restraints upon marriage, except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed, are void; but this does not affect limitations where the intent was, not to forbid marriage, but only to give the use until marriage.

Conditions
restraining
alienation, void.

Sec. 200. Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

SECTION 201. How long it may be suspended.

202. Future interests void, which suspended power of alienation.

203. Restriction on qualification of enjoyment.

How long it
may be sus-
pended.

Sec. 201. The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the limitation or condition, except in the single case mentioned in section 229.

Sec. 202. Every future interest is void in its creation which, Future interests void, which suspended power of alienation. by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

Sec. 203. The restrictions upon the power to affix qualifications to the *of enjoyment* shall be such only as are provided Restriction on qualification of enjoyment. by the laws of this Territory.

ARTICLE IV.

ACCUMULATIONS.

SECTION 204. Dispositions of income.

205. Accumulations, when void.

206. Accumulation of income.

207. Other directions, when void in part.

208. Application of income to support, &c., of minor.

Sec. 204. Dispositions of the income of property to accrue Dispositions of income. and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this Title in relation to future interests.

Sec. 205. All directions for the accumulation of the income Accumulations, when void. of property, except such as are allowed by this Title, are void.

Sec. 206. An accumulation of the income of property, for Accumulation of income. the benefit of one or more persons, may be directed by any will or transfer in writing, sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

Other direc-
tions, when
void in part.

Sec. 207. If, in either of the cases mentioned in the last section, the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

Application of
income to sup-
port, &c., of
minor.

Sec. 208. When a minor, for whose benefit an accumulation has been directed, is destitute of other sufficient means of support and education, the district court, upon application, may direct a suitable sum to be applied thereto, out of the fund,

CHAPTER III.

RIGHTS OF OWNERS.

SECTION 209. Increase of property.

210. In certain cases who entitled to income of property.

Increase of
property.

Sec. 209. The owner of a thing owns also all its products and accessions.

In certain
cases who en-
titled to income
of property.

Sec. 210. When in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

SECTION 211, 212. Future interests, when defeated.

213, 214. Future interests, when not defeated.

Future interest,
when defeated.

Sec. 211. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

Id.

Sec. 212. A future interest may be defeated in any manner, or by any act or means, which the party creating such interest

provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

Sec. 213. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

Future interests, when not defeated.

Sec. 214. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

TITLE III.

GENERAL DEFINITIONS.

SECTION 215. Income, what.

216. Time of creation, what.

Sec. 215. The income of property, as the term is used in this Part of the Code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

Income, what.

Sec. 216. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest within the meaning of this Part of the Code.

Time of creation, what.

PART II.

REAL OR IMMOVABLE PROPERTY.

TITLE I. General Provisions.

II. Estates in Real Property.

III. Rights and Obligations of Owners.

IV. Uses and Trusts.

V. Powers.

TITLE I.

GENERAL PROVISIONS.

Sec. 217. Real property within this Territory is governed by the law of this Territory.

TITLE II.

ESTATES IN REAL PROPERTY.

CHAPTER I. Estates in General.

II. Termination of Estates.

III. Servitudes.

CHAPTER I.

ESTATES IN GENERAL.

SECTION 218. Enumeration of estates.

219. What estate a fee simple.

220. Estates tail abolished ; their nature declared.

221. Certain remainders valid.

222. Freeholds ; chattels real ; chattel interests.

223. Estates for life of a third person, when a freehold, &c.

SECTION 224. Future estates, what.

- 225. Reversions.
- 226. Remainders.
- 227. Limitations of chattels real.
- 228. Suspension by trust.
- 229. Contingent remainder in fee.
- 230. Remainders, future and contingent estates, how created.
- 231. Limitation of successive estates for life.
- 232, 233. Remainder upon estates for life of third person.
- 234. Contingent remainder on a term of years.
- 235. Remainder of estates for life.
- 236. Remainder upon a contingency.
- 237. Heirs of a tenant for life, when to take as purchasers.
- 238. Construction of certain remainders.
- 239. Effect of power of appointment.

Sec. 218. Estates in real property, in respect to the duration of their enjoyment, are either: Enumerations of estates.

- 1. Estates of inheritance, or perpetual estates;
- 2. Estates for life;
- 3. Estates for years; or,
- 4. Estates at will.

Sec. 219. Every estate of inheritance, notwithstanding the abolition of tenures, continues to be called a fee simple, or fee; and every such estate, when not defeasible or conditional, is called a fee simple absolute, or an absolute fee. What estate a fee simple.

Sec. 220. Estates tail are abolished; and every estate is a fee simple; and if no valid remainder is limited thereon, is a fee simple absolute. Estates tail abolished; their nature declared.

Sec. 221. Where a remainder in fee is limited upon any estate, which would by the law mentioned in the last section be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession, on the death of the first taker, without issue living at the time of his death. Certain remainders valid.

Sec. 222. Estates of inheritance and for life, are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution. Freeholds; chattels real; chattels interests.

Sec. 223. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold only during the Estates for life of a third person, when a freehold, &c.

life of the grantee or devisee. After his death it is a chattel real.

Future estates,
what.

Sec. 224. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time, or otherwise, of a precedent estate, created at the same time.

Reversions.

Sec. 225. A reversion is the residue of an estate left, by operation of law, in the grantor, or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

Remainder.

Sec. 226. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

Limitations of
chattels real.

Sec. 227. The provisions of Title II of Part I of this Division, relative to future estates, apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

Suspension by
trust.

Sec. 228. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of section 201.

Contingent
remainder in
fee.

Sec. 229. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined, before they attain majority.

Remainders,
future and
contingent
estates, how
created.

Sec. 230. Subject to the rules of this Title, and of Part I of this Division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determi-

nation of a term of years ; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this Title.

Sec. 231. Successive estates for life cannot be limited, except to persons in being at the creation thereof ; and where a remainder is limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto are void, and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estates had been created.

Limitations of successive estates for life.

Sec. 232. No remainder can be created upon an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder is in fee ; nor can a remainder be created upon such an estate in a term for years, unless it is for the whole residue of such term.

Remainder upon estates for life of third person.

Sec. 233. When a remainder is created upon an estate for the life of any other person than the grantee or devisee thereof, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder, if valid in its creation, takes effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced.

Id.

Sec. 234. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such, that the remainder must vest in interest during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof.

Contingent remainder on a term of years.

Sec. 235. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Remainder of estates for life.

Sec. 236. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate ; and every such remainder is to be deemed a conditional limitation.

Remainder upon a contingency.

Sec. 237. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner

Heirs of a tenant for life, when to take as purchasers.

for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

Construction
of certain re-
mainders.

Sec. 238. When a remainder, on an estate for life or for years, is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

Effect of power
of appointment.

Sec. 239. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

CHAPTER II.

TERMINATION OF ESTATES.

SECTION 240. Tenancy at will may be terminated by notice.

241. Form and service of notice.

242. Effect of notice.

243. Re-entry, when and how to be made.

244. Notice not necessary before action.

Tenancy at will
may be termi-
nated by notice.

Sec. 240. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant, in the manner prescribed by the next section, to remove from the premises within a period specified in the notice, of not less than one month.

Form and ser-
vice of notice.

Sec. 241. The notice prescribed by the last section must be in writing, and must be served by delivering the same to the tenant, or to some person of discretion residing on the premises, or if neither can, with reasonable diligence, be found, the notice may be served by affixing it on a conspicuous part of the premises, where it may be conveniently read.

Effect of notice.

Sec. 242. After the notice prescribed by sections 240 and 241 has been served in the manner therein directed, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

Re-entry, when
and how to be
made.

Sec. 243. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon fif-

teen days' previous written notice of intention to re-enter, served in the mode prescribed by section 241.

Sec. 244. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time after the right to re-enter has accrued, without the notice prescribed in section 243. Notice not necessary before action.

CHAPTER III.

SERVITUDES.

- SECTION 245. Servitudes attached to land.
246. Servitudes not attached to land.
247. Designation of estates.
248. By whom granted.
249. By whom held.
250. Extent of servitudes.
251. Apportioning easements.
252. Rights of owner of future estate.
253. Actions by owner and occupant of dominant tenement.
254. Actions by owner of servient tenement.
255. How extinguished.

Sec. 245. The following land burdens, or servitudes upon land may be attached to other land as incidents or appurtenances, and are then called easements: Servitudes attached to land.

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right of way;
5. The right of taking water, wood, minerals and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light or heat from or over, or discharging the same upon or over, land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;

11. The right of having water flow without diminution or disturbance of any kind;

12. The right of using a wall as a party wall;

13. The right of receiving more than natural support from adjacent land or things affixed thereto;

14. The right of having the whole of a division fence maintained by a co-terminous owner;

15. The right of having public conveyances stopped, or of stopping the same, on land;

16. The right of a seat in church;

17. The right of burial.

Servitudes not attached to land.

Sec. 246. The following land burdens, or servitudes upon land, may be granted, and held, though not attached to land:

1. The right of fishing and taking game;

2. The right of a seat in church;

3. The right of burial;

4. The right of taking rents and tolls;

5. The right of way.

Designation of estates.

Sec. 247. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

By whom grantable.

Sec. 248. A servitude can be created only by one who has a vested estate in the servient tenement.

By whom held.

Sec. 249. A servitude thereon cannot be held by the owner of the servient tenement.

Extent of servitudes.

Sec. 250. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

Apportioning easements.

Sec. 251. In case of partition of the dominant tenement, the burden must be apportioned, according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

Rights of owner of future estate.

Sec. 252. The owner of a future estate in a dominant tenement may use easements attached thereto, for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

Sec. 253. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

Actions by owner and occupant of dominant tenement.

Sec. 254. The owner in fee of a servient tenement, may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

Actions by owner of servient tenement.

Sec. 255. A servitude is extinguished:

Extinction of servitudes.

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person ;
2. By the destruction of the servient tenement;
3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise ; or,
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I. Rights of owners.

II. Obligations of owners.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. Incidents of ownership.

II. Boundaries.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

SECTION 256. Water.

257. Rights of tenant for life.

258, 259. Rights of tenant for years, &c.

SECTION 260. Rights of grantees of rents and reversion.

261. Rights of lessees and their assignees, &c.

262. Application of last two sections.

263. Remedy on leases for life.

264. Rent dependent on life.

265. Remedy of reversioners, &c.

Water.

Sec. 256. The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue, nor pollute the same.

Rights of tenant for life.

Sec. 257. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

Rights of tenant for years, &c.

Sec. 258. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the building, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and cultivate and harvest the crops growing at the end of his tenancy.

Id.

Sec. 259. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

Rights of grantees of rent and reversion.

Sec. 260. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or deviser might have had.

Rights of lessees and their assignees, &c.

Sec. 261. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

Application of last two sections.

Sec. 262. The provisions of the last two sections apply to all grants reserving rent, except grants in fee executed before

the ninth day of April, 1805, or after the fourteenth day of April, 1860, the rents reserved by which have been transferred since the latter date.

Sec. 263. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years. Remedy on leases for life,

Sec. 264. Rent dependent on the life of a person may be recovered after, as well as before, his death. Rent dependent on life.

Sec. 265. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action. Remedies of reversioners, &c,

ARTICLE II.

BOUNDARIES.

SECTION 266. Rights of owner.

267. Boundaries by water.

268. Boundaries by ways.

269. Lateral and subjacent support.

270. Trees whose trunks are wholly on land of one.

271. Line trees.

Sec. 266. The owner of land in fee has the right to the surface, and to everything permanently situated beneath or above it. Rights of owner.

Sec. 267. When land borders upon water which constitutes an exterior boundary of the Territory, the owner of the upland takes to high-water mark ; when it borders upon a navigable lake where there is no tide, the owner takes to the edge of the lake at low-water mark ; when it borders upon any other water, the owner takes to the middle of the lake or stream. Boundaries by water.

Sec. 268. An owner of land, bounded by a road or street, is presumed to own to the centre of the way, but the contrary may be shown. Boundaries by ways.

Sec. 269. Each coterminous owner is entitled to the lateral and subjacent support which his land by nature receives from the land of the other. Lateral and subjacent support.

Trees whose
trunks are
wholly on land
of one.

Sec. 270. Trees whose trunks stand wholly upon the land of one owner, belong exclusively to him, although their roots grow into the land of another.

Line trees.

Sec. 271. Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

SECTION 272. Duties of tenant for life.

273. Monuments and fences.

Duties of tenant
for life.

Sec. 272. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

Monuments
and fences.

Sec. 273. Coterminous owners are mutually bound equally to maintain :

1. The boundaries and monuments between them,
2. The fences between them; unless one of them chooses to let his land lie open as a public common, in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

TITLE IV.

USES AND TRUSTS.

SECTION 274. What uses and trusts may exist.

275. Executed uses existing.

276. Right to possession of land creates legal ownership.

277. Certain trusts unaffected.

278. Trustees of estate for use of another take no interest.

279. Preceding sections qualified.

280. Trust must be in writing.

281. Transfer to one for money paid by another.

282. Rights of creditors.

SECTION 283. Section 281 qualified.

284. Purchasers protected.

285. For what purposes express trusts may be created.

286. Certain devises in trust to be deemed powers.

287. Profits of land liable to creditors in certain cases.

288. Other express trusts to be powers in trust.

289. Creation of certain powers not prohibited.

290. And land, &c., to descend to persons entitled.

291. Trustees of express trusts to have whole estate.

292. Author of trust may devise. &c.

293. Title of grantor of trust property.

294. Interests remaining in grantor of express trust.

295, 296. Powers over trust of party interested.

297. Effect of omitting trust in conveyance.

298. Certain sales, &c., by trustees, void.

299. When estate of trustee to cease.

Sec. 274. Uses and trusts, in relation to real property, are those only which are specified in this Title. What uses and trusts may exist.

Sec. 275. Every estate which is now held as a use, executed under any former statute of this Territory, is confirmed as a legal estate. Executed uses existing.

Sec. 276. Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipt of the rents and profits thereof, is to be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest. Right to possession of land creates legal ownership.

Sec. 277. The last section does not divest the estate of any trustee in a trust heretofore existing, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust. Certain trusts unaffected.

Sec. 278. Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person, to the use of or in trust for another, no estate or interest vests in the trustee; but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof. Trustees of estate for use of another take no interest.

Sec. 279. The preceding sections of this Title do not extend to trusts arising or resulting by implication of law, nor prevent Preceding sections qualified.

or affect the creation of such express trusts as are hereinafter authorized and defined.

Trust to be in
Writing.

Sec. 280. No trust in relation to real property is valid, unless created or declared :

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing ;
2. By the instrument under which the trustee claims the estate affected ; or,
3. By operation of law.

Transfer to one
for money paid
by another.

Sec. 281. Where a transfer of real property is made to one person, and the consideration therefor is paid by or for another, no use or trust results in favor of the person by or for whom such payment is made ; but the title vests in the grantee, subject only to the provisions of the next two sections.

Rights of
creditors.

Sec. 282. Every such transfer as is described in the last section is presumed to be fraudulent as against the creditors, at that time, of the person paying the consideration ; and where a fraudulent intent is not disproved, a trust results in favor of such creditors, to the extent necessary to satisfy their just demands.

Section 281
qualified.

Sec. 283. Section 281 does not apply :

1. To cases where the grantee took the grant as an absolute transfer in his own name, without the consent or knowledge of the person paying the consideration ; nor,
2. To cases where the grantee, in violation of a trust, purchased the real property so transferred, with property belonging to another person.

Purchasers
protected.

Sec. 284. No implied or resulting trust can prejudice the rights of a purchaser or incumbrancer of real property, for value and without notice of the trust.

For what
purposes
express trusts
may be created.

Sec. 285. Express trusts may be created for any of the following purposes :

1. To sell real property for the benefit of creditors ;
2. To sell, mortgage or lease real property, for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon ;
3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascer-

tained at the time of the creation of the trust or not, for himself or for his family during the life of such person, or for any shorter term, subject to the rules of Title II of this Part ; or,

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same Title.

Sec. 286. A devise of real property to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, vests no estate in them ; but the trust is valid as a power in trust.

Certain devises in trust to be deemed powers.

Sec. 287. Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

Profits of land liable to creditors in certain cases.

Sec. 288. Where an express trust in relation to real property is created for any purpose not enumerated in the preceding sections, such trust vests no estate in the trustees ; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers, contained in Title V of this Part.

Other express trusts to be powers in trust.

Sec. 289. Nothing in this Title prevents the creation of a power in trust, for any of the purposes for which an express trust may be created.

Creation of certain powers not prohibited.

Sec. 290. In every case where a trust is valid as a power in trust, the real property to which the trust relates, remains in, or passes by succession to, the persons otherwise entitled, subject to the execution of the trust as a power in trust.

And land, &c., to descend to persons entitled.

Sec. 291. Except as hereinafter otherwise provided, every express trust in real property, valid as such, in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Trustees of express trusts to have whole estate.

Sec. 292. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to

Author of trust may devise, &c.

whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

Title of grantor of trust property.

Sec. 293. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

Interests remaining in grantor of express trust.

Sec. 294. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust, or his successors.

Powers over trust of party interested.

Sec. 295. The beneficiary of a trust for the receipt of the rents and profits of real property cannot transfer, or in any manner dispose of, his interest in such trust.

Id.

Sec. 296. The beneficiary of a trust for the payment of an annuity out of the rents and profits of real property, or of a sum in gross, can dispose of his interest in such trust.

Effect of omitting trust in conveyance.

Sec. 297. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, such grant must be deemed absolute, in favor of the subsequent creditors of the trustees, not having notice of the trust, and in favor of purchasers from such trustees, without notice, and for a valuable consideration.

Certain sales, &c., by trustees void.

Sec. 298. Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

When estate of trustee to cease.

Sec. 299. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

TITLE V.

POWERS.

SECTION 300. What powers exist

301. Application of this title.

SECTION 302. Definition of a power.

- 303. Terms "author of a power" and "holder of a power." defined.
- 304. Division of power.
- 305. Definition of general powers.
- 306. Definition of special powers.
- 307. Beneficial powers.
- 308. Powers in trust.
- 309. General powers, when in trust.
- 310. Special powers, when in trust.
- 311. Who may create power.
- 312. To whom power may be given.
- 313. How created.
- 314. Reservation of powers in conveyances.
- 315. When power irrevocable.
- 316. When power a lien.
- 317. Power of sale in mortgage.
- 318. Beneficial powers, &c., transferred by insolvent assignments.
- 319. Who to execute powers.
- 320, 321. Married women.
- 322. How executed.
- 323. Execution by survivors.
- 324. Execution of power to dispose by devise.
- 325. Execution of power to dispose by grant.
- 326, 327. Directions by author, when disregarded.
- 328. Nominal conditions.
- 329. When directions of author to be observed.
- 330, 331. Consent of third person to execution of power.
- 332. Omission to recite power.
- 333. Instruments deemed conveyances.
- 334. Certain dispositions not void.
- 335. Computation of term of suspension.
- 336. What estate may be given.
- 337. Married women, their authority.
- 338. Defective execution.
- 339. Fraud.
- 340. General and beneficial powers to married women.
- 341. Estate of owner for life, &c., when changed into a fee.
- 342, 343. Certain powers create a fee.
- 344. Effect of power to devise inheritance in certain cases.
- 345. Power to dispose of fee.
- 346. Power to revoke.
- 347. Special and beneficial powers, who may take.
- 348. Construction of leasing powers.
- 349. Power to make leases by owner for life.
- 350. Release of such power.

- SECTION 351.** Mortgages by party having power to lease, &c.
 352. Effect thereof.
 353. Special and beneficial powers liable to creditors.
 354. Future beneficial powers.
 355. Trust powers imperative.
 356. Effect of right of selection.
 357, 358. Construction of certain powers.
 359, 360. When court to execute power.
 361. Execution of trust power when compelled by creditors, &c.
 362. Defective execution.
 363. Application of certain sections.

What powers exist.

Sec. 300. Powers, in relation to real property, are those only which are specified in this Title.

Application of this title.

Sec. 301. The provisions of this Title do not extend to a simple power of attorney to convey real property in the name of the owner and for his benefit.

Definition of a power.

Sec. 302. A power, as the term is used in this Title, is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

Terms "author of a power" and "holder of a power" defined.

Sec. 303. The author of a power, as the term is used in this Title, is the person by whom a power is created, whether by grant or devise; and the holder of a power is the person in whom a power is vested, whether by grant, devise or reservation.

Division of powers.

Sec. 304. Powers are general or special, and beneficial or in trust.

Definition of general powers.

Sec. 305. A power is general, when it authorizes the alienation or incumbrance of a fee in the property embraced therein, by grant, will or charge, or any of them, in favor of any person whatever.

Definition of special powers.

Sec. 306. A power is special:

1. When a person or class of persons is designated, to whom the disposition of property under the power is to be made; or,
2. When it authorizes the alienation or incumbrance, by means of a grant, will, or charge, of only an estate less than a fee.

Sec. 307. A power is beneficial when no person other than its holder has, by the terms of its creation, any interest in its execution. Beneficial powers.

Sec. 308. A power is in trust, when any person or class of persons, other than its holder, has, by the terms of its creation, an interest in its execution. Powers in trust.

Sec. 309. A general power is in trust, when any person or class of persons, other than its holder, is designated as entitled to the proceeds of the disposition or charge authorized by the power, or to any portion of the proceeds or other benefits to result from its execution. General powers, when in trust.

Sec. 310. A special power is in trust :

Special powers, when in trust.

1. When the disposition or charge which it authorizes is limited to be made to any person or class of persons, other than the holder of the power; or,

2. When any person or class of persons, other than the holder, is designated as entitled to any benefit from the disposition or charge authorized by the power.

Sec. 311. No person is capable of creating a power, who is not at the same time capable of granting some estate in the property to which the power relates. Who may create power.

Sec. 312. A power may be vested in any person.

To whom power may be given.

Sec. 313. A power may be created only :

How to be created.

1. By a suitable clause, contained in a grant of some estate in the real property to which the power relates, or in an agreement to execute such a grant ; or,

2. By a devise contained in a will.

Sec. 314. The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another ; and every power thus reserved is subject to the provisions of this Title, in the same manner as if granted to another. Reservation of powers in conveyance.

Sec. 315. Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it is given or reserved in the instrument creating the power. When powers irrevocable.

Sec. 316. A power is a lien upon the real property which it embraces, from the time the instrument in which it is contained takes effect; except that against creditors, purchasers When power a lien

and incumbrancers, in good faith and without notice, from **any** person having an estate in such real property, the power is a lien only from the time the instrument in which it is contained is duly recorded.

Power of sale
in mortgage.

Sec. 317. Where a power to sell real property is given to a mortgagee or other incumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in and may be executed by **any** person, who, by assignment or otherwise, becomes entitled to the money so secured to be paid.

Beneficial
powers, &c.,
transferred by
insolvent as-
signments, &c.

Sec. 318. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, passes to the assignees, pursuant to statute, of the estate of a non-resident, absconding, insolvent or imprisoned debtor, or of a person of unsound mind, in whom such a power or interest is vested.

Who to execute
powers.

Sec. 319. A power cannot be executed by any person not capable of disposing of real property.

Married women.

Sec. 320. A married woman may execute a power during her marriage, without the concurrence of her husband, unless otherwise prescribed by the terms of the power.

Id.

Sec. 321. No power can be executed by a married woman before she attains her majority, nor without being acknowledged by her in the manner prescribed by the chapter on RECORDING TRANSFERS.

How executed.

Sec. 322. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner.

Execution by
survivors, &c.

Sec. 323. Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

Execution of
power to dis-
pose by devise.

Sec. 324. Where a power to dispose of real property is confined to a disposition by devise or will, the instrument of execution must be a will duly executed according to the provisions of the Title on WILLS.

Sec. 325. Where a power is confined to a disposition by grant, it cannot be executed by will, even though the disposition is not intended to take effect until after the death of the person executing the power. Execution of power to dispose by grant.

Sec. 326. Where the author of a power has directed or authorized it to be executed by an instrument which would not be sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the rules before prescribed in this Title. Directions by author, when disregarded.

Sec. 327. Where the author of a power has directed any formalities to be observed in its execution, in addition to those which would be sufficient to pass the estate, the observance of such additional formalities is not necessary to a valid execution of the power. Id.

Sec. 328. Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power. Nominal conditions.

Sec. 329. With the exceptions contained in the preceding sections, the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of the district court to supply a defective execution in the cases provided in sections 328 and 362. When directions of author to be observed.

Sec. 330. When the consent of a third person to the execution of a power is requisite, such consent must be expressed in the instrument by which the power is executed, or be certified in writing thereon. In the first case the instrument of execution, in the second, the certificate, must be subscribed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, according to the chapter on RECORDING TRANSFERS. Consent of third person to execution of power.

Sec. 331. Where the consent of several persons to the execution of a power is requisite, all must consent thereto; but, in case any one or more of them is dead, the consent of the survivors is sufficient, unless otherwise prescribed by the terms of the power. Id.

Sec. 332. Every instrument executed by the holder of a power, conveying an estate or creating a charge which such Omission to recite power.

holder would have no right to convey or create except by virtue of his power, is to be deemed a valid execution of the power, even though not recited or referred to therein.

Instruments
deemed convey-
ances.

Sec. 333. Every instrument except a will, in execution of a power, even though the power is one of revocation only, is to be deemed a conveyance within the meaning of the chapter on RECORDING TRANSFERS.

Certain dispo-
sitions not void.

Sec. 334. A disposition or charge, by virtue of a power, more extensive than was authorized thereby, is not therefore void; but every estate or interest so created, so far as it is embraced by the terms of the power, is valid.

Computation of
term of suspen-
sions.

Sec. 335. The period during which the absolute right of alienation may be suspended by an instrument in execution of a power, must be computed, not from the date of the instrument, but from the time of the creation of the power.

What estate
may be given.

Sec. 336. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which could not have been given or limited at the time of the creation of the power.

Married women,
their authority.

Sec. 337. When a married woman, entitled to an estate in fee, is authorized by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate which she might create if unmarried.

Defective
execution.

Sec. 338. Purchasers for a valuable consideration, claiming under a defective execution of a power, are entitled to the same relief as similar purchasers claiming under a defective conveyance from an actual owner.

Fraud.

Sec. 339. Instruments in execution of a power are affected by fraud in the same manner as like instruments executed by owners or trustees.

General and
beneficial
powers to mar-
ried women.

Sec. 340. A general and beneficial power is valid, which gives to a married woman power to dispose, during her marriage, and without the concurrence of her husband, of a present or future estate in real property conveyed or devised to her in fee.

Estate of owner
for life, &c.,
when changed
into a fee.

Sec. 341. Where an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate is changed into a fee, abso-

lute in favor of creditors, purchasers, and incumbrancers, but subject to any future estates limited thereon, in case the power should not be executed, or the property should not be sold for the satisfaction of debts.

Sec. 342. Where an absolute power of disposition, not accompanied by any trust, is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate that may be limited thereon, but absolute in favor of creditors, purchasers, and incumbrancers.

Certain powers create a fee.

Sec. 343. In all cases where an absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the holder of the power, he is entitled to an absolute fee.

Sec. 344. Where a general and beneficial power to devise the inheritance is given to the owner of an estate for life or for years, he is deemed to possess an absolute power of disposition, within the meaning of the last three sections.

Effect of power to devise inheritance in certain cases.

Sec. 345. Every power of disposition is deemed absolute, by means of which the holder is enabled in his lifetime to dispose of the entire fee, in possession or in expectancy, for his own benefit.

Power to dispose of fee.

Sec. 346. Where the grantor in any conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor is still to be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

Power to revoke.

Sec. 347. A special and beneficial power is valid, which is granted:

Special and beneficial powers, who may take.

1. To a married woman, to dispose, during the marriage, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To the owner of a life estate in the property embraced in the power, to make leases for not more than twenty-one years, commencing in possession during his life.

Sec. 348. A special and beneficial power to make leases for not more than twenty-one years given to the owner of a life estate, is void only as to the time beyond twenty-one years, and authorizes leases for that term or less.

Construction of leasing powers.

- Power to make leases by owner for life.** Sec. 349. The power of the owner of a life estate to make leases is not transferable as a separate interest, but is annexed to his estate, and will pass, unless specially excepted, by any grant of such estate. If specially excepted in any such grant, it is extinguished.
- Release of such power.** Sec. 350. The power of the owner of a life estate to make leases may be released by him to any person entitled to a future estate in the property, and is thereupon extinguished.
- Mortgages by party having power to lease, &c.** Sec. 351. A mortgage, executed by the owner of a life estate having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein.
- Effect thereof,** Sec. 352. The effects on the power, of a lien by mortgage such as is mentioned in the last section, are :
1. That the mortgagee is entitled to an execution of the power, so far as the satisfaction of his lien may require it; and,
 2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage in the same manner as if in terms embraced therein.
- Special and beneficial powers liable to creditors.** Sec. 353. Every special and beneficial power is liable to the claims of creditors, in the same manner as other interests that cannot be reached by execution, and the execution of the power may be adjudged for the benefit of the creditors entitled.
- Future beneficial powers.** Sec. 354. No beneficial power, general or special, not already specified and defined in this Title, can hereafter be created.
- Trust powers imperative.** Sec. 355. Every trust power, unless its execution is made expressly to depend on the will of the trustee, is imperative, and imposes a duty on the trustee, the performance of which may be compelled for the benefit of the parties interested.
- Effect of right of selection.** Sec. 356. A trust power does not cease to be imperative, where the trustee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.
- Construction of certain powers.** Sec. 357. Where a disposition under a power is directed to be made to, among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated are entitled in equal propor

Sec. 358. Where the terms of a power import that the estate ^{or fund} is to be distributed among several persons designated, in such manner ^{or proportions} as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others.

Sec. 359. If the trustee of a power, with the right of selec- ^{When court to execute power.} tion, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as objects of the trust.

Sec. 360. Where a power in trust is created by will, and the ^{Id.} testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed, its execution devolves on the district court.

Sec. 361. The execution, in whole or in part, of any trust ^{Execution of trust power, when compelled by creditors, &c.} power, may be adjudged for the benefit of the creditors or assignees of any person entitled, as one of the beneficiaries of the trust, to compel its execution, when his interest is transferable.

Sec. 362. Where the execution of a power in trust is defect- ^{Defective execution.} ive, in whole or in part, under the provisions of this Title, its proper execution may be adjudged in favor of the persons designated as the objects of the trust.

Sec. 363. The provisions of the Title on TRUST, saving the ^{Application of certain sections.} rights of other persons from prejudice by the misconduct of trustees, and authorizing the court to remove and appoint trustees; the provisions of the Title on SUCCESSION, devolving express trusts upon the court, on the death of the trustee; and the provisions of section 299, in the Title on USES AND TRUSTS, apply equally to powers in trust, and the trustees of such powers.

PART III.

PERSONAL OR MOVABLE PROPERTY.

TITLE I. Personal Property in General.

TITLE II. Particular Kinds of Personal Property.

TITLE I.

PERSONAL PROPERTY IN GENERAL.

SECTION 364. By what law governed.

365. Future interests in perishable property, how protected.

By what law governed.

Sec. 364. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Future interests in perishable property, how protected.

Sec. 365. Where one has the present and another the future interest in a thing personal, and the thing is perishable, the latter may require it to be sold, and the proceeds invested, for the benefit of both parties, according to their respective interests; except in case of a thing specially appropriated to a particular use.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER I. Things in action,

II. Shipping.

III. Corporations.

IV. Products of the mind.

V. Other kinds of personal property.

CHAPTER I.

THINGS IN ACTION.

SECTION 366. Things in action defined.

367. Transfer and survivorship.

Sec. 366. A thing in action is a right to recover something by a judicial proceeding. Things in action defined.

Sec. 367. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided by law, it passes to his devisees or successor in office. Transfer and survivorship.

CHAPTER II.

SHIPPING.

ARTICLE I. General provisions.

II. Rules of navigation.

ARTICLE I.

GENERAL PROVISIONS.

SECTION 368. Definition of a ship.

369. Appurtenances and equipments.

370. Foreign and domestic navigation.

371. Foreign and domestic ships distinguished.

372. Several owners.

373. Owner for voyage.

374. Registry, &c.

Sec. 368. A ship is any boat, vessel or structure fitted for navigation. Every kind of ship is included in the term "shipping," and the following provisions relating to ships or shipping, apply to all boats, or structures fitted for navigation, and to the business thereof. Definition of a ship.

Sec. 369. All things, belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances. Appurtenances and equipments.

Sec. 370. Ships are engaged either in foreign or domestic navigation. Ships are engaged in foreign navigation, when passing to or from a foreign country; and in domestic navigation. Foreign and domestic navigation.

tion when passing from place to place within the United States.

Foreign and domestic ships distinguished.

Sec. 371. A ship in a port of the state or territory to which it belongs is called a domestic ship; in another port it is called a foreign ship.

Several owners.

Sec. 372. If a ship belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

owner for the voyage.

Sec. 373. If the owner of a ship commits its possession and navigation to another, that other and not the owner, is responsible for its repairs and supplies.

Registry, enrollment and license.

Sec. 374. The registry, enrollment, and license of ships, are regulated by acts of Congress.

ARTICLE II.

RULES OF NAVIGATION.

SECTION 375. Collisions.

1. Rules as to ships meeting each other.
2. The rule for sailing vessels.
- 3, 4. Rules for steamers in narrow channels.
5. Rules for steam vessels on different courses.
6. Meeting of steamers.

376. Collision from breach of rules.

377. Breaches of such rules to imply willful default.

378. Loss, how apportioned.

Collisions.

Sec. 375. In the case of ships meeting, the following rules must be observed in addition to those prescribed by any statutes of this Territory, which relate to navigation :

Rules as to ships meeting each other.

1. Whenever any ship, proceeding in one direction, meets another ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation ;

2. A steamer when passing another steamer in such channel, must always leave the other upon the larboard side ;

3. When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other.

Rule for steam vessels on different courses.

Sec. 376. If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary.

If collision ensues from breach of the above rules owner not to be entitled to recover.

Sec. 377. Damage to person or property arising from the failure of a ship to observe any rule of section 375, must be deemed to have been occasioned by the willful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

Breaches of such rules to imply willful default

Sec. 378. Losses caused by collision are to be borne as follows :

Loss, how apportioned,

1. If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained ;

2. If neither was in fault, the loss must be borne by him on whom it falls ;

3. If both were in fault the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned ; or,

4. If it cannot be ascertained where the fault lies, the loss must be equally divided.

CHAPTER III.

CORPORATIONS.

ARTICLE I. The creation of corporations.

II. Corporate stock.

III. Corporate powers.

IV. Dissolution of corporations.

ARTICLE I.

THE CREATION OF CORPORATIONS.

SECTION 379. Corporations defined.

380. How created.

381. Reservation of power to repeal.

382. Dealers with a corporation cannot question its corporate existence.

383. Name.

384. Distinction of corporations.

385. Public corporations defined.

386. Private corporations.

387. Charters.

388, 389. Acceptance of charter.

390. Number of corporators.

391. Purposes for which corporations may be formed.

392. Charter to be prepared.

393. Charter of road company.

394. Subscription and acknowledgment.

395. Banking and insurance companies.

396, 397. Petition.

398. Proceedings on petition.

399. Corporation, when formed.

400. Who are corporators.

Corporations
defined.

Sec. 379. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law it may continue for any length of time which the law prescribes.

How created.

Sec. 380. A corporation can only be created by authority of a statute. But the statute may be special for a particular corporation, or general for a number of corporations.

Reservation of
power to
repeal.

Sec. 381. Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislature.

Dealers with a
corporation
cannot question
its corporate
existence.

Sec. 382. One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground that there was in fact no such corporation, until that fact has been adjudged in a direct proceeding for the purpose.

Name.

Sec. 383. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by

law; but the name is to be deemed so far matter of description, that a mistake in the name, in any instrument, may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.

Sec. 384. Corporations are either :

¹ Distinction of corporations.

1. Public; or,
2. Private.

Sec. 385. A public corporation is one that has for its object the government of a portion of the Territory. Such corporations are regulated by local statutes, or by general laws.

Public corporations defined.

Sec. 386. Private corporations are of three kinds :

Private corporations.

1. Corporations for religion;
2. Corporations for benevolence;
3. Corporations for profit.

Sec. 387. The instrument by which a corporation is constituted is called its charter, whether that be a statute, as in case of a special charter, or the document prescribed by a general statute, for the constitution of the corporation.

Charters.

Sec. 388. In order to constitute a private corporation, there must not only be a statutory grant of corporate authority, but an acceptance of that grant by a majority of the corporators, or their agents. The acceptance cannot be conditional or qualified.

Acceptance of charter.

Sec. 389. Except when otherwise expressly provided, the acceptance of a grant of corporate authority may be proved like any other fact.

Id.

Sec. 390. Private corporations may be formed by the voluntary association of three or more persons, for the purposes and in the manner mentioned in the following sections of this article.

Number of corporators.

Sec. 391. The purposes for which the private corporations mentioned in the last section may be formed are :

Purposes for which corporations may be formed

1. The support of public worship;
2. The support of any benevolent, charitable, educational or missionary undertaking;
3. The support of any literary or scientific undertaking; the maintenance of a library; or the promotion of painting, music or other fine arts;

4. The encouragement of agriculture and horticulture;
5. The maintenance of public parks, and of facilities for skating and other innocent sports;
6. The maintenance of a club for social enjoyment;
7. The maintenance of a public or private cemetery;
8. The prevention and punishment of theft or willful injuries to property, and insurance against such risks;
9. The insurance of human life, and dealing in annuities;
10. The insurance of human beings against sickness or personal injury;
11. The insurance of the lives of domestic animals;
12. The insurance of property against marine risks;
13. The insurance of property against loss or injury by fire, or by any risk of inland transportation;
14. The transaction of a banking business;
15. The construction and maintenance of a railway and of a telegraph line in connection therewith;
16. The construction and maintenance of any other species of roads, and of bridges in connection therewith;
17. The construction and maintenance of a bridge;
18. The construction and maintenance of a telegraph line;
19. The establishment and maintenance of a line of stages;
20. The establishment and maintenance of a ferry;
21. The building and navigation of vessels, and carriage of persons and property thereon;
22. The supply of water to the public;
23. The manufacture and supply of gas, or the supply of light or heat to the public by any other means;
24. The transaction of any manufacturing, mining, mechanical or chemical business;
25. The transaction of a printing and publishing business;
26. The establishment and maintenance of an hotel;
27. The erection of buildings, and the accumulation and loan of funds for the purchase of real property; or,
28. The improvement of the breed of domestic animals, by importation, sale or otherwise.

Charter to be
prepared

Sec. 392. A charter must be prepared, setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;

3. The place or places where its business is to be transacted ;

4. The term for which it is to exist ;

5. The number of its directors or trustees, and the names and residences of those who are appointed for the first year ; and,

6. The amount of its capital stock, if any ; and number of shares into which it is divided.

Sec. 393. The charter of a road company must also state : Charter of road company.

1. The kind of road intended to be constructed ;

2. The places from and to which the road is intended to be run ;

3. The counties through which it is intended to be run ; and,

4. The estimated length of the road.

Sec. 394. The charter of an intended corporation must be subscribed by three or more persons, two of whom at least must be citizens of this Territory, and must be acknowledged by them before a commissioner of deeds, or any officer authorized to take acknowledgments. Subscription and acknowledgments.

Sec. 395. The charter of a corporation designed to carry on the business of banking or insurance must be presented to the auditor of the Territory, who must indorse his approval thereon, but may, as a condition thereof, require the name of the corporation to be changed, if it is, in his judgment, likely to mislead the public. Banking and insurance companies.

Sec. 396. A petition must be presented with the charter of an intended corporation, to the county commissioners of the county in which its principal place of business is to be situated, asking that the charter be examined, approved and filed, and an order of incorporation granted. Petition.

Sec. 397. A petition for incorporation must declare the truth of the statement of the charter, and must be subscribed by all the persons who subscribed the charter, and verified by their oaths.

Sec. 398. Upon the presentation of a petition for incorporation, the county commissioners must inquire into the facts ; and if satisfied that the matters stated in the petition are true, Proceedings on petition

and that the proceedings have been had in conformity with the law, an order must be made by the commissioners declaring that the charter is approved, and that upon the filing of the order, charter and petition, the subscribers of the charter shall be a corporation, for the purposes, and upon the terms therein stated.

Corporation,
when formed.

Sec. 399. Upon the filing of the order, charter, and petition, mentioned in the last section, with the register of deeds of the county in which the order was made, and of a duplicate thereof with the Territorial Auditor, the subscribers of the charter are a corporation for the purposes and upon the terms therein stated.

Who are corpo-
rators.

Sec. 400. Except when otherwise provided, a person becomes a corporator in a private corporation, upon the issue of stock to him and his acceptance thereof.

ARTICLE H.

CORPORATE STOCK.

SECTION 401. Subscriptions for stock.

402. Remedies for non-payment of subscription.

403. Issue of stock.

404. Transfers of stock.

405. Over-issue of stock.

406. Purchase of stock by the corporation.

407. Dividend.

Subscriptions
for stock.

Sec. 401. A subscription to the stock of a corporation about to be formed, is to be held for the benefit of the corporation, when it is formed, and may be enforced by it.

Remedies for
non-payment of
subscription.

Sec. 402. When a corporation is authorized by its charter, or by the terms of subscription, to forfeit stock for non-payment, it may either forfeit the stock, or recover the amount of the subscription, but cannot do both.

Issue of stock.

Sec. 403. Stock is issued by placing it in the name of the stockholder upon the books of the corporation; unless the issue of a certificate is required by the charter or by-laws, in which case the stock is issued by the execution and delivery of the certificate.

Sec. 404. A certificate of stock may be transferred like any other personal property; and a transfer on the books of the corporation is not necessary between the parties to the transfer; but a certificate is not a negotiable instrument, and a transfer does not confer greater rights against the corporation than the former holder of the stock possessed.

Transfers of
stock.

Sec. 405. A corporation whose capital is limited by its charter, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed.

overissue of
stock.

Sec. 406. Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock.

Purchase of
stock by the
corporation.

Sec. 407. A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

Dividend.

ARTICLE III.

CORPORATE POWERS.

SECTION 408. General powers.

409, 410. By-laws and other powers.

411. Mode of acting.

412. Meetings and agencies.

413. Meetings of public corporations.

414. Mode of exercising power.

415. General restriction.

416. Exercise of banking powers prohibited.

417. Liability of stockholders.

418. Quorum.

419. Powers of foreign corporations.

420. Their liabilities.

421. Power of colleges, &c., to take property.

422. Power of cities, &c., to take property.

423. Power of school officers to take property.

Sec. 408. Every corporation, by virtue of its existence as such, has the following powers, unless otherwise specially provided:

General powers.

1. To have succession by its corporate name, for the period limited by its charter; and when no period is limited, perpetually; subject to the power of the legislature as hereinbefore declared;

2. To maintain and defend judicial proceedings;
3. To make and use a common seal, and alter the same at pleasure;
4. To hold, purchase and transfer such real and personal property as the purposes of the corporation require, not exceeding the amount limited by its charter;
5. To appoint and remove such subordinate officers and agents, as the business of the corporation requires, and to allow them a suitable compensation;
6. To make by-laws, not inconsistent with the law of the land, for the management of its property, the regulation of its affairs, and transfer of its stock;
7. To admit and remove members; and,
8. To enter into any obligation essential to the transaction of its ordinary affairs.

By-laws and
other powers.

Sec. 409. The by-laws of a corporation are the regulations subordinate to the charter, prescribed for the government of its officers. They must be made by the corporators in general meeting, unless the charter prescribes another body or a different mode.

Id.

Sec. 410. The powers and duties of corporation, the time, place and manner of exercising the corporate powers, the means by which persons may become members or lose membership, the kind and number of officers, and the manner of their appointment or removal, are prescribed by this Code, or by the statutes relating to the corporations respectively, or the by-laws made in pursuance of law.

Mode of acting.

Sec. 411. A corporation may act :

1. By writing, under the corporate seal;
2. By writing, signed by an authorized agent;
3. By resolution of the corporators, directors, or other managing body; or,
4. By an authorized agent.

Meetings and
agencies

Sec. 412. Unless otherwise expressly authorized by its charter, the meetings of the corporators, directors or other managing body of a corporation, must be held within the jurisdiction of the state or Territory by whose authority the corporation was created. It may, however, also have agencies elsewhere.

Sec. 413. The meetings of a public corporation, or of its officers, must be held within the limits of its own jurisdiction. Meetings of public corporations

Sec. 414. Where the law expressly confers power upon a corporation to do an act in a certain mode, its power is confined to the mode prescribed. Mode of exercising power.

Sec. 415. Besides the powers and duties specified in this chapter, and such others as are expressly conferred by statute, or may be necessary to the exercise of the powers so conferred, a corporation has no other power. General restriction.

Sec. 416. No corporation, unless it is expressly incorporated for banking purposes, possesses the power of discounting bills, notes or other evidences of debt, of receiving deposits, of buying gold and silver bullion or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money. Exercise of banking powers prohibited.

Sec. 417. When the whole capital of a corporation is not paid in, and the capital paid is insufficient to satisfy the claims of its creditors, each stockholder is bound to pay, on each share held by him, the sum necessary to complete the amount of such share as fixed by the charter, or such proportion of that sum as is required to satisfy the debts of the corporation. Liability of stockholders.

Sec. 418. When the corporate powers of a corporation are directed by its charter to be exercised by any particular body, or number of persons, a majority of such body, or persons, if not otherwise provided by the charter, is a sufficient number to form a board for the transaction of business. Such board must be convened in the mode prescribed by the charter or by-laws, or by notice to all the members thereof within the Territory; and every decision of a majority of the persons thus duly assembled as a board, is as valid as if made by all. Quorum.

Sec. 419. A foreign corporation can perform no act in this Territory, which is forbidden by the laws or is contrary to the policy of the Territory. Powers of foreign corporations.

Sec. 420. Every act of a foreign corporation done in this Territory is subject to its laws, and the corporation itself may be sued in the manner prescribed by the CODE OF CIVIL PROCEDURE. Their liabilities.

Power of
colleges, &c.,
to take
property.

Sec. 421. Any corporation, being a college or other literary institution of this Territory, may take and hold property, both real and personal, subject to such conditions and visitations as may be prescribed by the donor, and agreed to by the corporation, in trust for any of the following purposes :

1. To establish and maintain an observatory ;
2. To found and maintain professorships and scholarships ;
3. To provide and keep in repair a place for the burial of the dead ; or,
4. For any other specific purpose comprehended in the general objects authorized by its charter.

Power of cities
to take
property.

Sec. 422. The corporation of any city or village of this Territory may take and hold property, both real and personal, subject to such conditions as may be prescribed by the donor, and agreed to by the corporation, in trust for any purpose of education, or for the diffusion of knowledge, or for the relief of distress, or for fire-engine houses, reservoirs, or public docks, or for parks, gardens, or other grounds for health and recreation, or for ornament or military exercise and parade, within or near such incorporated city or village.

Power of
school officers
to take
property.

Sec. 423. The school commissioners of any town, and the trustees of any school district, may take and hold property, both real and personal, in trust for the benefit of the schools of the town or district, and for such purposes are to be deemed corporations.

ARTICLE IV.

DISSOLUTION OF CORPORATIONS.

- SECTION 424.** How dissolved.
425. Forfeiture for non-user.
 426. Trustees in case of dissolution.
 427. Their powers.
 428. Revival.

How dissolved.

Sec. 424. A corporation is dissolved :

1. By the expiration of the time limited by its charter ; or,
2. By a judgment of dissolution, in the manner provided by the CODE OF CIVIL PROCEDURE, or by statute.

Sec. 425. If any corporation hereafter created is not organized, and engaged in the transaction of business, within one year from the date of its incorporation, its dissolution may be adjudged; unless a different time within which its business must be commenced, is fixed by law. Forfeiture for non-user.

Sec. 426. Upon the dissolution of any corporation, unless other persons are appointed by the legislature, or by some court of competent authority, its directors, trustees or managers, at the time of its dissolution, become the trustees of the creditors and stockholders of the corporation dissolved, and have power to settle its affairs, collect and pay debts, and divide among the stockholders the property that remains after the payment of debts and necessary expenses; and for this purpose may maintain or defend any judicial proceeding. Trustees in case of dissolution.

Sec. 427. The trustees mentioned in the last section are jointly and severally responsible to the creditors and stockholders of the corporation, to the extent of its property in their hands. Their powers.

Sec. 428. A corporation once dissolved can be revived only by the same power by which it could be created. Revival.

CHAPTER IV.

PRODUCTS OF THE MIND.

SECTION 429. How far the subject of ownership.

430. Joint authorship,

431. Transfer.

432. Effect of publication.

433. Subsequent inventor, author, &c.

434. Private writings.

Sec. 429. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product, and the representations or expressions thereof made by him, remain in his possession. How far the subject of ownership.

Joint
authorship.

Sec. 430. Unless otherwise agreed, a product of the mind, in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions; or,
2. If it is not single, in proportion to the contribution of each.

Transfer.

Sec. 431. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

Effect of
publication.

Sec. 432. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this Territory is concerned.

Subsequent
inventor,
author, &c.

Sec. 433. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing, has the same right therein as the prior author, which is exclusive to the same extent, against all persons except the prior author, or those claiming under him.

Private
writings.

Sec. 434. Letters, and other private communications in writing, belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER V.

OTHER KINDS OF PERSONAL PROPERTY.

SECTION 435. Trade marks and signs.

436, 437. Good will of business.

438. Title deeds.

Trade marks
and signs.

Sec. 435. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade-mark, any form, symbol or name, which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation or part of a designation, which relates only to the name, quality or description of the thing or business.

Sec. 436. The good will of a business is the expectation of ^{Good will of business.} continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

Sec. 437. The good-will of a business is property, transfer-^{able} like any other.

Sec. 438. Instruments essential to the title of real proper-^{Title deals.} ty, and which are not kept in a public office as a record pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

PART IV.

ACQUISITION OF PROPERTY.

TITLE I. Modes in which property may be acquired.

II. Occupancy.

III. Accession.

IV. Transfer.

V. Will.

VI. Succession.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

Sec. 439. Property is acquired by

1. Occupancy ;
2. Accession ;
3. Transfer ;
4. Will ; or,
5. Succession.

TITLE II.

OCCUPANCY.

SECTION 440. Simple occupancy.

441. Prescription.

Simple occu-
pancy.

Sec. 440. Occupancy for any period confers a title sufficient against all except the Territory and those who have title by prescription, accession, transfer, will or succession.

Prescription.

Sec. 441. Occupancy for the period prescribed by the CODE OF CIVIL PROCEDURE, or any law of this Territory as sufficient to bar an action for the recovery of the property, confers a title thereto, denominated a title by prescription, which is sufficient against all.

TITLE III.

ACCESSION.

CHAPTER I. To real property.

II. To personal property.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

SECTION 442. Fixtures.

443. Alluvion.

444. Sudden removal of bank.

445. Islands, in navigable streams.

446. In unnavigable streams.

447. Islands formed by division of stream.

448. Abandoned bed of stream.

Fixtures.

Sec. 442. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it.

Sec. 443. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material, or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

Alluvion.

Sec. 444. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it, within a year after the owner of the land to which it has been united takes possession thereof.

Sudden removal of bank.

Sec. 445. Islands, and accumulations of land, formed in the beds of streams which are navigable, belong to the Territory, if there is no title or prescription to the contrary.

Islands in navigable streams.

Sec. 446. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

Islands in streams not navigable.

Sec. 447. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

Islands formed by division of streams.

Sec. 448. If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the owners of the land newly occupied take, by way of indemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived.

Abandoned bed of stream.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

SECTION 449. Accession by uniting several things.

450, 451. Principal part, what.

452. Uniting materials and workmanship.

453. Inseparable materials.

454. Materials of several owners.

SECTION 455. Willful trespassers.

456. Owner may elect between the thing and its value.

457. Wrongdoer liable in damages.

Accession by
uniting several
things.

Sec. 449. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

Principal part,
what.

Sec. 450. That part is to be deemed the principal, to which the other has been united only for the use, ornament or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

1d.

Sec. 451. If neither part can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

uniting materials and
workmanship.

Sec. 452. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

Inseparable
materials.

Sec. 453. Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

Materials of
several owners.

Sec. 454. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner, without whose consent the admixture was made, may require a separation, if the

materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

Sec. 455. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced. Willful trespassers.

Sec. 456. In all cases where one, whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material, in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product. Owner may elect between the thing and its value.

Sec. 457. One who wrongfully employs materials belonging to another, is liable to him in damages, as well as under the foregoing provisions of this chapter. Wrongdoer liable in damages.

TITLE IV.

TRANSFER.

CHAPTER I. Transfer in general.

II. Transfer of real property.

III. Transfer of personal property.

IV. Recording transfers.

V. Unlawful transfers.

CHAPTER I.

TRANSFER IN GENERAL.

ARTICLE I. Definition of transfer.

II. What may be transferred.

ARTICLE III. Mode of transfer.

IV. Interpretation of grants.

V. Effect of transfer.

ARTICLE I.

DEFINITION OF TRANSFER.

SECTION 458. Transfer, what.

459. Transfer a contract.

Transfer, what. Sec. 458. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

Transfer a contract. Sec. 459. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

SECTION 460. What may be transferred.

461. Possibility.

462. Right of entry.

What may be transferred. Sec. 460. Property of any kind may be transferred, except as otherwise provided by this article.

Possibility. Sec. 461. A mere possibility, not coupled with an interest, cannot be transferred.

Right of entry. Sec. 462. A mere right of re-entry, or of repossession for breach of a condition subsequent, cannot be transferred to any one except the owner of the property affected thereby.

ARTICLE III.

MODE OF TRANSFER.

SECTION 463. When oral.

464. Grant, what.

SECTION 465. Delivery necessary.

466. Date.

467. Delivery to grantee is necessarily absolute.

468. Delivery in escrow.

469. Surrendering or canceling grant.

470. Constructive delivery.

471. When voluntary settlement takes effect.

Sec. 463. A transfer may be made without writing, in every case in which a writing is not expressly required by statute. When oral.

Sec. 464. A transfer in writing is called a grant. Grant, what.

Sec. 465. A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor. Delivery necessary.

Sec. 466. A grant duly executed is presumed to have been delivered at its date. Date.

Sec. 467. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made. Delivery to grantee is necessarily absolute.

Sec. 468. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. Delivery in escrow.

Sec. 469. Redelivering a grant of real property to the grantor, or concealing it, does not operate to transfer the title. Surrendering or cancelling grant.

Sec. 470. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases: Constructive delivery.

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown or may be presumed.

Sec. 471. A grant made as a mere gratuity takes effect upon its execution, even though the grantor retains its possession, unless a contrary intention appears. When voluntary settlement takes effect.

ARTICLE IV.

INTERPRETATION OF GRANTS.

- SECTION 472. Grants, how interpreted.
 473. Limitations, how controlled.
 474. Recitals, when resorted to.
 475. Interpretation against grantor.
 476. Irreconcilable provisions.
 477. Meaning of "heirs" and "issues" in certain remainders.
 478. Words of inheritance, unnecessary.

Grants, how interpreted.	Sec. 472. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided by this article.
Limitations, how controlled.	Sec. 473. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.
Recitals, when resorted to.	Sec. 474. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.
Interpretation against grantor.	Sec. 475. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.
Irreconcilable provisions.	Sec. 476. If several parts of a grant are absolutely irreconcilable, the former part prevails.
Meaning of "heirs" and "issue" in certain remainders.	Sec. 477. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words; such words must be taken to mean successors or issue living at the death of the person named as ancestor.
Words of inheritance unnecessary.	Sec. 478. Words of inheritance or succession are not requisite to transfer a fee in real property.

ARTICLE V.

EFFECT OF TRANSFER.

- SECTION 479. What title passes.
 480. What interests affected.

SECTION 481. Incidents.

482. Grant may inure to benefit of stranger.

Sec. 479. A transfer vests in the transferee all the actual ^{What title passes.} title to the thing transferred which the transferrer then has, unless a different intention is expressed or is necessarily implied, and no more, except in the cases specified in sections 480, 499, 1745 and 1773.

Sec. 480. A transfer cannot affect any interest of the transferrer, which he does not own when it is made; but, if it is made with a covenant, neither the transferrer nor any person claiming under him can be permitted to take in contravention of the covenant. ^{What interests affected.}

Sec. 481. The transfer of a thing transfers also all its incidents ^{Incidents.} unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

Sec. 482. A present interest, and the benefit of a condition ^{Grant may inure to benefit of stranger.} or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

ARTICLE I. Mode of transfer.

II. Effect of transfer.

ARTICLE I.

MODE OF TRANSFER.

SECTION 483. Requisites to convey certain estates.

484. Grants in fee or of freeholds, how executed; when to take effect.

485. Form of grant.

486. Grant by married woman must be acknowledged.

487. Livery of seizin.

Requisites to
convey certain
estates.

Sec. 483. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent, thereunto authorized by writing.

Grants in fee,
or of freeholds
how executed;
when to take
effect.

Sec. 484. A grant of an estate in real property, other than an estate for years or at will, must be sealed by the grantor or his agent; and if not duly acknowledged, previous to its delivery, according to the provisions of chapter IV of this Title, its subscription and seal must be attested by at least one witness; or if not so attested, it has no effect as against a subsequent purchaser or incumbrancer, or those claiming under him, until so acknowledged,

Form of grant.

Sec. 485. A grant of an estate in real property may be made, in substance, as follows:

“This grant, made the ...day of, in the year, between A. B., of, of the first part, and C. D., of, of the second part, witnesseth:

“That the party of the first part hereby grants to the party of the second part, in consideration of dollars, now received, all the real property situated in, and bounded

“Witness the hand and seal of the party of the first part.

“A. B. [SEAL.]”

Grant by mar-
ried women
must be
acknowledged.

Sec. 486. No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her within this Territory, unless the grant is acknowledged by her in the manner prescribed by section 521.

Livery of
Seizin.

Sec. 487. The mode formerly in use, of conveying lands by feoffment, with livery of seizin, is abolished.

ARTICLE II.

EFFECT OF TRANSFER.

SECTION 488. What easements pass with property.

489. No implied covenants in grants.

490. How far conclusive on purchasers.

491. Grants by owners for life or for years.

SECTION 492. Title to highway.

493. Attornment by tenant unnecessary.

494. Lineal and collateral warranties.

Sec. 488. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent, as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed. What easements pass with property.

Sec. 489. No covenant is implied in any grant of an estate in real property, whether it contains special covenants or not, except as provided by the Title on *HIRING*. No implied covenants in grants.

Sec. 490. Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who, in good faith, and for a valuable consideration, acquires a superior title or lien by an instrument that is first duly recorded. How far conclusive on purchasers.

Sec. 491. A grant, made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. Conveyances for life or for years.

Sec. 492. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front thereof. Title to highway.

Sec. 493. When real property is occupied by a tenant, a grant of any estate therein, by his landlord, is valid without an attornment of the tenant to the grantee; but the payment of rent to such grantor, by his tenant, before notice of the grant, is binding upon the grantee; and the tenant is not liable to the grantee for any breach of the condition of the lease, until he has had notice of the grant. Attornment by tenant, when unnecessary. Liabilities of tenant.

Sec. 494. Lineal and collateral warranties, with all their incidents, and all the incidents of feudal tenures, not expressly retained by this Code, are abolished. The liability of those who acquire the real property of a decedent, by will or succession, is regulated by the CODE OF CIVIL PROCEDURE, or by statute. Lineal and collateral warranties.

CHAPTER III.

TRANSFERS OF PERSONAL PROPERTY.

ARTICLE I. Mode of transfer.

II. What operates as a transfer.

III. Gifts.

ARTICLE I.

MODE OF TRANSFER.

SECTION 495. When must be in writing.

496. Transfer by sale, &c.

When must be
in writing.

Sec. 495. An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

Transfer by
sale, &c.

Sec. 496. The mode of transferring other personal property by sale, is regulated by the Title on that subject in the Third Division of this Code.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

SECTION 497. Transfer of title under sale.

498. Transfer of title under executory agreement for sale.

499. When buyer acquires better title than seller has.

Transfer of
title under sale.

Sec. 497. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

Transfer of
title under
executory
agreement
for sale.

Sec. 498. Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent

to transfer the title thereto, in the manner prescribed by the chapter upon OFFER OF PERFORMANCE.

Sec. 499. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind the transfer made by him. When buyer acquires better title than seller has

ARTICLE III.

GIFTS.

SECTION 500. Gifts defined.

- 501. Gift, how made.
- 502. Gift not revocable.
- 503. Gift in view of death, what.
- 504. When gift presumed to be in view of death.
- 505. Revocation of gift in view of death.
- 506. Effect of will upon gift.
- 507. When treated as legacy.

Sec. 500. A gift is a transfer of personal property, made voluntarily and without consideration. Gifts defined.

Sec. 501. A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee. if, how made.

Sec. 502. A gift, other than a gift in view of death, cannot be revoked by the giver. Gift not revocable.

Sec. 503. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver. Gift in view of death, what.

Sec. 504. A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death. When gift presumed to be in view of death.

Revocation of
gift in view
of death.

Sec. 505. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time.

Effect of will
upon gift.

Sec. 506. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

When treated
as a legacy.

Sec. 507. A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE I. What may be recorded.

II. Mode of recording.

III. Proof and acknowledgment of instruments.

IV. Effect of recording or of the want thereof.

ARTICLE I.

WHAT MAY BE RECORDED.

SECTION 508. Instruments affecting real property.

509. Instruments must be acknowledged.

510. When deed to be recorded.

511. Transfers of personal property, &c.

Instruments
affecting real
property.

Sec. 508. Any instrument or judgment, affecting the title to real property, may be recorded under this chapter.

Instruments
must be
acknowledged.

Sec. 509. Before an instrument may be recorded, its execution must be acknowledged by the person executing it, or proved by a subscribing witness, and the acknowledgment or proof certified in the manner prescribed by article III of this chapter.

When deed to
be recorded.

Sec. 510. An instrument, proved and certified pursuant to sections 524 and 525, may be recorded in the proper office, if

the original is at the same time deposited therein to remain for public inspection, but not otherwise.

Sec. 511. Transfers of property in trust for the benefit of creditors, and transfers of or liens on property, by way of mortgage, are required to be recorded in the cases specified in the Title on special relations of DEBTOR and CREDITOR, and the chapter on MORTGAGES, respectively.

Transfers of
personal
property, &c.

ARTICLE II.

MODE OF RECORDING.

SECTION 512. In what office.

513. Books of record.

514. Duties of register, &c.

515. Transfers of vessels.

Sec. 512. Instruments recorded under this chapter, must be recorded with the register of deeds, of the county in which the real property affected thereby is situated.

In what office.

Sec. 513. Grants, absolute in terms, and not intended as mortgages, or as securities in the nature of mortgages, are to be recorded in one set of books, and mortgages and securities in another.

Books of record.

Sec. 514. The duties of registers of deeds, in respect to recording instruments, are prescribed by statute.

Duties of
clerk, &c.

Sec. 515. The mode of recording transfers of vessels, registered under the laws of the United States, is regulated by acts of Congress.

Transfers of
vessels.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

SECTION 516, 517. By whom acknowledgments may be taken in this territory.

518. By whom taken, without the territory.

SECTION 519. By whom taken, without the United States.

520. Requisites for acknowledgments.

521. Requisites for acknowledgments when made by married women.

522. Id.

523. Proof by subscribing witnesses.

524. Proof of deed when witnesses are dead.

525. What proof to be made and certified.

526. Certificate of acknowledgment.

527, 528, 529. Certificate of officers, authority.

By whom
acknowledg-
ments may be
taken in this
territory.

Sec. 516. The proof or acknowledgment of an instrument may be made at any place within this Territory, before a judge of the district court, or of the supreme court.

14.

Sec. 517. The proof or acknowledgment of an instrument may be made, in this Territory, within the city or county for which the officer was appointed, before :

1. A judge of a court of record ;
2. A mayor or recorder of a city ;
3. A justice of the peace ;
4. A commissioner of deeds ;
5. A notary public ; or,
6. A probate judge.

By whom
taken, without
the territory,

Sec. 518. The proof or acknowledgment of an instrument may be made without the Territory, but within the United States, and within the jurisdiction of the officer, before :

1. A judge of the supreme court, or of a district court, of the United States ;
2. A judge of the supreme, superior or circuit court, of any state or Territory ;
3. The mayor of any city ;
4. Any other officer of the state or Territory where the acknowledgment is made, authorized by its laws to take the proof or acknowledgment ; or,
5. A commissioner appointed for the purpose by the government of this Territory, pursuant to special statutes of this Territory.

By whom taken
without the
United States.

Sec. 519. The proof or acknowledgment of an instrument may be made without the United States, before :

1. A minister plenipotentiary, or minister extraordinary, or

chargé d'affaires, of the United States, resident and accredited in the country where the proof or acknowledgment is made ;

2. A consul of the United States resident in that country ;

3. A judge of the highest court of any of the British American provinces, acting in his own jurisdiction ; or,

4. The mayor or chief magistrate of any city in the British islands, acting in his own jurisdiction.

Sec. 520. The acknowledgment of an instrument cannot be taken, unless the officer taking it knows, or has satisfactory evidence, that the person making such acknowledgment is the individual who is described in and who executed the instrument.

Requisites for acknowledgments.

Sec. 521. The acknowledgment of a married woman to an instrument, purporting to be executed by her, cannot be taken within this Territory, unless she acknowledges to the officer, on a private examination, apart from her husband, that she executed such instrument freely, and without any compulsion or fear of her husband.

Acknowledgments by married women.

Sec. 522. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner, except as mentioned in the last section.

Sec. 523. The proof of the execution of an instrument must be made by a subscribing witness thereto, who must state his own place of residence, and that he knew the person who is described in and who executed the instrument ; and such proof must not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the subscribing witness to the instrument.

Proof by subscribing witness.

Sec. 524. When all the witnesses to an instrument which might be recorded are dead, it may be proved before any officer mentioned in sections 517, 518 or 519, other than commissioners of deeds, justices of the peace, notaries public and probate judge.

Proof of deed when witnesses are dead.

Sec. 525. The proof of the execution of an instrument, in the case mentioned in the last section, must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or of one of them, and of the grantor ; all which evidence must be set forth by the officer taking the same, in his certificate of the proof.

What proof to be made and certified.

Certificate of
acknowledg-
ment.

Sec. 526. An officer taking the acknowledgment or proof of any instrument must indorse upon the instrument a certificate thereof, signed by himself personally, setting forth all the matters required by law to be done or known by him, or proved before him, on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their evidence.

Certificate of
officer's
authority.

Sec. 527. A certificate of proof or acknowledgment before any officer in this Territory other than a judge of a court of record, when used in any county other than that in which he resides, must be accompanied by a certificate, under the hand and seal of the register of deeds of the county in which the officer resides, setting forth that such officer, at the time of taking such proof or acknowledgment, was duly authorized to take the same, and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

14.

Sec. 528. When an instrument is proved or acknowledged before one of the officers mentioned in subdivision 4 of section 518, the certificate of such officer must be accompanied by a certificate under the name and official seal of the clerk, register, recorder or prothonotary, of the county in which such officer resides, or of the county or district court or court of common pleas thereof, specifying that such officer was, at the time of taking the proof or acknowledgment, duly authorized to take the same, and that such clerk, register, recorder or prothonotary, is acquainted with the handwriting of the officer, and believes his signature to be genuine.

14.

Sec. 529. When an instrument is proved or acknowledged before one of the commissioners mentioned in subdivision 5 of section 518, the certificate of such commissioner must be accompanied by the certificate of the secretary of this Territory, attesting the existence of the officer, and the genuineness of his signature; and such commissioner can only act within the city or county in which he resided at the time of his appointment.

ARTICLE IV.

EFFECT OF RECORDING, OR THE WANT THEREOF.

SECTION 530. Conveyances to be recorded.

531. Conveyance, what.

532. Letter recorded, how revoked.

533. Effect of recording and deposit.

534. Certain leases not affected.

Sec. 530. Every conveyance of real property, other than a lease for a term not exceeding three years, is void as against any subsequent purchaser or incumbrancer (including an assignee of a mortgage, lease, or other conditional estate) of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Conveyances
to be recorded.

Sec. 531. The term "conveyance," as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered, or by which the title to any real property may be affected; except wills, executory contracts for the sale or purchase of real property, and powers of attorney.

Conveyance,
what.

Sec. 532. No instrument containing a power to convey real property, which has been recorded, is to be deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

Letter recorded,
how revoked.

Sec. 533. The recording and deposit of an instrument proved and certified according to the provisions of sections 510, 524 and 525 are constructive notice of the execution of such instrument to all purchasers and incumbrancers subsequent to the recording; but the proof, recording and deposit do not entitle the instrument or the record thereof, or the transcript of the record, to be read in evidence.

Effect of
recording and
deposit.

Sec. 534. The provisions of this chapter do not extend to leases existing at the time of the adoption of this Code.

Certain leases
not affected.

CHAPTER V.

UNLAWFUL TRANSFERS.

SECTION 535. Certain instruments void against purchasers, &c.

536. Not void against purchaser having notice, unless fraud is mutual.

537, 538. Power to revoke when deemed executed.

539. Purchaser in good faith, not affected.

540. Conveyance of land adversely possessed.

541. Other provisions.

Certain instruments void against purchasers, &c.

Sec. 535. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, rents or profits.

Not void against purchasers having notice, unless fraud is mutual.

Sec. 536. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made, was privy to the fraud intended.

Power to revoke, when deemed executed.

Sec. 537. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property is reserved to the grantor, or given to any other person, a subsequent grant of or charge upon the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

Id.

Sec. 538. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

Purchaser in good faith not affected.

Sec. 539. The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this chapter.

Sec. 540. Every grant of real property, other than one made by the Territory, or under a judicial sale, is void, if at the time of the delivery thereof, such real property is in the actual possession of a person claiming under a title adverse to that of the grantor.

Conveyance
of land adverse-
ly possessed.

Sec. 541. Other provisions concerning unlawful transfers are contained in Part II of the Fourth Division of this Code, concerning the special relations of DEBTOR and CREDITOR.

other
provisions.

TITLE V.

WILL.

CHAPTER I. Execution and revocation of wills.

II. Interpretation of wills.

III. General provisions relating to wills.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

SECTION 542. Who may make will.

543. Monomaniac incompetent.

544. Will procured by fraud, &c.

545. What may pass by will.

546. Who may take by will.

547. Nuncupative will.

548. Mutual will.

549. Conditional will.

550. Written will, how to be executed.

551. Nuncupative will, how to be executed.

552. Witness to add residence.

553. Republication by codicil.

554. Will made out of this territory.

555. Will not duly executed. void.

556. Subsequent change of domicil.

557. Wills may be deposited for safe keeping.

558. To whom to be delivered.

559. Will, when to be opened by surrogate.

560. Lost or destroyed will.

SECTION 561. Written will, how revoked.

- 562. Evidence of revocation.
- 563. Revocation by obliteration on face of will.
- 564. Revocation of duplicate.
- 565. Revocation by subsequent will.
- 566. Revocation of subsequent will does not revive the first.
- 567. Revocation by marriage and birth of issue.
- 568. Revocation of woman's will by marriage.
- 569. Contract of sale not a revocation.
- 570. Charge or incumbrance not a revocation.
- 571. Conveyance when not a revocation.
- 572. When it is a revocation.
- 573. Revocation of codicils.
- 574. Afterborn child, unprovided for, to succeed.
- 575. Devises and bequests in certain cases not to lapse.
- 576. Witness to will, cannot take under will.
- 577. When witness may succeed.
- 578. Creditor a competent witness.

Who may
make will.

Sec. 542. Every male person of the age of eighteen years or upwards, and every female of the age of sixteen years or upwards, of sound mind, and no others, may dispose of real and personal property, by a will duly executed, according to the provisions of this Code.

Monomaniac
incompetent.

Sec. 543. A person having any insane delusion is incompetent to make a will.

Will procured
by fraud, &c.

Sec. 544. A will or part of a will procured to be made by duress, menace, fraud or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

What may pass
by will.

Sec. 545. Every estate and interest in real or personal property, to which heirs, husband, widow or next of kin might succeed, may be disposed of by will.

Who may
take by will.

Sec. 546. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by its charter or by statute so to take.

Nuncupative
will.

Sec. 547. A nuncupative will of real or personal property, or both, is valid, when made in contemplation, fear or peril of death:

1. By a soldier, while in actual military service, whether he is an officer or private, or a surgeon, or a servant of the army; or,

2. By a sailor (whether he is an officer or surgeon, a marine or mariner, or a servant of the vessel), after he finally goes on board the vessel for the voyage, and before he comes on shore, in port, after the voyage is over.

Sec. 548. A conjoint or mutual will is valid, but it may be Mutual will. revoked by any of the testators, in like manner with any other will.

Sec. 549. A will, the validity of which is made by its own Conditional will. terms conditional, may be denied probate, according to the event, with reference to the condition.

Sec. 550. Every will, other than a nuncupative will authorized by section 547, must be executed and attested as follows: Written will, how to be executed.

1. It must be subscribed at the end thereof, by the testator himself, or by some person in his presence and by his direction;

2. The subscription must be made in the presence of each of the attesting witnesses, or be acknowledged by the testator to each of them, to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request.

Sec. 551. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. Nuncupative will, how to be executed.

Sec. 552. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. Witness to add residence.

Sec. 553. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil. Republishing by codicil.

Will made out
of this territory.

Sec. 554. A will of real or personal property, or both, or a revocation thereof, made out of this Territory by a person not having his domicil in this Territory, is as valid, when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this Territory, and according to the provisions of this chapter.

Will not duly
executed, void.

Sec. 555. No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

Subsequent
change of
domicil.

Sec. 556. Whenever a will, or a revocation thereof, is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicil to a place, by the law of which such will would be void.

Wills may be
deposited for
safe keeping.

Sec. 557. Every probate judge must deposit, in his office, any will delivered to him for that purpose, and give a written receipt to the depositor; and must inclose such will in a sealed wrapper, so that it cannot be read, and indorse thereon the name of the testator, his residence, and the date of the deposit; and such wrapper must not be opened until its delivery under the provisions of the next section.

To whom to be
delivered.

Sec. 558. A will deposited under the provisions of the last section must be delivered only:

1. To the testator in person;
2. Upon his written order, duly proved by the oath of a subscribing witness;
3. After his death, to the person, if any, named in the indorsement on the wrapper of the will; or,
4. If there is no such indorsement, and if the will was not deposited with the probate judge having jurisdiction of its probate, then to the probate judge who has jurisdiction.

Will, when to
be opened by
surrogate.

Sec. 559. The probate judge with whom a will is deposited, or to whom it is delivered, must, after the death of the testator, publicly open and examine the will and file it in his office, there

to remain until duly proved, or deliver it to the probate judge having jurisdiction of its probate.

Sec. 560. A lost or destroyed will of real or personal property, or both, may be established in the cases provided in the CODE OF CIVIL PROCEDURE, or any act in force, on that subject. Lost or destroyed will.

Sec. 561. Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered, otherwise than : Written will, how revoked.

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Sec. 562. When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses. Evidence of revocation.

Sec. 563. A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but where, in order to effect a new disposition, the testator attempts to revoke a provision of the will, by altering or oblitterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected. Revocation by obliteration on face of will.

Sec. 564. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates. Revocation of duplicate.

Sec. 565. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will. Revocation by subsequent will.

Sec. 566. If, after making a will, the testator duly makes and executes a subsequent will, the destruction, canceling or revocation of the latter does not revive the former, unless it appears by the terms of such revocation that it was his inten- Revocation of subsequent will does not revive the first.

tion to revive the prior will, or unless after such destruction, canceling or revocation, he duly republishes the prior will.

Revocation by marriage and birth of issue.

Sec. 567. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is to be deemed revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Revocation of woman's will by marriage.

Sec. 568. A will executed by an unmarried woman is revoked by her subsequent marriage.

Contract of sale not a revocation.

Sec. 569. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Charge or incumbrance not a revocation.

Sec. 570. A charge or incumbrance upon any real or personal property, for the purpose of securing the payment of money, or the performance of any other obligation, is not a revocation of a will relating to the same property, previously executed; but the dispositions made by the will take effect subject thereto.

Conveyance, when not a revocation.

Sec. 571. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

when it is a revocation.

Sec. 572. If the instrument, by which an alteration is made in the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency, by reason of which they do not take effect.

Sec. 573. The revocation of a will revokes all its codicils. Revocation of codicils.

Sec. 574. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property, that he would have succeeded to if the testator had died intestate. After-born child, unprovided for, to succeed.

Sec. 575. Whenever any real or personal property is disposed of by will to a descendant or a brother or sister of the testator, and such legatee or devisee dies during the lifetime of the testator, leaving a successor who survives the testator, such disposition does not lapse, but the thing so disposed of vests in the surviving successors of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate. Devisees and bequests, in certain cases not to lapse.

Sec. 576. If a person is an attesting witness to the execution of a will wherein any beneficial devise, legacy, interest or power of appointment of any real or personal property, is made to such witness, and the will cannot be proved without his testimony, the devise, legacy, interest or power is void so far only as concerns such witness, or any one claiming under him, and the witness is competent to prove the execution of the will. Witness to will cannot take under will.

Sec. 577. An attesting witness to a will, without whose testimony it cannot be proved, and who would have been entitled to a share of the testator's estate in case the will had not been established, succeeds to the same portion of the testator's estate that he would have succeeded to if the testator had died intestate, not exceeding the value of the devise or bequest to him in the will. When witness may succeed.

Sec. 578. A creditor, whose debt is by a will charged upon property, is not thereby disqualified as a witness to prove the execution of the will. Creditor a competent witness.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

- SECTION 579.** Testator's intention to be carried out.
- 580. Intention to be ascertained from the will.
 - 581. Rules of interpretation.
 - 582. Several instruments are to be taken together.
 - 583, 584, 585. Harmonizing various parts.
 - 586. Words taken in ordinary sense.
 - 587. Words to receive an operative construction.
 - 588. Intestacy to be avoided.
 - 589. Effect of technical words.
 - 590. Technical words not necessary.
 - 591. Certain words not necessary to pass a fee.
 - 592. Power to devise, how executed by terms of will.
 - 593. Devise or bequest of all real or all personal property, or both.
 - 594, 595. Residuary clause.
 - 596. "Heirs," "relatives," "issue," "descendants," &c.
 - 597. Words of donation and of limitation.
 - 598. To what time words refer.
 - 599. Devise or bequest to a class.
 - 600. When conversion takes effect.
 - 601. When child born after testator's death takes under will.
 - 602. Mistakes and omissions.
 - 603. When devises and bequests vest.
 - 604. When cannot be divested.
 - 605. Death of devisee or legatee.
 - 606. Interests in remainder are not affected.
 - 607. Conditional devises and bequests.
 - 608. Condition precedent, what.
 - 609. Effect of condition precedent.
 - 610. Conditions precedent, when deemed performed.
 - 611. Conditions subsequent, what.
 - 612. Devisees, &c., take as tenant in common.
 - 613. Advancements when ademption.

Testator's
intention to be
carried out.

Sec. 579. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

Sec. 580. In case of uncertainty, arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made; exclusive of his oral declarations.

Intention to be ascertained from the will.

Sec. 581. In interpreting a will, subject to the laws of this Territory, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

Rules of interpretation.

Sec. 582. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Several instruments to be taken together.

Sec. 583. All the parts of a will are to be construed in relation to each other, and so as if possible to form one consistent whole, but where several parts are absolutely irreconcilable, the latter must prevail.

Harmonising various parts.

Sec. 584. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

Id.

Sec. 585. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

Id.

Sec. 586. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Words taken in ordinary sense.

Sec. 587. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which shall render any of the expressions inoperative.

Words to receive an operative construction.

Sec. 588. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Intestacy to be avoided.

Sec. 589. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Effect of technical words.

Technical words not necessary. **Sec. 590.** Technical words are not necessary to give effect to any species of disposition by a will.

Certain words not necessary to pass a fee. **Sec. 591.** The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

Power to devise, how executed by terms of will. **Sec. 592.** Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

Devise or bequest of all real or all personal property or both. **Sec. 593.** A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Residuary clause. **Sec. 594.** A devise of the residue of the testator's estate, property, or real property, passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

Id. **Sec. 595.** A bequest of the residue of the testator's estate, property or personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

"Heirs," "relatives," "issue," "descendants," &c. **Sec. 596.** A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives" or "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin" of any person, without other words of qualification, and when the terms are used as words of donation and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to sections 642 and 643 of this Code.

Words of donation and of limitation. **Sec. 597.** The terms mentioned in the last section are used as words of donation, and not limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

To what time words refer. **Sec. 598.** Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Sec. 599. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description, before the time to which possession is postponed.

Devise or bequest to a class.

Sec. 600. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property, from the time of the testator's death.

When conversion takes effect.

Sec. 601. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

When child born after testator's death, takes under will.

Sec. 602. When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intention cannot be received.

Mistakes and omissions.

Sec. 603. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

When devises and bequests vest.

Sec. 604. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

When cannot be divested.

Sec. 605. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place.

Death of devisee or legatee.

Sec. 606. The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

Interests in remainder are not affected.

Sec. 607. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

Conditional devises and bequests.

Sec. 608. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Condition precedent, what

effect of
condition
precedent.

Sec. 609. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled; except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Conditions
precedent,
when deemed
performed.

Sec. 610. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

Condition
subsequent,
what.

Sec. 611. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Devises and
legatees takes
as tenants in
common.

Sec. 612. A devise or legacy given to more than one person vests in them as owners in common.

Advancements
when ademp-
tions.

Sec. 613. Advancements or gifts are not to be taken as adempments of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

SECTION 614. Nature and designations of legacies.

1. Specific.
2. Demonstrative.
3. Annuities.
4. Residuary.
5. General.

615. Order of sale in case of an intestate.

616. Order of sale in case of a testator.

617, 618. Legacies, how charged with debts.

619. Abatement.

620. Specific devises and legacies.

621. Heir's conveyance good, unless will is proved within four years.

622. Possession of legatees.

623. Bequest of interest.

624. Satisfaction.

625. Legacies, when due.

Section 626. Interest.

- 627. Construction of these rules.
- 628. Executor according to the tenor.
- 629. Power to appoint is invalid.
- 630. Executor not to act till qualified.
- 631. Executor of an executor.
- 632. Provisions as to revocations.
- 633. Execution and construction of prior wills not affected.
- 634. "Wills" includes codicils.
- 635. The law of what place applies.
- 636. Liability of beneficiaries for testator's obligations.

Sec. 614. Legacies are distinguished and designated, according to their nature, as follows: Nature and designation of legacies.

1. A legacy of a particular thing, specified, and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator; Specific.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy; Demonstrative.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy; Annuities.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged; Residuary.

5. All other legacies are general legacies. General.

Sec. 615. When a decedent dies intestate, the property, except such as is otherwise disposed of under section 640 of this Code, and such as is exempt under the CODE OF CIVIL PROCEDURE, or any statute exempting property from execution, is to be resorted to, in the following order, in payment of debts: Order of sale in case of intestacy.

- 1. Personal property;
- 2. Real property other than estates of freehold;
- 3. Estates of freehold.

Sec. 616. The property of a testator, with the exception specified in the last section, is to be resorted to, in the following order, for the payment of debts and legacies; Order of sale in case of a testator.

1. Personal property, excepting such as is expressly exempted in the will ;

2. Real property expressly devised to pay debts or legacies, where the personal property is exempted in the will, or where the personal property which is not exempted is insufficient;

3. Real property which is not effectually devised ;

4. Property, real or personal, charged with debts or legacies ; but though real property be charged with the payment of legacies, the personal property is not to be exonerated ;

5. The following property, ratably : real property, devised without being charged with debts or legacies, and specific and demonstrative legacies ;

6. Personal property expressly exempted in the will.

Legacies, how
charged with
debts.

Sec. 617. In the application of the personal property of a decedent to the payment of debts, legacies must be charged in the following order, unless a different intention is expressed in the will ;

1. Residuary legacies ;

2. General legacies ;

3. Legacies given for a valuable consideration, or for the relinquishment of dower, or some right or interest ;

4. Specific and demonstrative legacies.

Id.

Sec. 618. Legacies to husband, widow or kindred of any class, are chargeable only after legacies to persons not related to the testator.

Abatement.

Sec. 619. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Specific devises
and legacies.

Sec. 620. In a specific devise or legacy the title passes by the will, but, in case of legacies, possession can only be obtained from the personal representative ; and he may be authorized by the probate judge to sell the property devised or bequeathed, in the cases herein provided.

Heir's convey-
ance good
unless will is
proved within
four years.

Sec. 621. The rights of a purchaser or incumbrancer of real property, in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly

proved as a will, and recorded in the office of the probate judge having jurisdiction thereof, or unless written notice of such devise is filed with the probate judge of the county where the real property is situated, within four years after the deviser's death.

Sec. 622. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be. Possession of legatees.

Sec. 623. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death. Bequest of interest.

Sec. 624. A legacy, or a gift in contemplation, fear or peril of death, may be satisfied. Satisfaction.

Sec. 625. Legacies are due and deliverable, at the expiration of one year after the testator's decease. Annuities commence at the testator's decease. Legacies when due.

Sec. 626. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease. Interest.

Sec. 627. The four preceding sections are in all cases to be controlled by a testator's express intention. Construction of these rules.

Sec. 628. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor. Executor according to the tenor.

Sec. 629. An authority to an executor to appoint an executor is void. Power to appoint void.

Sec. 630. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate. Executor not to act till qualified

Executor of an executor.

Sec. 631. No executor of an executor, as such, has any power over the estate of the first testator.

Provisions as to revocations.

Sec. 632. The provisions of this Title in relation to the revocation of wills, apply to all wills made by any testator living at the expiration of one year from the time this article takes effect.

Execution and construction of prior wills not affected.

Sec. 633. The provisions of this Title do not impair the validity of the execution of any will made before this article takes effect, or affect the construction of any such will.

"Will" includes codicils.

Sec. 634. The term "will," as used in this Code, includes all codicils as well as wills.

The law of which place applies.

Sec. 635. Except as otherwise provided, the validity and interpretation of wills is governed, when relating to real property within this Territory, by the law of this Territory; when relating to personal property, by the law of the testator's domicile.

Liability of beneficiaries for testator's obligations.

Sec. 636. Those to whom property is given by will, are liable for the obligations of the testator in the cases and to the extent prescribed by the CODE OF CIVIL PROCEDURE, or the statutes in such case made and provided.

TITLE VI.

SUCCESSION.

SECTION 637. Succession defined.

638. Office of personal representatives.

639. Who are personal representatives.

640. Certain personal and other property not assets but retained by family.

641. Who to retain such property.

642. Order of succession.

1. Husband.

2. Wife and children.

3. Wife and next of kin.

4. Wife alone.

5. Children alone.

643. Where there is neither widow nor children.

644. Successor of deceased parent.

645. Relatives in equal degree; in unequal degree.

SECTION 646. Several heirs, how to hold.

647. Abolition of dower and curtesy.

648. Certain estates, &c., not to be affected.

649. Trusts.

650. Trust estates vest in the district court.

651. Property in common.

652. Joint property.

653. Succession to real property of a copartnership.

654, 655, 656. When advancement to be set-off or deducted.

657. Relatives of the half blood.

658, 659. Computation of degrees.

660. Aliens.

661. Mother, &c., of illegitimate decedent may succeed.

662. Illegitimate child may succeed to mother's property.

663. Illegitimacy.

664. Posthumous relatives.

665. Divorce bars succession between the parties.

666. Who are representatives.

667. Escheat.

668. Title of territory subject to charges.

669. Liability of successors for decedent's obligations.

Sec. 637. Succession is the coming in of another to take the property of one who dies without disposing of it by will. Succession defined.

Sec. 638. The property, both real and personal, of any one who dies without disposing of it by will, passes, in the first instance, to the personal representatives of such person, as trustees: Office of personal representatives.

1. To make the provision for the surviving husband or wife or child, which is directed by section 640;

2. To apply the property to the payment of the debts of the decedent, according to the Title on Wills and the provisions of the CODE OF CIVIL PROCEDURE, or the laws on that subject; and

3. To distribute any remaining property among those entitled to succeed to the property of the decedent, according to the provisions of this Title.

Sec. 639. The personal representatives of a decedent are his executors or administrators, including administrators with will annexed, who have duly qualified according to the provisions of the CODE OF CIVIL PROCEDURE, or the laws now in force on that subject. Who are personal representatives.

Certain
property not
assets but
retained by
family.

Sec. 640. Where a decedent leaves a husband, wife or child, the following property is to be immediately delivered by the personal representative, to such wife or husband, and child or children, and is not to be deemed assets :

1. Any estate or interest, to the value of one thousand dollars, in a lot and buildings thereon, occupied as a residence by the decedent, and which, by law, is exempt, as a homestead, from sale on execution ;

2. All sewing machines, spinning wheels, weaving looms, and stoves, used by the family ;

3. The family Bible ; one pew, family pictures, and school books used by the family ; and books, not exceeding in value one hundred dollars, used as part of the family library ;

4. Sheep, to the number of ten, with their fleeces, and the yarn and cloth manufactured from the same ; two cows and four swine ;

5. All wearing apparel and clothing, and the wife's ornaments ; all beds, bedsteads and bedding ; all cooking utensils and kitchen furniture ;

6. All family stores, or provisions, or supplies, for ordinary domestic use ;

7. Household furniture, or other personal property, or money, to the value or amount of two hundred and fifty dollars ; and,

8. Letters and other private writings.

Who to retain
such property.

Sec. 641. The property mentioned in the last section is to remain in the possession of the husband or wife if there is one, during the time such husband or wife resides with and provides for the child or children of the marriage. When any child ceases so to reside, he is entitled to receive an equal share, or the value thereof, of such property, except that a wife may retain, as her own, her wearing apparel and ornaments, and one bedstead and bedding.

Order of
succession.

Sec. 642. All property remaining after paying of such debts of a decedent as by law can be collected by execution, and satisfaction of the dispositions of his will, is to be distributed, together with any damages recovered by the personal representatives for any wrongful act, neglect or default which caused the decedent's death, to the successors of the decedent as follows :

1. If a decedent leaves a husband, the whole surplus goes to Husband. him, notwithstanding that it was the separate property of the wife, unless during the marriage she alienated such property, or effectually disposed thereof on her decease, by will or by gift in view of death ;

2. If the decedent leaves a wife and lineal descendants, one- Widow and child. third part goes to the wife, and the other two-thirds to the nearest lineal descendants and the successors of those who are deceased ;

3. If the decedent leaves a wife and no descendants, and Widow and next of kin. leaves a father or mother, brother or sister, the whole surplus, if it does not exceed in value at the time of distribution ten thousand dollars, goes to the wife ; if it exceeds ten thousand dollars, but does not exceed twenty thousand dollars, then ten thousand dollars go to her ; if it exceeds twenty thousand dollars, then one-half goes to her ; the remainder if any, goes to the father and mother or the survivor of them, or, if neither is living, to the brothers and sisters, and the successors of those of them who are deceased ;

4. If the decedent leaves a wife, and no descendant, parent, Widow alone. brother, or sister, the whole surplus goes to the wife ;

5. If the decedent leaves no husband or wife, the whole surplus Children alone. goes equally to the nearest lineal descendants, and the successors of those who are deceased.

Sec. 643. If a decedent leaves no husband or wife, and no Where there is neither widow nor children. descendant, the whole surplus of the estate goes to the next of kin, and the successors of those who are deceased, as follows :

1. To the father or mother, or either of them ;

2. If there is no parent, to the brothers and sisters, in equal shares, and the successors of those who are deceased ;

3. If there is no parent or brother or sister, or successor of a brother or sister, then to the next of kin and the successors of those who are deceased.

Sec. 644. The successors of a deceased parent cannot take Successor of deceased parent. by representation in place of the parent.

Sec. 645. Where the successors of the decedent, except pa- Relatives in equal degree. rents, are all in equal degree of consanguinity to the decedent, their shares are equal ; but if several are of unequal degree, each In unequal degree. of the nearest degree succeeds to the share to which he would

have been entitled had all those in the same degree, who have died leaving issue, been living; and the issue of those who have died, respectively succeed to the shares which such descendants or next of kin would have received if living.

Several heirs
how to hold.

Sec. 646. Whenever real property, or a share thereof, vests in several persons under the provisions of this Title, they take, as owners in common, in proportion to their respective rights.

Abolition of
dower and
curtesy.

Sec. 647. Dower and curtesy are abolished.

Certain
estates, &c.,
not to be
affected.

Sec. 648. This Title does not affect any limitation of an estate or interest by deed or will.

Trusts.

Sec. 649. The interest of any person in real property held in trust for him, if not devised by him, vests in his successors, according to the provisions of this chapter.

Trust estates
vest in
supreme court.

Sec. 650. Upon the death of a sole trustee of an express trust, whether a resident of this Territory or not, the trust estate does not devolve by succession, but the trust, if then unexecuted, vests in the district court, with all the powers and duties of the original trustee, and must be executed by a person appointed for that purpose, under the direction of the court.

Property in
common.

Sec. 651. On the death of one of several owners in common, his title passes in like manner with his other property.

Joint property.

Sec. 652. On the death of one of two or more joint owners, with right of survivorship, his title passes to the surviving joint owners.

Partnership
property.

Sec. 653. On the death of a partner, the surviving partners succeed to all the partnership property, whether real or personal, in trust for the purposes of liquidation, even though the deceased was appointed by agreement sole liquidator; and the interest of the deceased in the ultimate distribution of the partnership assets passes to those who succeed to his other personal property.

When advance-
ment to be set
off or deducted.

Sec. 654. When any real or personal property, or both, whether within or without this Territory, of a person who dies intestate as to all his property, has been advanced by such intestate, directly, or by virtue of a beneficial power, or of a power in trust with a right of selection, to a person entitled to succeed to his property, and with a view to a portion or settlement

in life, and so expressed in the instrument establishing the settlement or portion, the value thereof as expressed in the instrument must be reckoned, for the purposes of this section only, as part of the property of such intestate which his successors are to receive; and if such advancement equals or exceeds the share which such relative would be entitled to receive, of the property so reckoned, then such relative and his successors have no share in the property of the intestate. But if the advancement is less than such share, he and his successors are to have so much only of the property as is sufficient to make it equal to such share.

Sec. 655. The exclusion from succession, and the adjustment of shares under the provisions of the last section, take effect only upon judgment in a civil action.

Sec. 656. Unless both the purpose and the value of the settlement or portion, are expressed in the instrument of settlement, there is no legal advancement within the provisions of section 654.

Sec. 657. Relatives of the half blood, on either the paternal or maternal side, and their descendants, and the successors of both, succeed equally with those of the whole blood, except that to real property, which came to the decedent by succession, devise or gift of his relative, none who are not in any wise of the blood of such relative can succeed.

Sec. 658. In determining succession, degrees of relationship are reckoned by counting from the decedent up to the common ancestor, and then down to the relative in question; reckoning a degree for each person. In such computation the decedent is excluded, the relative included, and the common ancestor counted but once.

Sec. 659. Brothers and sisters are in the first degree of relationship, which rule applies for the benefit of their successors.

Sec. 660. Aliens may take in all cases, by succession, as well as citizens; and no person, capable of succeeding under the provisions of this chapter, is precluded from such succession by reason of the alienage of any relative.

Sec. 661. The mother of an illegitimate child, and the relatives on the part of the mother, succeed to its property as if the child were legitimate.

illegitimate
child may
succeed to
mother's
property.

Sec. 662. In case of the death of a mother leaving no lawful issue, and no husband, and leaving illegitimate children or their descendants, such children and descendants succeed in the same manner as if such children were legitimate.

Illegitimacy.

Sec. 663. No person can succeed through an illegitimate relationship, except in the cases hereinbefore provided.

Posthumous
relatives.

Sec. 664. Relatives of a decedent, conceived before his death, but born thereafter, succeed, as if born in his lifetime and surviving him.

Divorce bars
succession
between the
parties.

Sec. 665. Where a marriage has been dissolved for the misconduct of either party thereto, the guilty party is not entitled to succeed to the property of the other.

Successors of
one who dies
before the
decedent.

Sec. 666. Where a person, who would have been entitled, if living at the death of another, to succeed to his property, dies before the latter, the property which he would thus have taken by succession, if living, passes to those who would have been entitled to succeed thereto, if he had so taken it, and had died immediately thereafter.

Escheat.

Sec. 667. If there is no one capable of succeeding under the preceding sections, the property of a decedent devolves to the people of the Territory.

Title of territory
subject to
charges.

Sec. 668. Real property passing to the Territory under the last section, whether held by the Territory or its grantees, is subject to the same charges and trusts to which it would have been subject if it had passed by succession; and the district court has power to direct the United States district attorney for this Territory to convey the same to the parties entitled, or to a new trustee appointed by the court.

Liability of
successors for
decedent's
obligations.

Sec. 669. Those who succeed to the property of a decedent are liable for his obligations in the cases, and to the extent, prescribed by the CODE OF CIVIL PROCEDURE, or by the statutes on that subject.

DIVISION THIRD.

OBLIGATIONS.

- PART I. Obligations in general.**
II. Contracts.
III. Obligations imposed by law.
IV. Obligations arising from particular transactions.
-

P A R T I.

OBLIGATIONS IN GENERAL.

- TITLE I. Definition of obligations.**
II. Interpretation of obligations.
III. Transfer of obligations.
IV. Extinction of obligations.

TITLE I.

DEFINITION OF OBLIGATIONS.

- SECTION 670. Obligation, what.**
671. How created.

Sec. 670. An obligation is a legal duty, by which a person **Obligation,**
what.
is bound to do or not to do a certain thing.

- Sec. 671. An obligation arises either from:** **How created.**
1. The contract of the parties; or,
2. The operation of law.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

CHAPTER I. General rules of interpretation.

II. Joint or several obligations.

III. Conditional obligations.

IV. Alternative obligations.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

SECTION 672. General rules.

General rules. Sec. 672. The rules which govern the interpretation of contracts are prescribed by Part II of this Division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

SECTION 673. Obligation, joint or several, &c.

674. When joint.

675. Contribution between joint parties.

Obligation,
joint or
several, &c.

Sec. 673. An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;
2. Several; or,
3. Joint and several.

When joint.

Sec. 674. An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in

the Title on the INTERPRETATION OF CONTRACTS. This presumption, in the case of a right, can be overcome only by express words to the contrary.

Sec. 675. A party to a joint or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

Contribution
between joint
parties.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

SECTION 676. Obligation, when conditional.

677. Conditions, kinds of.

678. Conditions precedent.

679. Conditions concurrent.

680. Condition subsequent.

681. Performance, &c., of conditions when essential.

682. When performance, &c., excused.

683. Impossible or unlawful conditions void.

684. Conditions involving forfeiture, how construed.

Sec. 676. An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

Obligation, when
conditional.

Sec. 677. Conditions may be precedent, concurrent or subsequent.

Conditions,
kinds of.

Sec. 678. A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

Condition
precedent.

Sec. 679. Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

Conditions
concurrent.

Sec. 680. A condition subsequent is one referring to a future event, upon happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

Condition
subsequent.

Sec. 681. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must

Performance,
&c., of con-
ditions when
essential.

be able, and offer, to fulfill all conditions concurrent, so imposed upon him, on the like fulfillment by the other party; except as provided by the next section.

When performance, &c., excused.

Sec. 682. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part, in favor of the former party.

Impossible or unlawful conditions void.

Sec. 683. A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the OBJECT OF CONTRACTS, or which is repugnant to the nature of the interest created by the contract, is void.

Conditions involving forfeiture, how construed.

Sec. 684. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

SECTION 685. Who has the right of selection.

686. Right of selection, how lost.

687. Alternatives indivisible.

688. Nullity of one or more of alternative obligations.

Who has the right of selection.

Sec. 685. If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection; unless it is otherwise provided by the terms of the obligation.

Right of selection, how lost.

Sec. 686. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

Alternatives indivisible.

Sec. 687. The party having the right of selection between alternative acts, must select one of them in its entirety, and

cannot select part of one and part of another, without the consent of the other party.

Sec. 688. If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone.

Nullity of one or more of alternative obligations.

TITLE III.

TRANSFER OF OBLIGATIONS.

SECTION 689. Burden of obligation, not transferable.

690. Rights arising out of obligation, transferable.

691. Covenants running with land, what.

692, 693, 694. What covenants run with the land.

695. What covenants run with land when assigns are named.

696. Who are bound by covenants.

697. Who are not.

698. Apportionment of covenants.

Sec. 689. The burden of an obligation may be transferred, with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 697.

Burden of obligation not transferable.

Sec. 690. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

Rights arising out of obligation transferable.

Sec. 691. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor, and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

Covenants running with land, what.

Sec. 692. The only covenants which run with the land, are those specified in this Title, and those which are incidental thereto.

What covenants run with the land.

Sec. 693. Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it, then in existence, runs with the land.

Id.

14.

Sec. 694. The last section includes covenants of warranty, for quiet enjoyment, or for further assurance, on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

What covenants
run with land
when assigns
are named.

Sec. 695. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far only as the assigns thus mentioned are concerned.

Who are bound
by covenants.

Sec. 696. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property.

Who are not.

Sec. 697. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it, or ceased to enjoy its benefits.

Apportionment
of covenants.

Sec. 698. Where several persons, holding by several titles, are subject to the burden, or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I. Performance.

II. Offer of performance.

III. Prevention of performance or offer.

IV. Accord and satisfaction.

V. Novation.

VI. Release.

CHAPTER I.

PERFORMANCE.

SECTION 699. Obligation extinguished by performance.

700. Performance by one of several joint debtors.

701. Performance to one of joint creditors.

702. Effect of directions by creditors.

703. Partial performance.

704. Payment, what.

705. Application of general performance.

Sec. 699. Full performance of an obligation, by the party Obligation extinguished by performance whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor extinguishes it.

Sec. 700. Performance of an obligation, by one of several Performance by one of several joint debtors persons who are jointly liable under it, extinguishes the liability of all.

Sec. 701. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in Performance to one of joint creditors the case of a deposit made by owners in common, or in joint ownership, which is regulated by the Title on DEPOSIT.

Sec. 702. If a creditor, or any one of two or more joint Effect of directions by creditors creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

Sec. 703. A partial performance of an indivisible obligation Partial performance extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it, without injuring his own property, his retention thereof is not presumed to be voluntary.

Sec. 704. Performance of an obligation for the delivery of Payment, what money only, is called payment.

Application of
general per-
formance.

Sec. 705. Where a debtor, under several obligations to another, does an act, by way of performance, which is equally applicable to two or more of such obligations, such performance is applied as follows ;

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, is manifested to the creditor, it is so applied ;

2. If no such application is then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance ; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion ; and an application once made by the creditor cannot be rescinded without the consent of the debtor ;

3. If neither party makes such application, within the time prescribed herein, the performance is applied to the extinction of obligations in the following order ; and, if there is more than one obligation of a particular class, to the extinction of all in that class, ratably :

- (1.) Of an obligation due at the time of performance ;
- (2.) Of an obligation not voidable at the option of the debtor ;
- (3.) Of an obligation secured by a lien, or collateral undertaking ;
- (4.) Of interest ;
- (5.) Of the obligation earliest in date of maturity ;
- (6.) Of the obligation which it is most for the interest of the debtor to extinguish.

CHAPTER II.

OFFER OF PERFORMANCE.

SECTION 706. Obligation extinguished by offer of performance.

707. Offer of partial performance.

708. By whom to be made.

SECTION 709. To whom to be made.

- 710. Where offer may be made.
- 711. When offer must be made.
- 712. Compensation after delay in performance
- 713. Conditional offer.
- 714. Ability and willingness, essential.
- 715. Production of thing to be delivered, not necessary.
- 716. Thing offered, to be kept separate.
- 717. Performance of condition precedent.
- 718. Written receipts.
- 719. Extinction of pecuniary obligation.
- 720. Objections to mode of offer.
- 721. Title to thing offered.
- 722. Custody of thing offered.
- 723. Effect of offer on accessories of obligation.
- 724. Creditor's retention of thing which he refuses to accept.
- 725. Effect of offer on accessories of obligation.
- 726. Creditor's retention of thing which he refuses to accept.

Sec. 706. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation. obligation extinguished by offer of performance.

Sec. 707. An offer of partial performance is of no effect. Offer of partial performance.

Sec. 708. An offer of performance must be made by the debtor, or by some person on his behalf and with his assent. By whom to be made.

Sec. 709. An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, then to a notary public. To whom to be made.

Sec. 710. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor: Where offer may be made.

1. At any place appointed by the creditor; or,
2. Wherever the person, to whom the offer ought to be made, can be found; or,
3. If such person cannot, with reasonable diligence, be found within this Territory, and within a reasonable distance from his residence or place of business, or if he evades the debtor,

then at his residence, or place of business, if the same can, with reasonable diligence, be found within the Territory; or,

4. If this cannot be done, then at any place within this Territory.

When offer
must be made.

Sec. 711. Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

Id.

Sec. 712. Where an obligation does not fix the time for its performance, an offer of performance may be made at any time, before the debtor, upon a reasonable demand, has refused to perform.

Compensation
after delay in
performance.

Sec. 713. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

Offer to be
made in good
faith.

Sec. 714. An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

Conditional
offer.

Sec. 715. An offer of performance must be free from any conditions which the creditor is not bound on his part to perform.

Ability and
willingness
essential.

Sec. 716. An offer of performance is of no effect, if the person making it is not able and willing to perform according to the offer.

Production of
thing to be
delivered, not
necessary.

Sec. 717. The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted.

Thing offered
to be kept
separate.

Sec. 718. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

Performance of
condition
precedent.

Sec. 719. When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

Sec. 720. A debtor has a right to require from his creditor Written receipt.
a written receipt for any property delivered in performance of
his obligation.

Sec. 721. An obligation for the payment of money is ex- Extinction of pecuniary obligation.
tinguished by a due offer of payment, if the amount is imme-
diately deposited in the name of the creditor, with some bank
of deposit within this Territory, of good repute, and notice
thereof is given to the creditor.

Sec. 722. All objections to the mode of an offer of perfor- Objections to mode of offer.
mance, which the creditor has an opportunity to state at the
time to the person making the offer, and which could be then
obviated by him, are waived by the creditor, if not then stated.

Sec. 723. The title to a thing duly offered in performance Title to thing offered.
of an obligation passes to the creditor, if the debtor at the
time signifies his intention to that effect.

Sec. 724. The person offering a thing, other than money, by Custody of thing offered.
way of performance, must, if he means to treat it as belonging
to the creditor, retain it as a depositary for hire, until the cred-
itor accepts it, or until he has given reasonable notice to the
creditor that he will retain it no longer, and, if with reason-
able diligence he can find a suitable depositary therefor, until
he has deposited it with such person.

Sec. 725. An offer of payment or other performance, duly Effect of offer on accessories of obligation.
made, though the title to the thing offered be not transferred to
the creditor, stops the running of interest on the obligation,
and has the same effect upon all its incidents as a performance
thereof.

Sec. 726. If anything is given to a creditor by way of per- Creditor's retention of thing, which he refuses to accept.
formance, which he refuses to accept as such, he is not bound
to return it without demand; but if he retains it, he is gratui-
tous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

SECTION 727. What excuses performance, &c.

728, 729, 730. Effect of prevention of performance.

731. Effect of refusal to accept performance before offer.

What excuses
performance,
&c.

Sec. 727. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate :

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse ;

2. When it is prevented or delayed by an irresistible superhuman cause, or by the act of public enemies of this Territory or of the United States, unless the parties have expressly agreed to the contrary ; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

Effect of
prevention of
performance.

Sec. 728. If performance of an obligation is prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained by its performance on both sides.

Id.

Sec. 729. If a debtor is dissuaded by his creditor from performance, but is not actually forbidden to perform, he may, at his option, omit to perform, and retain whatever he has received under the contract, but he is entitled to nothing more.

Id.

Sec. 730. If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

Effect of
refusal to
accept perform-
ance before
offer.

Sec. 731. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

CHAPTER IV.

ACCORD AND SATISFACTION.

SECTION 732. Accord, what.

733. Effect of accord.

734. Satisfaction; what.

735. Accord of liquidated debt.

Sec. 732. An accord is an agreement to accept, in extinction Accord what. of an obligation, something to which the person agreeing to accept is not otherwise entitled.

Sec. 733. Though the parties to an accord are bound to ex- Effect of accord. ecute it, yet it does not extinguish the obligation until it is fully executed.

Sec. 734. Acceptance, by the creditor, of the consideration Satisfaction, what. of an accord, extinguishes the obligation, and is called satisfaction.

Sec. 735. Payment of an amount less than that of a liqui- Accord of liquidated debt. dated debt then payable, is not a satisfaction thereof, though accepted as such.

CHAPTER V.

NOVATION.

SECTION 736. Novation, what.

737. Modes of novation.

738. Novation a contract.

739. Effect of acceptance of new obligation.

740. Recission of novation.

Sec. 736. Novation is the substitution of a new obligation Novation, what. for an existing one.

Sec. 737. Novation is made:

1. By the substitution of a new and higher obligation be- Modes of novation. tween the same parties, with intent to extinguish the old obligation;

2. By the substitution of a new debtor in place of the old one, with intent to release the latter ; or

3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

Novation a
contract

Sec. 738. Novation is made by contract, and is subject to all the rules concerning contracts in general.

Effect of
acceptance of
new obligation.

Sec. 739. The acceptance, by a creditor, of a new obligation of the debtor for the payment of money only, in satisfaction of another obligation of as high degree, for the payment of a specific sum of money only, then payable, does not extinguish the latter obligation unless accepted as a satisfaction under section 735, but extends the time of payment until the new obligation becomes payable.

Rescission of
novation.

Sec. 740. When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance, if the debtor prevents such person from complying with the order, or from fulfilling the obligation, or if, before the creditor can with reasonable diligence reach such person, he becomes insolvent.

CHAPTER VI.

RELEASE.

SECTION 741. Obligation extinguished by release.

742. Certain claims not affected by general release.

743. Release of several joint debtors.

Obligation
extinguished by
release.

Sec. 741. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or under seal.

Certain claims
not affected by
general releases.

Sec. 742. A general release does not extend to claims which the creditor did not know or suspect to exist in his favor, at the time of executing the release.

Release of
several joint
debtors.

Sec. 743. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors ; nor does it affect their right to contribution from him.

PART II.

CONTRACTS.

TITLE I. Nature of a contract.

II. Manner of creating contracts.

III. Interpretation of contracts.

IV. Unlawful contracts.

V. Extinction of contracts.

TITLE I.

NATURE OF A CONTRACT.

CHAPTER I. Definition.

II. Parties.

III. Consent.

IV. Object.

V. Consideration.

CHAPTER I.

DEFINITION.

Section 744. Contract, what.

745. Essential elements of contract.

Sec. 744. A contract is an agreement to do or not to do a certain thing. Contract, what.

Sec. 745. It is essential to the existence of a contract that there should be :-

1. Parties capable of contracting ;
2. Their consent ;
3. A lawful object ; and,
4. Sufficient cause or consideration.

Essential
elements of
contract.

CHAPTER II.

PARTIES.

SECTION 746. Who may contract.

747. Minor's, &c.

748. Identification of parties necessary.

749. When contract for benefit of third person may be enforced.

Who may
contract.

Sec. 746. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

Minor's &c.

Sec. 747. Minors, and persons of unsound mind, have only such capacity as is defined by Part I of the First Division of this Code.

Identification
of parties
necessary.

Sec. 748. It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them.

When contract
for benefit of
third person
may be
enforced.

Sec. 749. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

CHAPTER III.

CONSENT.

SECTION 750. Essentials of consent.

751. Consent, when voidable.

752. Apparent consent, when not free.

753. When deemed to have been obtained by fraud, &c.

754. Duress, what.

755. Menace, what.

756. Fraud, actual or constructive.

757. Actual fraud, what.

758. Constructive fraud.

759. Actual fraud a question of fact.

760. Undue influence, what.

761. Mistake, what.

Section 762. Mistake of fact.

763. Mistake of law.

764. Mistake of foreign laws.

765. Mutuality of consent.

766. Communication of consent.

767. Mode of communicating acceptance of proposal.

768. When communication deemed complete.

769. Acceptance by performance of conditions.

770. Acceptance must be absolute.

771. Revocation of proposal.

772. Revocation, how made.

773. Ratification of contract, void for want of consent.

774. Assumption of obligation by acceptance of benefits.

Sec. 750. The consent of the parties to a contract must Essentials of consent.
be:

1. Free;
2. Mutual; and,
3. Communicated by each to the other.

Sec. 751. A consent which is not free is nevertheless not ab- Consent, when voidable.
solutely void, but may be rescinded by the parties, in the man-
ner prescribed by the chapter on RESCISSION.

Sec. 752. An apparent consent is not real or free when ob- Apparent consent, when not free,
tained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

Sec. 753. Consent is deemed to have been obtained through When deemed to have been obtained by fraud, &c.
one of the causes mentioned in the last section, only when it
would not have been given had such cause not existed.

Sec. 754. Duress consists in: Duress, what.

1. Unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife;
 2. Unlawful detention of the property of any such person;
- or,
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

Menace, what.

Sec. 755. Menace consists in a threat :-

1. Of such duress as is specified in the first and third subdivisions of the last section ;
2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section ; or,
3. Of injury to the character of any such person.

Fraud, actual or constructive.

Sec. 756. Fraud is either actual or constructive.

Actual fraud, what.

Sec. 757. Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract :-

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;
3. The suppression of that which is true, by one having knowledge or belief of the fact ;
4. A promise made without any intention of performing it ; or,
5. Any other act fitted to deceive.

Constructive fraud, what.

Sec. 758. Constructive fraud consists :

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him ; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

Actual fraud, a question of fact.

Sec. 759. Actual fraud is always a question of fact.

Undue influence.

Sec. 760. Undue influence consists :

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him ;
2. In taking an unfair advantage of another's weakness of mind ; or,
3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

Sec. 761. Mistake may be either of fact or of law.

Mistake, what.

Sec. 762. Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in :

Mistake of fact.

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract ; or,
2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

Sec. 763. Mistakes of law constitutes a mistake, within the meaning of this article, only when it arises from :

Mistake of law.

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law ; or,
2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

Sec. 764. Mistake of foreign laws is a mistake of fact.

Mistake of foreign laws.

Sec. 765. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on INTERPRETATION, they are to be deemed so to agree without regard to the fact.

Mutuality of consent.

Sec. 766. Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

Communication of consent.

Sec. 767. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

Mode of communicating acceptance of proposal.

Sec. 768. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

When communication deemed complete.

Sec. 769. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

Performance of conditions ; acceptance.

Acceptance
must be
absolute.

Sec. 770. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

Revocation of
proposal.

Sec. 771. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

Revocation,
how made.

Sec. 772. A proposal is revoked :

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 766 and 768, before his acceptance has been communicated to the former ;

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance ;

3. By the failure of the acceptor to fulfill a condition precedent to acceptance ; or,

4. By the death or insanity of the proposer.

Ratification of
contract void
for want of
consent.

Sec. 773. A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

Assumption of
obligation by
acceptance of
benefits.

Sec. 774. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

CHAPTER IV.

OBJECT OF A CONTRACT.

Section 775. Object, what.

776. Requisites of object.

777. Impossibility, what.

778. When contract wholly void.

779. When contract partially void.

Object, what.

Sec. 775. The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

Sec. 776. The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed. Requisites of object.

Sec. 777. Everything is deemed possible, except that which is impossible in the nature of things. Impossibility, what.

Sec. 778. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void. When contract wholly void.

Sec. 779. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful in whole or in part, the contract is void as to the latter, and valid as to the rest. When contract partially void.

CHAPTER V.

CONSIDERATION.

SECTION 780. Good consideration what.

781. How far legal or moral obligation is a good consideration.

782. Consideration lawful.

783. Effect of its illegality.

784. Consideration executed or executory.

785. Executory consideration.

786. How ascertained.

787. 788. Effect of impossibility of ascertaining consideration.

Sec. 780. Any benefit conferred, or agreed to be conferred, upon the promiser, by any other person, to which the promiser is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promiser, is a good consideration for a promise. Good consideration, what.

Sec. 781. An existing legal obligation resting upon the promiser, or a moral obligation, originating in some benefit conferred upon the promiser, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent How far legal or moral obligation is a good consideration.

corresponding with the extent of the obligation, but no further or otherwise.

Consideration
lawful.

Sec. 782. The consideration of a contract must be lawful, within the meaning of section 827.

Effect of its
legality.

Sec. 783. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful the entire contract is void.

Consideration
executed or
executory.

Sec. 784. A consideration may be executed or executory, in whole or in part. In so far as it is executory, it is subject to the provisions of chapter IV of this Title.

Executory
consideration.

Sec. 785. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

How ascer-
tained.

Sec. 786. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

Effect of
impossibility
of ascertaining
consideration.

Sec. 787. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

Id.

Sec. 788. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

TITLE II.

MANNER OF CREATING CONTRACTS.

SECTION 789. Contracts express or implied.

790. Express contract, what.

791. Implied contract, what.

792. What contracts may be oral.

793. Contract not in writing through fraud, may be enforced against fraudulent party.

SECTION 794. What contracts must be written.

795. Effect of writing.

796. Contract in writing, takes effect when.

797. Provisions of chapter on transfers of real property.

798. Seal, what.

799. Effect of seal.

Sec. 789. A contract is either express or implied.

Contract:
express or
implied.

Sec. 790. An express contract is one, the terms of which are stated in words.

Express
contract, what.

Sec. 791. An implied contract is one, the existence and terms of which are manifested by conduct.

Implied con-
tract, what.

Sec. 792. All contracts may be oral, except such as are specially required by statute to be in writing.

What con-
tracts may be
oral.

Sec. 793. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

Contract not in
writing through
fraud, may
be enforced
against fraudu-
lent party.

Sec. 794. The following contracts, or some memorandum thereof, expressing the parties, their consent and the object of the contract, must be in writing, subscribed by the party to be charged thereby, or by his agent for the purpose:

What contracts
must be written.

1. An agreement that, by its terms, cannot be fully performed within one year;

2. An agreement made upon consideration of marriage, other than mutual promises to marry.

Sec. 795. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.

Effect of
writing.

Sec. 796. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

Contract in
writing takes
effect, when.

Sec. 797. The provisions of the chapter on TRANSFERS IN GENERAL, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

Provisions of
chapter on
transfers of
real property.

Sec. 798. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written. All other seals may be

Seal, what.

made by writing the word "seal" opposite the name of the person signing or executing the instrument of writing.

Effect of seal.

Sec. 799. A seal is presumptive evidence of a consideration.

TITLE III.

[INTERPRETATION OF CONTRACTS.]

Section 800. Uniformity of interpretations.

- 801. Contracts, how to be interpreted.
- 802. Intention of parties how ascertained.
- 803. Intention to be ascertained from language.
- 804. Interpretation of written contracts.
- 805. Writing, when disregarded.
- 806. Effect to be given to every part of contract.
- 807. Several contracts, when taken together.
- 808. Interpretation in favor of contract.
- 809. Words to be understood in usual sense.
- 810. Technical words.
- 811. Law of place.
- 812. Contracts explained by circumstances.
- 813. Contract restricted to its evident object.
- 814. Interpretation in sense in which promiser believed promisee to rely.
- 815. Particular clause subordinate to general intent.
- 816. Contract, partly written and partly printed.
- 817. Repugnancies, how reconciled.
- 818. Inconsistent words rejected.
- 819. Words to be taken most strongly against whom.
- 820. Reasonable stipulations, when implied.
- 821. Necessary incidents implied.
- 822. Time of performance of contract.
- 823. Time, when of essence.
- 824. When joint and several.
- 825. Executed and executory contracts, what.

Uniformity of interpretation.

Sec. 800. All contracts, whether public or private, sealed or unsealed, are to be interpreted by the same rules; except as otherwise provided by this Code.

Contracts, how to be interpreted.

Sec. 801. A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful.

Sec. 802. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

Intention of parties, how ascertained.

Sec. 803. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Intention to be ascertained from language.

Sec. 804. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however to the other provisions of this Title.

Interpretation of written contract.

Sec. 805. When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

Writing, when disregarded.

Sec. 806. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others.

Effect to be given to every part of contract.

Sec. 807. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

Several contracts when taken together.

Sec. 808. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

Interpretation in favor of contract.

Sec. 809. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Words to be understood in usual sense.

Sec. 810. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

Technical words.

Sec. 811. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

Law of place.

Sec. 812. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

Contract explained by circumstances.

Contract restricted to its evident object.

Sec. 813. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

Interpretation in sense in which promiser believed promisee to rely.

Sec. 814. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promiser believed, at the time of making it, that the promisee understood it.

Particular clause subordinate to general intent.

Sec. 815. Particular clauses of a contract are subordinate to its general intent.

Contract partly written and partly printed.

Sec. 816. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

Repugnancies, how reconciled.

Sec. 817. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause, subordinate to the general intent and purposes of the whole contract.

Inconsistent words rejected.

Sec. 818. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

Words to be taken most strongly against whom.

Sec. 819. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly, against the party who caused the uncertainty to exist. The promiser is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

Reasonable stipulations, when implied.

Sec. 820. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

Necessary incidents implied.

Sec. 821. All things that in law or usage, are considered as incidental to a contract, or as necessary to carry it into effect,

are implied therefrom ; unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

Sec. 822. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. Time of performance of contract.
If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

Sec. 823. Time is never considered as of the essence of a contract, unless by its terms expressly so provided. Time, when of essence.

Sec. 824. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several. When contract joint and several.

Sec. 825. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several. Id.

Sec. 826. An executed contract is one, the object of which is fully performed. All others are executory. Executed and executory contracts, what.

TITLE IV.

UNLAWFUL CONTRACTS.

SECTION 827. What is unlawful.

- 828. Certain contracts unlawful.
- 829. Penalties void.
- 830. Contract fixing damages, void.
- 831. Exception.
- 832. Restraints upon legal proceedings.
- 833. Contract in restraint of trade, void.
- 834. Exception in favor of sale of good will.
- 835. Exception in favor of partnership arrangements.
- 836. Contract in restraint of marriage, void.

Sec. 827. That is not lawful which is : What is unlawful.
1. Contrary to an express provision of law ;
2. Contrary to the policy of express law, though not expressly prohibited ; or,
3. Otherwise contrary to good morals.

Certain con-
tracts unlawful.

Sec. 828. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Penalties,
void.

Sec. 829. Penalties imposed by contract for any non-performance thereof, are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses.

Contract fixing
damages, void.

Sec. 830. Every contract, by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided by the next section.

Exception.

Sec. 831. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

Restraints
upon legal
proceedings.

Sec. 832. Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

Contract in
restraint of
trade void.

Sec. 833. Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void.

Exception in
favor of sale of
good will.

Sec. 834. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

Exception in
favor of
partnership
arrangements.

Sec. 835. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

Sec. 836. Every contract in restraint of the marriage of any person, other than a minor, is void. Contract in restraint of marriage void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. Contracts, how extinguished.

II. Rescission.

III. Alteration and Cancellation.

CHAPTER I.

CONTRACTS HOW EXTINGUISHED.

Sec. 837. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this Title. Contract, how extinguished.

CHAPTER II.

RESCISSION.

SECTION 838. Rescission extinguishes contract.

839. When party may rescind.

840. When stipulations against right to rescind do not defeat it.

841. Rescission, how effected.

Sec. 838. A contract is extinguished by its rescission.

Rescission extinguishes contract.

Sec. 839. A party to a contract may rescind the same in the following cases only :

When party may rescind.

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party ;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause ;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause ; or,

5. By consent of all the other parties.

When stipulations against right to rescind do not defeat it.

Sec. 840. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

Rescission, how effected.

Sec. 841. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules :

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind ; and,

2. He must restore to the other party every thing of value which he has received from him under the contract ; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable, or positively refuses, to do so.

CHAPTER III.

ALTERATION AND CANCELLATION.

SECTION 842. Alteration by consent.

843. Sealed contracts, how modified.

844. Extinction by cancellation, &c.

845. Extinction by unauthorized alteration.

846. Alteration of duplicate, not to prejudice.

Alteration by consent.

Sec 842. A contract not under seal may be altered in any respect by consent of the parties, upon a sufficient consider-

ation; and is extinguished, thereby, to the extent of the alteration.

Sec. 843. A contract under seal may be altered by an agreement under seal, or by an executed agreement without seal; and not otherwise, except as to the time of performance, which may be extended by any form of agreement. Sealed contracts how modified.

Sec. 844. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act. Extinction by cancellation, &c

Sec. 845. The intentional destruction, cancellation or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act. Extinction by unauthorized alteration.

Sec. 846. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section. Alteration of duplicate not to prejudice.

PART III.

OBLIGATIONS IMPOSED BY LAW.

SECTION 847. Abstinance from injury.

848. Fraudulent deceit.

849. Deceit, what.

850. Deceit upon the public, &c.

851. Restoration of thing wrongfully acquired.

852. When demand necessary.

853. Responsibility for willful acts, negligence, &c.

854. Other obligations.

Sec. 847. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights. Abstinance from injury.

Sec. 848. One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers. Fraudulent deceit.

Deceit, what.

Sec. 849. A deceit, within the meaning of the last section, is either :

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true ;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact ; or,
4. A promise, made without any intention of performing it.

Deceit upon the public, &c.

Sec. 850. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

Restoration of thing wrongfully acquired.

Sec. 851. One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

When demand necessary.

Sec. 852. The restoration required by the last section must be made without demand ; except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

Responsibility for willful acts, negligence, &c.

Sec. 853. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person ; unless the latter has, willfully, or by want of ordinary care, incurred the risk of such injury. The extent of liability in such cases is defined by the Title on COMPENSATORY RELIEF.

Other obligations.

Sec. 854. Other obligations are prescribed by the First and Second Divisions of this CODE.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANS- ACTIONS.

TITLE I. Sale.

II. Exchange.

III. Deposit.

IV. Loan.

V. Hiring.

VI. Service.

VII. Carriage.

VIII. Trust.

IX. Agency.

X. Partnership.

XI. Insurance.

XII. Indemnity.

XIII. Guaranty.

XIV. Lien.

XV. Negotiable instruments.

XVI. General provisions.

TITLE I.

SALE.

CHAPTER I. General provisions.

II. Rights and obligations of the seller.

III. Rights and obligations of the buyer.

IV. Sale by auction.

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE I. Sale.

II. Agreements for sale.

III. Form of the contract.

ARTICLE I.

SALE.

SECTION 855. Sale, what.

856. Subject of sale.

Sale, what.

Sec. 855. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

Subject of sale.

Sec. 856. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.

AGREEMENTS FOR SALE.

SECTION 857. Agreement for sale.

858. Agreement to sell.

859. Agreement to buy.

860. Agreement to sell and buy.

861. What may be the subject of the contract.

862. Agreement to sell real property.

863. Usual covenants in deeds of grant.

864. Language of usual covenants.

Agreement
for sale,

Sec. 857. An agreement for sale is either :

1. An agreement to sell;
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

Sec. 858. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

Agreement to
sell

Sec. 859. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

Agreement to
buy.

Sec. 860. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him, and to pay a price therefor.

Agreement to
sell and buy.

Sec. 861. Any property, which, if in existence, might be the subject of sale, may be the subject of an agreement for a sale, whether in existence or not.

What may be
the subject of
the contract.

Sec. 862. An agreement to sell real property binds the seller to execute a grant in the form and manner prescribed by the chapter on TRANSFERS OF REAL PROPERTY.

Agreement to
sell real
property.

Sec. 863. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of seizin, quiet enjoyment, further assurance, general warranty, and against incumbrances.

Usual covenants
in deeds of
grant.

Sec. 864. The covenants mentioned in the last section must be in substance as follows:

Language of
usual cove-
nants.

"The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

ARTICLE III.

FORM OF THE CONTRACT.

SECTION 865. Contract for sale of personal property.

866. Contract to manufacture.

867. Contract for sale of real property.

868. Transfer of real property.

Contract for
sale of personal
property.

Sec. 865. No sale of personal property, or agreement to buy or sell it, for a price of fifty dollars or more, is valid unless :

1. A memorandum of the contract, showing the parties, their consent, and the subject of sale, is made in writing, and subscribed by the party to be charged ; or,

2. The buyer accepts and receives part of the thing sold, or, when it consists of a thing in action, part of the evidences thereof ; or,

3. The buyer, at the time of sale, pays a part of the price.

Contract to
manufacture.

Sec. 866. An agreement to manufacture a thing, from materials furnished by the manufacturer or by another person, is not within the provisions of the last section.

Contract for
sale of real
property.

Sec. 867. No agreement for the sale of real property, or of any estate therein, is valid, unless a memorandum thereof, showing the parties, their consent, and the subject of sale, is made in writing, and subscribed by the party to be charged, or unless the contract has been partially performed by the party seeking to enforce it, and such part performance has been accepted by the other.

Transfer of
real property.

Sec. 868. The form of a transfer of real property is described by the chapter on such transfers.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE I. Rights and duties before delivery.

II. Delivery.

III. Warranty.

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

SECTION 869. When seller must act as depositary.

870. When seller may resell.

Sec. 869. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it. When seller must act as depositary.

Sec. 870. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller, after payment is due, the seller may rescind the sale, or may enforce his lien for the price in the manner prescribed by the Title on LIENS. When seller may resell.

ARTICLE II.

DELIVERY.

SECTION 871. Delivery on demand.

872. Delivery, where made.

873. Expense of transportation.

874. Notice of election as to delivery.

875. Buyer's directions as to manner of sending thing sold.

876. Delivery to be within reasonable hours.

Sec. 871. One who sells personal property, whether it was in his possession at the time of sale, or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon. Delivery on demand.

Sec. 872. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or, if it is not then in existence, it is deliverable at the place where it is produced. Delivery, where made.

Expense of
transportation.

Sec. 873. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Notice of
election as to
delivery.

Sec. 874. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice ; and if he does not give such notice within a reasonable time, his right of option is waived.

Buyer's
directions as
to manner of
sending thing
sold.

Sec. 875. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

Delivery to be
within reason-
able hours.

Sec. 876. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.

WARRANTY.

- SECTION 877. Warranty, what.
- 878. No implied warranty in mere contract of sale.
- 879. Warranty of title to personal property.
- 880. Warranty on sale by sample.
- 881. When seller knows that buyer relies on his statements, &c.
- 882. Merchandise not in existence.
- 883. Manufacturer's warranty against latent defects.
- 884. Thing bought for particular purpose.
- 885. When thing cannot be examined by buyer.
- 886. Trade marks.
- 887. Other marks.
- 888. Warranty on sale of written instrument.
- 889. Warranty of provisions for domestic use.
- 890. Warranty on sale of good will.
- 891. Warranty upon judicial sale.
- 892. Effect of general warranty.

Sec. 877. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future. Warranty, what.

Sec. 878. Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty. No implied warranty in mere contract of sale.

Sec. 879. One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unincumbered title thereto. Warranty of title to personal property.

Sec. 880. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample. Warranty on sale by sample.

Sec. 881. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy. When seller knows that buyer relies on his judgment, &c.

Sec. 882. One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care. Merchandise not in existence.

Sec. 883. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein. Manufacturer's warranty against latent defects.

Sec. 884. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose. Thing bought for particular purpose.

Sec. 885. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable. When thing can not be examined by buyer.

Sec. 886. One who sells or agrees to sell any article to which there is affixed or attached a trade mark, thereby warrants that mark to be genuine, and lawfully used. Trade marks

Other marks.

Sec. 887. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was in whole or in part, produced, manufactured or prepared, thereby warrants the truth thereof.

Warranty on sale of written instruments.

Sec. 888. One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants the instrument to be what it purports to be, and to be binding according to its purport upon all the parties thereto; and also warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations or its invalidity for any cause.

Warranty of provisions for domestic use.

Sec. 889. One who makes a business of selling provisions for domestic use warrants, by a sale thereof, to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome.

Warranty on sale of good will.

Sec. 890. One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

Warranty upon judicial sale.

Sec. 891. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

Effect of general warranty.

Sec. 892. A general warranty does not extend to defects inconsistent therewith, of which the buyer was then aware, or which were then easily discernible by him, without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

SECTION 893. Price, when to be paid.

894. Right to inspect goods.

895. Rights in case of breach of warranty.

Price, when to be paid.

Sec. 893. A buyer must pay the price of the thing sold on its delivery; and must take it away within a reasonable time after the seller offers to deliver it.

Sec. 894. On an agreement for sale, with warranty, the **buyer** has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so. Right to inspect goods.

Sec. 895. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition. Rights in case of breach of warranty.

CHAPTER IV.

SALE BY AUCTION.

SECTION 896. Sale by auction, what.

897. Sale, when complete.

898. Withdrawal of bid.

899. Sale under written conditions.

900. Rights of buyer upon sale without reserve.

901. By bidding.

902. Auctioneer's memorandum of sale.

Sec. 896. A sale by auction is a sale by public outcry to the highest bidder on the spot. Sale by auction, what.

Sec. 897. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold. Sale, when complete.

Sec. 898. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer. Withdrawal of bid.

Sec. 899. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for own benefit. Sale under written conditions.

Sec. 900. If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and upon such a sale, bids by the seller or any agent for him are void. Rights of buyer upon sale without reserve.

By bidding.

Sec. 901. The employment by a seller at a sale by auction, without the knowledge of the buyer, of any person to bid at the sale, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

Auctioneer's memorandum of sale.

Sec. 902. When property is sold by auction, the auctioneer, or his partner or clerk, may enter in a sale book, at the time of the sale, a memorandum specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer. A memorandum thus made binds both parties in the same manner as if made by themselves.

TITLE II.

EXCHANGE.

SECTION 903. Exchange, what.

904. Form of contract.

905. Parties have rights and obligations of sellers and buyers.

906. Warranty of money.

Exchange, what.

Sec. 903. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

Form of contract.

Sec. 904. The provisions of section 865 apply to all exchanges in which the value of the thing to be given by either party is fifty dollars or more.

Parties have rights and obligations of sellers and buyers.

Sec. 905. The provisions of the Title on SALES apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

Warranty of money.

Sec. 906. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

DEPOSIT.

CHAPTER I. Deposit in general.

II. Deposit for keeping.

III. Deposit for exchange.

CHAPTER I.

DEPOSIT IN GENERAL.

ARTICLE I. Nature and creation of deposit.

II. Obligations of the depositary.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

SECTION 907. Deposit, kinds of.

908. Voluntary deposit, how made.

909, 910. Involuntary deposit, how made.

911. Deposit for keeping, what.

912. Deposit for exchange, what.

Sec. 907. A deposit may be voluntary or involuntary; and for safe keeping or for exchange.

Deposit, kinds of.

Sec. 908. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

Voluntary deposit, how made.

Sec. 909. An involuntary deposit is made:

Involuntary deposit, how made.

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

Id. Sec. 910. The person with whom a thing is deposited, in the manner described in the last section, is bound to take charge of it, if able to do so.

Deposit for keeping, what. Sec. 911. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

Deposit for exchange, what. Sec. 912. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

SECTION 913. Depositary must deliver on demand.

914. No obligation to deliver without demand.

915. Place of delivery.

916. Notice to owner of adverse claim.

917. Notice to owner of thing wrongfully detained.

918. Delivery of thing owned jointly, &c.

Depositary must deliver on demand. Sec. 913. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 916.

No obligation to deliver without demand. Sec. 914. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

Place of delivery. Sec. 915. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

Notice to owner of adverse claim. Sec. 916. A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited which

may tend to excuse the depositary from delivering the thing to him.

Sec. 917. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

Notice to owner of thing wrongfully detained.

Sec. 918. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

Delivery of thing owned jointly, &c.

CHAPTER II.

DEPOSIT FOR KEEPING.

ARTICLE I. General provisions.

- II. Gratuitous deposit.
- III. Storage.
- IV. Inn keepers.
- V. Finding.

ARTICLE I.

GENERAL PROVISIONS.

SECTION 919. Depositor must indemnify depositary.

- 920. Obligation of depositary of animals.
- 921. Obligations as to use of things deposited.
- 922. Liability for damage arising from wrongful use.
- 923. Sale of thing in danger of perishing.
- 924. Injury to, or loss of thing deposited.
- 925. Service rendered by depositary.
- 926. Extent of his liability for negligence.

Depositor
must indemnify
depository.

Sec. 919. A depositor must indemnify the depository:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

Obligation of
depository of
animals

Sec. 920. A depository of living animals must provide them with suitable food and shelter, and treat them kindly.

Obligations as
to use of thing
deposited.

Sec. 921. A depository may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, in case of necessity.

Liability for
damage arising
from wrongful
use.

Sec. 922. A depository is liable for any damage happening to the thing deposited during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

Sale of thing in
danger of
perishing.

Sec. 923. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depository may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

Injury to, or
loss of thing
deposited.

Sec. 924. If a thing is lost or injured during its deposit, and the depository refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depository is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

Service rendered
by depository.

Sec. 925. So far as any service is rendered by a depository, or required from him, his duties and liabilities are prescribed by the Title on EMPLOYMENT AND SERVICE.

Extent of his
liability for
negligence.

Sec. 926. The liability of a depository for negligence is limited to the amount which he is informed or has reason to suppose the thing deposited to be worth.

ARTICLE II.

GRATUITOUS DEPOSIT.

SECTION 927. Gratuitous deposit, what.

928. Nature of involuntary deposits.

929. Degree of care required of gratuitous depositary.

930. His duties cease, when.

Sec. 927. Gratuitous deposit is a deposit for which the de- Gratuitous deposit, what
positary receives no consideration beyond the mere possession
of the thing deposited.

Sec. 928. An involuntary deposit is gratuitous, the deposi- Nature of involuntary deposit.
tary being entitled to no reward.

Sec. 929. A gratuitous depositary must use at least slight Degree of care required of gratuitous depositary.
care for the preservation of the thing deposited.

Sec. 930. The duties of a gratuitous depositary cease :

1. Upon his restoring the thing deposited to its owner ; or,
 2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time.
- But an involuntary depositary, under subdivision 2 of section 909, cannot give such notice until the emergency which gave rise to the deposit is past.

His duties cease, when.

ARTICLE III.

STORAGE.

SECTION 931. Deposit for hire.

932. Degree of care required of depositary for hire.

933. Rate of compensation for fraction of a week, &c.

934, 935. Termination of deposit.

Sec. 931. A deposit not gratuitous is called storage. The Deposit for hire.
depositary in such case is called a depositary for hire.

Sec. 932. A depositary for hire must use at least ordinary Degree of care required of depositary for hire.
care for the preservation of the thing deposited!

Rate of compensation for fraction of a week, &c.

Sec. 933. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

Termination of deposit

Sec. 934. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

Id.

Sec. 935. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor, on paying all that would become due to the depositary in case of the deposit so continuing.

ARTICLE IV.

INNKEEPERS.

SECTION 936. Innkeeper's liability.

937. How exempted from liability.

Innkeeper's liability.

Sec. 936. An innkeeper is liable for all losses of, or injuries to, personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn.

How exempted from liability.

Sec. 937. If an innkeeper keeps a fireproof safe, and gives notice to a guest, either personally, or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of, or injury to, such articles, if not deposited with him, and not required by the guest for present use.

ARTICLE V.

FINDING.

SECTION 938. Obligation of finder.

939. Finder to notify owner.

940. Claimant to prove ownership.

941. Reward, &c., to finder.

942. Finder may put thing found on storage.

943. When finder may sell the thing found.

944. How sale is to be made.

945. Surrender of thing to the finder.

946. Thing abandoned.

Sec. 938. One who finds a thing lost, is not bound to take charge of it, but if he does so, he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

Obligation of
finder.

Sec. 939. If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

Finder to
notify owner.

Sec. 940. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

Claimant to
prove owner-
ship.

Sec. 941. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

Reward, &c.,
to finder.

Sec. 942. The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.

Finder may
put thing
found on
storage.

Sec. 943. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found, or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

When finder
may sell the
thing found.

1. When the thing is in danger of perishing, or of losing the greater part of its value ; or,

2. When the lawful charges of the finder amount to two-thirds of its value.

How sale is to
be made

Sec. 944. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

Surrender of
thing to the
finder.

Sec. 945. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

Thing
abandoned.

Sec. 946. The provisions of this article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

SECTION 947. Relations of the parties.

Relations of
the parties.

Sec. 947. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

LOAN.

CHAPTER I. Loan for use.

II. Loan for exchange.

III. Loan of money.

CHAPTER I.

LOAN FOR USE.

SECTION 948. Loan, what.

949. Title to property lent.

950, 951. Care required of borrower.

952. Degree of skill.

953. Borrower, when to repair injuries.

954. Use of thing lent.

955. Relending, forbidden.

956. Borrower, when to bear expenses.

957. Lender liable for defects.

958. Lender may require return of thing lent.

959. When returnable without demand.

960. Place of return.

Sec. 948. A loan for use is a contract by which one gives Loan, what. to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

Sec. 949. A loan for use does not transfer the title to the Title to property lent. thing; and all its increase during the period of the loan belongs to the lender.

Sec. 950. A borrower for use must use great care for the Care required of borrower. preservation in safety and in good condition of the thing lent.

Sec. 951. One who borrows a living animal for use, must Id. treat it with great kindness, and provide everything necessary and suitable for it.

Sec. 952. A borrower for use is bound to have and to exercise such skill in the care of the thing lent, as he causes the Degree of skill. lender to believe him to possess.

Sec. 953. A borrower for use must repair all deteriorations Borrowed, when to repair injuries. or injuries to the thing lent, which are occasioned by his negligence, however slight.

Sec. 954. The borrower of a thing for use may use it for Use of thing lent. such purposes only as the lender might reasonably anticipate at the time of lending.

**Relending
forbidden.**

Sec. 955. The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

**Borrower, when
to bear ex-
penses.**

Sec. 956. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

**Lender liable
for defects.**

Sec. 957. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

**Lender may
require return
of thing lent.**

Sec. 958. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

**When return-
able without
demand.**

Sec. 959. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

**Place of
return.**

Sec. 960. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

SECTION 961, 962. Loan for exchange, what.

963. Title to property lent.

964. Contract cannot be modified by lender.

965. Certain sections applicable.

Sec. 961. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use. Loan for exchange, what.

Sec. 962. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

Sec. 963. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase. Title to property lent.

Sec. 964. A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon. Contract cannot be modified by lender.

Sec. 965. Sections 957, 959, and 960, apply to a loan for exchange. Certain sections applicable.

CHAPTER III.

LOAN OF MONEY.

SECTION 966. Loan of money.

967. Loan to be repaid in current money.

968. Loan may be for reward.

969. Interest, what.

970. Annual rate.

971, 972. Legal interest.

973. Deduction of amount of interest in advance.

974. Recovery of amount exceeding legal interest.

975. Reservation of illegal interest renders contract void.

976. Rights of borrower under contract reserving illegal interest.

977. Cure of usury.

978. Subsequent usury.

Sec. 966. A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on LOAN FOR USE. Loan of money.

Loan to be repaid in current money.

Sec. 967. A borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

Loan may be for reward.

Sec. 968. A loan of money may be made with or without reward, but is presumed to be made for reward.

Interest, what.

Sec. 969. Reward for the loan, forbearance, or use of money, or its equivalent, is called interest.

Annual rate.

Sec. 970. When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

Legal interest.

Sec. 971. Under an obligation to pay interest, no rate being specified, interest is payable at the rate of seven one-hundredths of the principal for one year, and in the like proportion for a longer or shorter time; but in the computation of interest for less than a year, three hundred and sixty days are deemed to constitute a year.

Id.

Sec. 972. No greater interest than is allowed by the last section may be computed, unless otherwise specified in the contract or obligation, in which case it cannot exceed two per cent. per month, or twenty-four one-hundredths of the principal for one year.

Deduction of amount of interest in advance.

Sec. 973. The interest which would become due at the end of the term for which a loan is made, not exceeding one year's interest in all, may be deducted from the loan in advance if the parties thus agree.

Recovery of amount exceeding legal interest.

Sec. 974. When a greater rate of interest has been paid than is allowed by this title, the person paying it may recover the excess from the person taking it.

Reservation of illegal interest renders contract void.

Sec. 975. Every contract by which a lender of money intentionally takes or reserves to himself therefor any benefit or advantage whatever, in addition to the rate of interest allowed by this Title, is voidable by the party prejudiced thereby.

Rights of borrower under contract reserving illegal interest.

Sec. 976. A borrower under a usurious contract is entitled to recover from the lender all that he gave to him under the same, without restoring or paying anything to the lender.

Sec. 977. A usurious contract may be made valid by an express remission of the usury by the creditor, in good faith, before the debt is due. Care of usury.

Sec. 978. A loan on lawful interest is not avoided by a subsequent agreement to pay usury, but the latter agreement alone is void. Subsequent usury.

TITLE V.

HIRING.

CHAPTER I. Hiring in general.

II. Hiring of real property.

III. Hiring of personal property.

CHAPTER I.

HIRING IN GENERAL.

- SECTION 979. Hiring, what.
 980. Products of thing.
 981. Quiet possession.
 982. Degree of care, &c., on part of hirer.
 983. Must repair injuries, &c.
 984. Thing let for a particular purpose.
 985. When letter may terminate the hiring.
 986. When hirer may terminate the hiring.
 987. When hiring terminates.
 988. When terminated by death, &c., of party.
 989. Apportionment of hire.

Sec. 979. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time. Hiring, what.

Sec. 980. The products of a thing hired, during the hiring, belong to the hirer. Products of thing.

Quiet
possession.

Sec. 981. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

Degree of care,
&c., on part
of hirer.

Sec. 982. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

Must repair
injuries, &c.

Sec. 983. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

Thing let for a
particular
purpose.

Sec. 984. When a thing is let for a particular purpose, the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use, in all events, or may treat the contract as thereby rescinded.

When letter
may terminate
the hiring.

Sec. 985. The letter of a thing may terminate the hiring, and reclaim the thing, before the end of the term agreed upon:

1. When the hirer uses, or permits a use of the thing hired, in a manner contrary to the agreement of the parties; or,
2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

When hirer
may terminate
the hiring.

Sec. 986. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into a good condition, or repairing; or,
2. When the greater part of the thing hired, or that part which was, and which the letter had, at the time of the hiring, reason to believe was, the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

When hiring
terminates.

Sec. 987. The hiring of a thing terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the hirer acquiring a title to the thing hired, superior to that of the letter; or,
4. By the destruction of the thing hired.

Sec. 988. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases, it is not terminated thereby. When terminated by death, &c., of party.

Sec. 989. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him. Apportionment of hire.

CHAPTER II.

HIRING OF REAL PROPERTY.

SECTION 990. Lessor to make dwelling house fit for its purpose.

991. When lessee may make repairs, &c.

992. Term of hiring when no limit is fixed.

993. Hiring of lodgings for indefinite term.

994. Renewal of lease by lessee's continued possession.

995. Notice to quit.

996. Rent, when payable.

997. Tenant must deliver notice served on him.

998. Letting parts of rooms forbidden.

Sec. 990. The lessor of a building intended for the occupation of human beings must put it into a condition fit for that purpose, and must repair all subsequent dilapidations thereof, except such as are mentioned in section 983. Lessor to make dwelling house fit for its purpose.

Sec. 991. If, within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor. When lessee may make repairs, &c.

Sec. 992. A hiring of real property, other than lodgings, is presumed to extend to the next day upon which it is the usage of the place to make annual hiring of real property. In places where there is no usage on the subject, such a hiring is presumed to be for one year from its commencement. Term of hiring when no limit is fixed.

Hiring of
lodgings for
indefinite
term.

Sec. 993. A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

Renewal of
lease by lessee's
continued
possession.

Sec. 994. If a lessee of real property remains in possession thereof, after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

Notice to quit.

Sec. 995. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

Rent, when
payable.

Sec. 996. The rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified, is payable at the termination of the hiring.

Tenant must
deliver notice
served on him.

Sec. 997. Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same.

Letting parts
of room for-
bidden.

Sec. 998. One who hires part of a room, for a dwelling, is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

SECTION 999. Obligations of letter of personal property.

1000. Ordinary expenses.

1001. Extraordinary expenses.

1002. Return of thing hired.

1003. Charter-party, what.

Sec. 999. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer, and not the natural result of its use.

Obligations of
letter of
personal
property

Sec. 1000. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

Ordinary
expenses.

Sec. 1001. If a letter fails to fulfill his obligations, as prescribed by section 999, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

Extraordinary
expenses.

Sec. 1002. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring, or if no particular place was so contemplated by them, at the place which it was at that time.

Return of
thing hired.

Sec. 1003. The contract by which a ship is let is termed a charter-party. By it, the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer.

Charter-party,
what.

TITLE VI

SERVICE.

- CHAPTER I. Service with employment.
- II. Particular employments.
- III. Service without employment.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

- ARTICLE I. Definition of employment.
- II. Obligations of the employer.
- III. Obligations of the employee.
- IV. Termination of employment.

ARTICLE I.

DEFINITION OF EMPLOYMENT.

SECTION 1004. Employment, what.

Employment,
what.

Sec. 1004. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or of a third person.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

- SECTION 1005. When employer must indemnify employee.
- 1006. When not.
- 1007. Employer to indemnify for his own negligence.

Sec. 1005. An employer must indemnify his employee, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

When employer must indemnify employee.

Sec. 1006. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee.

When not.

Sec. 1007. An employer must in all cases indemnify his employee for losses caused by his own want of ordinary care.

Employer to indemnify for his own negligence.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYEE.

SECTION 1008, 1009, 1010. Duties of gratuitous employee.

- 1011. Duties of employee for reward.
- 1012. Duties of employee for his own benefit.
- 1013. Contracts for service limited to two years.
- 1014. Employee must obey employer.
- 1015. Employee to conform to usage.
- 1016. Degree of skill required.
- 1017. Must use what skill he has.
- 1018. What belongs to employer.
- 1019. Duty to account.
- 1020. Employee not bound to deliver without demand.
- 1021. Preference to be given to employers.
- 1022. Responsibility of employee for substitute.
- 1023. Responsibility for negligence.
- 1024. Surviving employee.
- 1025. Confidential employment.

Sec. 1008. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

Duties of gratuitous employee.

Id. Sec. 1009. One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases one who undertakes a gratuitous service may relinquish it at any time.

Id. Sec. 1010. A gratuitous employee, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

Duties of employee for reward. Sec. 1011. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

Duties of employee for his own benefit. Sec. 1012. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

Contracts for service limited to two years. Sec. 1013. A contract to render personal service, other than a contract of apprenticeship under sections 140, 143, or 149, cannot be enforced against the employee beyond the term of two years from the commencement of service under it, but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

Employee must obey employer. Sec. 1014. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this Title, except where such obedience is impossible, or unlawful, or would impose new and unreasonable burdens upon the employee, or in case of an emergency which, according to the best information which the employee can with reasonable diligence obtain, the employer did not contemplate, in which he cannot, with reasonable diligence, be consulted, and in which non-compliance is judged by the employee, in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases, the employee must conform as nearly to the directions of his employer as may be reasonably practicable, and most for the interest of the latter.

Sec. 1015. An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

Employee to conform to usage.

Sec. 1016. An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

Degree of skill required.

Sec. 1017. An employee is always bound to use such skill as he possesses.

Must use what sk he has.

Sec. 1018. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during, or after the expiration of, the term of his employment.

What belongs to employer.

Sec. 1019. An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

Duty to account.

Sec. 1020. An employee, who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand, in any mode involving greater risk than its retention by the employee himself.

Employee not bound to deliver without demand.

Sec. 1021. An employee, who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. If intrusted with similar affairs by different employers, he must give them preference according to their relative urgency, or, other things being equal, according to the order in which they were committed to him.

Preference to be given to employers.

Sec. 1022. An employee, who is expressly authorized to employ a substitute, is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

Responsibility of employee for substitute.

Responsibility
for negligence.

Sec. 1023. An employee, who is guilty of a culpable degree of negligence, is liable to his employer for the damage thereby caused to the latter ; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

Surviving
employee.

Sec. 1024. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

Confidential
employment.

Sec. 1025. The obligations peculiar to confidential employments are defined in the Title on TRUSTS.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

SECTION 1026. Termination by death, &c., of employer.

1027. Employment, how terminated.

1028. Continuance of service in certain cases.

1029. Termination at will.

1030. Termination by employer for fault.

1031. Termination by employee for fault.

1032. Compensation of employee dismissed for cause.

1033. Compensation of employee leaving for cause.

Termination
by death, &c.,
of employer.

Sec. 1026. Every employment, in which the power of the employee is not coupled with an interest in its subject, is terminated by notice to him of:

1. The death of the employer ; or,
2. His legal incapacity to contract.

Employment,
how termi-
nated.

Sec. 1027. Every employment is terminated:

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employee ; or,
4. By his legal incapacity to act as such.

Continuance of
service in
certain cases.

Sec. 1028. An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time, without notice, must continue his service after notice of the

death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service, according to the terms of the contract of employment.

Sec. 1029. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title. Termination at will.

Sec. 1030. An employment, even for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employee, in the course of his employment, or in case of his habitual neglect of his duty, or continued incapacity to perform it. Termination by employer for fault.

Sec. 1031. An employment, even for a specified term, may be terminated by the employee at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employee. Termination by employee for fault.

Sec. 1032. An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract. Compensation of employee dismissed for cause.

Sec. 1033. An employee, who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance. Compensation of employee leaving for cause.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I. Master and seryant.

II. Agents.

III. Factors.

IV. Shipmasters.

V. Mates and seamen.

VI. Ships' managers.

ARTICLE I.

MASTER AND SERVANT.

SECTION 1034. Servant, what.

1035, 1036. Term of hiring.

1037. Renewal of hiring.

1038. Time of service.

1039. Servant to pay over without demand.

1040. When servant may be discharged.

Servant, what. Sec. 1034. A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

Term of hiring. Sec. 1035. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year ; a hiring at a daily rate, for one day ; a hiring by piece work, for no specified term.

Id. Sec. 1036. In the absence of any agreement as to wages, a domestic servant is presumed to be hired by the month ; a clerk, or other servant not merely mechanical, or agricultural, by the year ; and other servants for no specified term.

Renewal of hiring. Sec. 1037. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

Time of service. Sec. 1038. The entire time of a domestic servant belongs to the master ; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

Servant to pay over without demand. Sec. 1039. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand ; but he is not bound without orders from his master, to send anything to him through another person.

Sec. 1040. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not: When servant may be discharged.

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.

AGENTS.

SECTION 1041. Agent to conform to his authority.

1042. Must keep his principal informed.

1043. Collecting agent.

1044. Responsibility of sub agent.

Sec. 1041. An agent must not exceed the limits of his actual authority, as defined by the Title on AGENCY. Agent to conform to his authority.

Sec. 1042. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency. Must keep his principal informed.

Sec. 1043. An agent, employed to collect a negotiable instrument, must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor, and, if it is a bill of exchange, must present it for acceptance with reasonable diligence. Collecting agent.

Sec. 1044. A mere agent of an agent is not responsible as such to the principal of the latter. Responsibility of sub-agent.

ARTICLE III.

FACTORS.

SECTION 1045. Factor, what.

1046. Obedience required from factor.

1047. Sale on credit.

1048. Liability of factor under guaranty commission.

1049. Factor cannot relieve himself from liability.

Factor, what.

Sec. 1045. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

Obedience
required from
factor.

Sec. 1046. A factor must obey the instructions of his principal, to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may nevertheless sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

Sales on
credit.

Sec. 1047. A factor may sell property consigned to him on such credit as is usual, but, having once agreed with the purchaser upon the term of credit, may not extend it.

Liability of
factor under
guaranty
commission

Sec. 1048. A factor, who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guaranty for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

Factor cannot
relieve himself
from liability.

Sec. 1049. A factor who receives property for sale under a general agreement or usage to guaranty the sales, or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

ARTICLE IV.

SHIPMASTERS.

SECTION 1050. Appointment of master.

1051. When must be on board.

1052. Pilots.

1053. Power of master over crew.

1054. Power of master over passengers.

1055. Impressing private stores.

1056. When may abandon the ship.

1057. Duties on abandonment.

1058. When master cannot trade on his own account.

SECTION 1059. Care and diligence.

1060. Authority of master.

Sec. 1050. The master of a ship is appointed by the owner, Appointment of master. and holds during his pleasure. The word "ship," as used in this Code, shall be construed to mean any boat, vessel, or structure fitted for navigation.

Sec. 1051. The master of a ship is bound to be always on When must be on board. board when entering or leaving a port. The word "port," as used in this Code, shall be construed to mean any place on a navigable river or lake where a vessel lands, to receive or put off freight or passengers, or for any other purpose, and when a vessel has made a landing, it is said to be in port.

Sec. 1052. Before leaving a port, the master of a ship must Pilots. take a pilot on board, and the navigation of the vessel devolves on him.

Sec. 1053. The master of a ship may enforce the obedience Power of master over seamen. of the mate and crew to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by law, being responsible for the abuse of his power.

Sec. 1054. The master of a ship may confine any person on Power of master over passengers. board, during a voyage, for willful disobedience to his lawful commands.

Sec. 1055. If, during a voyage, the ship's supplies fail, the Impressing private stores. master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value or giving security therefor.

Sec. 1056. The master of a ship must not abandon it during When may abandon the ship. the voyage, without the advice of the other officers.

Sec. 1057. The master of a ship, upon abandoning it, must Duties on abandonment. carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

Sec. 1058. The master of a ship, who engages for a common When master cannot trade on his own account. profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

Care and
diligence.

Sec. 1059. The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

Authority of
master.

Sec. 1060. The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the Title on AGENCY.

ARTICLE V.

MATES AND SEAMEN.

SECTION 1061. Mate, what.

1062. Seamen, what.

1063. Mate and seamen, how engaged and discharged.

1064. Unseaworthy vessel.

1065. Seamen not to lose wages or lien by agreement.

1066. Special agreement with seamen.

1067. Wages depend on freightage.

1068. When wages, &c., begin.

1069. Wages, where voyage is broken up before departure.

1070. Wrongful discharge.

1071. Wages when not lost by wreck.

1072. Certificate.

1073. Disabled seamen.

1074. Maintenance of seamen during sickness.

1075. Death on the voyage.

1076. Theft, &c., forfeits wages.

1077. Seamen cannot ship goods.

1078. Embezzlement and injuries,

1079. Law governing seamen.

Mate, what.

Sec. 1061. The mate of a ship is the officer next in command to the master.

Seamen, what.

Sec. 1062. All persons, other than the master, mates, pilots, clerks and engineers, employed in and about the navigation of a vessel of any description, and in receiving and discharging freight, supplies or any other thing, are to be deemed seamen within the provisions of this Code.

Mate and
seamen how
engaged and
discharged.

Sec. 1063. The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for willful and persistent disobedience or gross disqual-

ification, but cannot otherwise be discharged before the termination of the voyage.

Sec. 1064. A mate or seaman is not bound to go on a voyage in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

Unseaworthy vessel.

Sec. 1065. A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of a ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

Seamen not to lose wages or lien by agreement.

Sec. 1066. No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

Special agreement with seamen.

Sec. 1067. Except as hereinafter provided, the wages of seamen are due at the end of the voyage.

Wages depends on freightage.

Sec. 1068. The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

When wages, &c., begin

Sec. 1069. Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

Wages where voyage is broken up before departure.

Sec. 1070. When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

Wrongful discharge.

Sec. 1071. In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo and stores.

Wages when not lost by wreck.

Sec. 1072. A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo, and stores, is presumptive evidence of the fact.

Certificate.

Disabled
seamen.

Sec. 1073. Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages notwithstanding.

Maintenance of
seamen during
sickness.

Sec. 1074. If a mate or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

Death on the
voyage.

Sec. 1075. If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

Theft, &c.,
forfeits wages.

Sec. 1076. Desertion of the ship without cause, or a justifiable discharge by the master during the voyage, for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

Seamen cannot
ship goods.

Sec. 1077. A mate or seaman may not, under any pretext, ship goods on his own account, without permission from the master.

Embezzlement
and injuries.

Sec. 1078. If any part of the cargo or appurtenances of a ship is embezzled or injured by the mate or a seaman, the offender, or, if it is not known which is the offender, all those of whom negligence or fault may be presumed, must make good the loss.

Law governing
seamen.

Sec. 1079. The shipment of officers and seamen, and their rights and duties, are further regulated by law.

ARTICLE VI.

SHIPS' MANAGERS.

SECTION 1080. Manager, what.

1081. Duties of manager.

1082. Compensation.

Sec. 1080. The general agent for the owners, in respect to Manager, what. the care of a ship and freight, is called the manager; if he is a part owner he is also called the managing owner.

Sec. 1081. Unless otherwise directed, it is the duty of the Duties of manager. manager of a ship to provide for the complete seaworthiness of the ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate and crew, and supplies of provisions and stores.

Sec. 1082. A managing owner is presumed to have no right Compensation. to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

~~Section~~ 1083. Voluntary interference with property.
1084. Salvage.

Sec. 1083. One who officiously, and without the consent of Voluntary interference with property. the real or apparent owner of a thing, takes it into his possession, for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses, incurred by him about such service, from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

Sec. 1084. Any person, other than the master, mate, or a Salvage. seaman thereof, who rescues a ship, her appurtenances, or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the Title on LIENS.

TITLE VII.

CARRIAGE.

CHAPTER I. Carriage in general,

II. Carriage of persons.

III. Carriage of property.

IV. Carriage of messages.

V. Common carriers.

CHAPTER I.

CARRIAGE IN GENERAL.

SECTION 1085. Contract of carriage.

1086. Different kinds of carriers.

1087. Marine and inland carriers, what.

1088. Carriers by railroad and steamboat.

1089. Carriers by sea.

1090. Obligations of gratuitous carriers.

1091. Obligations of gratuitous carrier who has begun to carry.

Contract of
carriage.

Sec. 1085. The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

Different kinds
of carriers.

Sec. 1086. Carriage is either :

1. Inland; or,
2. Marine.

Marine and
inland carriers,
what.

Sec. 1087. Carriers upon the ocean, upon arms of the sea, upon the great lakes Ontario, Erie, Huron, Michigan and Superior, and upon the rivers and canals connecting those lakes with each other, are marine carriers. All others are inland carriers.

Carriers by
railroad and
steamboat.

Sec. 1088. Rights and duties peculiar to carriers by railway and steamers, are defined in other Codes or statutes.

Sec. 1089. Rights and duties peculiar to carriers by sea, Carriers by sea.
are defined by acts of congress.

Sec. 1090. Carriers without reward are subject to the same Obligations of gratuitous carriers
rules as employees without reward, except so far as is otherwise provided by this Title.

Sec. 1091. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he Obligations of gratuitous carrier who has begun to carry.
had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

ARTICLE I. Gratuitous carriage.

II. Carriage for reward.

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

SECTION 1092. Degree of care required.

Sec. 1092. A carrier of persons without reward must use Degree of care required.
ordinary care and diligence for their safe carriage.

ARTICLE II.

CARRIAGE FOR REWARD.

SECTION 1093. General duties of carrier.

1094. Vehicles.

1095. Not to overload his vehicles.

1096. Treatment of passengers.

1097. Rate of speed and delays.

Sec. 1093. A carrier of persons for reward must use the General duties of carrier.
most care and diligence for their safe carriage, must provide

everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

Vehicles.

Sec. 1094. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

Not to overload his vehicles.

Sec. 1095. A carrier of persons for reward must not overcrowd or overload his vehicle.

Treatment of passengers.

Sec. 1096. A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, must treat them with civility, and given them a reasonable degree of attention.

Rate of speed and delays.

Sec. 1097. A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

ARTICLE I. General definitions.

II. Obligations of the carrier.

III. Bill of lading.

IV. Freightage.

V. General average.

ARTICLE I.

GENERAL DEFINITIONS.

SECTION 1098. Freight, consignor, &c., what.

Freight
consignor, &c.,
what

Sec. 1098. Property carried is called freight, the reward, if any, to be paid for its carriage is called freightage, the person who delivers the freight to the carrier is called the consignor, and the person to whom it is to be delivered is called the consignee.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

SECTION 1099. Care and diligence required of carriers.

1100. Carrier to obey directions.

1101. Conflict of orders.

1102. Stowage, deviation, &c.

1103. Delivery of freight.

1104. Place of delivery.

1105. Obligations of carrier when freight is not delivered to consignee.

1106. How carrier may terminate his liability.

1107. When consignee cannot be found.

Sec. 1099. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

Care and diligence required of carriers.

Sec. 1100. A carrier must comply with the directions of the consignor or consignee, to the same extent that an employee is bound to comply with those of his employer.

Carrier to obey directions

Sec. 1101. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

Conflict of orders.

Sec. 1102. A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

Stowage, deviation, &c.

Sec. 1103. A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

Delivery of freight.

Sec. 1104. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows :

Place of delivery.

1. If carried upon a railway owned or managed by the carrier, it may be delivered at the station nearest the place to which it is addressed ;

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address ; or if there is no wharf, on board a lighter alongside the ship ; or,

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

Obligations of carrier when freight is not delivered to consignee.

Sec. 1105. If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a carrier, until the consignee has had a reasonable time to remove it.

How carrier may terminate his liability.

Sec. 1106. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, and giving notice thereof to the consignee.

When consignee cannot be found.

Sec. 1107. If a consignee of freight cannot, with reasonable diligence, be found, the carrier may place it in a suitable warehouse for his account, but must give notice thereof to the consignor.

ARTICLE III.

BILL OF LADING.

SECTION 1108. Bill of lading, what.

1109, 1110. Bill of lading negotiable.

1111. Effect of bill of lading on rights, &c., of carrier.

1112. Bills of lading to be given to consignor.

1113. Carrier exonerated by delivery according to bill of lading.

1114. Carrier may demand surrender of bill of lading before delivery.

Sec. 1108. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. Bill of lading, what.

Sec. 1109. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange. Bill of lading negotiable.

Sec. 1110. When a bill of lading is made to "bearer," or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement. Id.

Sec. 1111. A bill of lading does not alter the rights or obligation of the carrier, as defined in this chapter, unless, it is plainly inconsistent therewith. Effect of bill of lading on rights, &c., of carrier.

Sec. 1112. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him besides all damage thereby occasioned. Bill of lading to be given to consignor.

Sec. 1113. A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer. Carrier exonerated by delivery according to bill of lading.

Sec. 1114. When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight. Carrier may demand surrender of bill of lading before delivery.

ARTICLE IV.

FREIGHTAGE.

SECTION 1115. When freightage is to be paid.

1116. Consignor, when, liable for freightage.

SECTION 1117. Consignee, when liable.

1118. Natural increase of freight.

1119, 1120. Apportionment by contract.

1121. Apportionment according to distance.

1122. Freight carried further than agreed, &c.,

1123. Carrier's lien for freightage.

When freightage
is to be paid.

Sec. 1115. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

Consignor,
when liable
for freightage.

Sec. 1116. The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

Consignee,
when liable.

Sec. 1117. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

Natural
increase of
freight.

Sec. 1118. No freightage can be charged upon the natural increase of freight.

Apportionment
by contract.

Sec. 1119. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

11.

Sec. 1120. If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

Apportionment
according to
distances.

Sec. 1121. If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

Freight carried
further than
agreed, &c.

Sec. 1122. If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver

it, on the demand of the consignee, at the place and time of its arrival.

Sec. 1123. A carrier has a lien for freightage, which is regulated by the Title on LIENS. Carrier's lien for freightage.

ARTICLE V.

GENERAL AVERAGE.

SECTION 1124. Jettison and general average, what.

1125. Order of jettison.

1126. By whom made.

1127. Loss, how borne.

1128. General average loss, how adjusted.

1129. Values, how ascertained.

1130. Things stowed on deck.

1131. Application of the foregoing rules.

Sec. 1124. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss. Jettison and general average, what.

Sec. 1125. A jettison must begin with the most bulky and least valuable articles, so far as possible. Order of jettison.

Sec. 1126. A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person. By whom made.

Sec. 1127. The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage and cargo, for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed. Loss, how borne.

Sec. 1128. The proportions in which a general average loss is to be borne, must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost, as the value of his part of the property affected bears to the value of the whole: But an adjustment made at the end of the voyage, if valid there is valid everywhere. General average loss, how adjusted.

Values, how
ascertained.

Sec. 1129. In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

Things stowed
on deck.

Sec. 1130. The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

Application of
the foregoing
rules.

Sec. 1131. The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred, for the preservation of the ship and cargo from extraordinary perils.

CHAPTER IV.

CARRIAGE OF MESSAGES.

SECTION 1132. Obligations of carrier of messages.

1133. Degree of care and diligence required.

Obligations of
carrier of
messages.

Sec. 1132. A carrier of messages for reward must deliver them at the place to which they are addressed, or to the persons for whom they are intended.

Degree of care
and diligence
equied.

Sec. 1133. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. A carrier by telegraph must use the utmost diligence therein.

CHAPTER V.

COMMON CARRIERS.

ARTICLE I. Common carriers in general.

II. Common carriers of persons.

III. Common carriers of property.

IV. Common carriers of messages.

ARTICLE I.

COMMON CARRIERS IN GENERAL.

SECTION 1134. Common carrier, what.

1135. Obligation to accept freight.

1136. Obligation not to give preference.

1137. What preferences he must give.

1138. Starting.

1139. Compensation.

1140. Obligations of carrier altered by agreement.

1141. Certain agreements void.

1142. Effect of written contract.

Sec. 1134. Every one who offers to the public to carry persons, property or messages, is a common carrier of whatever he thus offers to carry. Common carrier what.

Sec. 1135. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry. Obligation to accept freight.

Sec. 1136. A common carrier must not give preference, in time, price, or otherwise, to one person over another, except where expressly authorized by statute. Obligation not to give preference.

Sec. 1137. A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this Territory. What preferences he must give.

Sec. 1138. A common carrier must start at such a time and place as he announces to the public. Starting.

Sec. 1139. A common carrier is entitled to a reasonable compensation and no more; which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry. Compensation.

Sec. 1140. The rights and obligations of a common carrier cannot be altered by notice on his part, or by any other means except a written agreement between him and the person with whom he deals. Obligations of carrier altered only by agreement.

Certain agree-
ments void.

Sec. 1141. A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong, of himself or his servants.

Effect of
written
contract.

Sec. 1142. A passenger, consignor, or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

ARTICLE. II.

COMMON CARRIERS OF PERSONS.

SECTION 1143. Obligation to carry luggage.

1144. Luggage, what.

1145. Liability for luggage.

1146. Luggage, how carried and delivered.

1147. Obligation to provide vehicles.

1148. Seats for passengers.

1149. Regulations for conduct of business.

1150. Fare, when payable.

1151. Ejection of passengers.

1152. Fare not payable after ejection.

1153. Carrier's lien.

Obligation to
carry luggage.

Sec. 1143. A common carrier of persons, unless his vehicle is fitted for the reception of passengers exclusively, must receive and carry a reasonable amount of luggage for each passenger, without any charge except for an excess of weight over one hundred pounds to a passenger.

Luggage, what.

Sec. 1144. Luggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

Liability for
luggage.

Sec. 1145. The liability of a carrier for luggage received by him with a passenger, is the same as that of a common carrier of property.

Sec. 1146. A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belongs.

Luggage, how
carried and
delivered.

Sec. 1147. A common carrier of persons, upon a route to which he has an exclusive right, must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

Obligation to
provide
vehicles.

Sec. 1148. A common carrier of persons must provide every passenger with a seat.

Seats for
passengers.

Sec. 1149. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

Regulations
for conduct
of business.

Sec. 1150. A common carrier may demand the fare of passengers, either at starting, or at any subsequent time.

Fare, when
payable.

Sec. 1151. A passenger, who refuses to pay his fare, or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and within a short distance from some dwelling house.

Ejection of
passengers.

Sec. 1152. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

Fare not
payable after
ejection.

Sec. 1153. A common carrier has a lien upon the luggage of a passenger, for the payment of such fare as he is entitled to from him. This lien is regulated by the Title on LIENS.

Carrier's lien,

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

SECTION 1154. Liability of inland carriers for loss.

1155. When exemptions do not apply.

1156. Liability for delay.

1157, 1158. Liability of marine carriers.

1159. Perils of sea, what.

- SECTION 1160.** Consignor of valuables to declare their nature
 1161. Delivery of freight beyond usual route.
 1162. Proof to be given in case of loss.
 1163. Carrier's services other than carriage and delivery.

Liability of inland carriers for loss.

Sec. 1154. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 1103 to 1107, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice or weakness, or a spontaneous action, of the property itself;
2. The act of a public enemy of the United States, or of this Territory ;
3. The act of the law ; or,
4. Any irresistible superhuman cause.

When exemptions do not apply.

Sec. 1155. A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

Liability for delay.

Sec. 1156. A common carrier is liable for delay, only when it is the effect of his ordinary negligence.

Liability of marine carriers.

Sec. 1157. A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

Id.

Sec. 1158. The liability of a common carrier by sea is further regulated by acts of congress.

Perils of sea. what.

Sec. 1159. Perils of the sea are from :

1. Storms and waves ;
2. Rocks, shoals and rapids ;
3. Other obstacles, though of human origin ;
4. Changes of climate ;
5. The confinement necessary at sea ;
6. Animals peculiar to the sea ; and,
7. All other dangers peculiar to the sea.

Consignor of valuables to declare their nature.

Sec. 1160. A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state, of timepieces of any description, of negotiable paper or other valuable writings, of pictures, glass or china ware, is not liable for more than fifty dollars upon the

loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight.

Sec. 1161. If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier, carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

Delivery of freight beyond the usual route

Sec. 1162. If freight, addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor, that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

Proof to be given in case of loss.

Sec. 1163. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the Titles on DEPOSIT and SERVICE.

Carrier's services other than carriage and delivery.

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

SECTION 1164. Order of transmission of telegraphic messages.

1165. Order in other cases.

1166. Damages when message is refused or postponed.

Sec. 1164. A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order :

Order of transmission of telegraphic messages.

1. Messages from public agents of the United States or of this Territory, on public business ;
2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use ;
3. Messages giving information relating to the sickness or death of any person ;

4. Other messages, in the order in which they were received.

Order in
other cases.

Sec. 1165. A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this Territory, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

Damages when
message is
refused or
postponed.

Sec. 1166. Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUST.

CHAPTER I. Trusts in general.

II. Trusts for the benefit of third persons.

CHAPTER I:

TRUSTS IN GENERAL.

ARTICLE I. Nature and creation of a trust.

II. Obligations of trustees.

III. Obligations of third persons.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

SECTION 1167. Trusts classified:

1168. Voluntary trust, what.

1169. Involuntary trust, what.

1170. Parties to the contract.

1171. What constitutes one a trustee.

1172. For what purpose a trust may be created.

1173. Voluntary trust, how created as to trustor.

SECTION 1174. How created as to trustee.

1175. Involuntary trustee, who is.

1176. Involuntary trust resulting from negligence, &c.

Sec. 1167. A trust is either :

Trusts
classified.

1. Voluntary ; or

2. Involuntary.

Sec. 1168. A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by one, for the benefit of another.

Voluntary
trust, what.

Sec. 1169. An involuntary trust is one which is created by operation of law.

Involuntary
trust, what.

Sec. 1170. The person whose confidence creates a trust, is called the trustor ; the person in whom the confidence is reposed, is called the trustee ; and the person for whose benefit the trust is created is called the beneficiary.

Parties to the
contract.

Sec. 1171. Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence obtains any control.

What consti-
tutes one a
trustee.

Sec. 1172. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the Titles on USES AND TRUSTS and on TRANSFERS.

For what pur-
pose a trust
may be created.

Sec. 1173. Subject to the provisions of section 280, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty :

Voluntary
trust, how
created as a
trustor.

1. An intention on the part of the trustor to create a trust ; and,

2. The subject, purpose and beneficiary of the trust.

Sec. 1174. Subject to the provisions of section 280, a voluntary trust is created, as to the trustee, by any words or acts of his, indicating with reasonable certainty :

As to trustee.

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence : and,

2. The subject, purpose and beneficiary of the trust.

Involuntary
trustee, who is.

Sec. 1175. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

Involuntary
trust resulting
from negli-
gence, &c.

Sec. 1176. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

ARTICLE. II.

OBLIGATIONS OF TRUSTEES.

SECTION 1177. Trustee's obligation to good faith.

1178. Trustee not to use property for his own profit.

1179. Certain transactions forbidden.

1180. Trustee's influence not to be used for his advantage.

1181. Trustee not to assume a trust adverse to interest of beneficiary.

1182. To disclose adverse interest.

1183. Trustee guilty of fraud, when.

1184. Presumption against trustees.

1185. Trustee mingling trust property with his own.

1186, 1187. Measure of liability for breach of trust.

1188. Co-trustees, how far liable for each other.

Trustee's
obligation to
good faith.

Sec. 1177. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

Trustee not to
use property
for his own
profit.

Sec. 1178. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

Certain trans-
actions forbid-
den.

Sec. 1179. Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust, in which he, or any one for whom he acts as agent, has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

2. When, the beneficiary not having capacity to contract, the district court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the district court for the latter, in the manner above prescribed.

Sec. 1180. A trustee may not use the influence, which his position gives him, to obtain any advantage from his beneficiary.

Trustee's influence not to be used for his advantage.

Sec. 1181. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

Trustee not to assume a trust adverse to interest of beneficiary.

Sec. 1182. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

To disclose adverse interest.

Sec. 1183. Every violation of the provisions of the preceding sections of this article, is a fraud against the beneficiary of a trust.

Trustee guilty of fraud, when.

Sec. 1184. All transactions between a trustee and his beneficiary, during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

Presumption against trustees.

Sec. 1185. A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

Trustee mingling trust property with his own.

Sec. 1186. A trustee who uses or disposes of the trust property, contrary to section 1178, may, at the option of the beneficiary, be required to account for all profits so made, or to pay

Measure of liability for breach of trust.

the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

Id.

Sec. 1187. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

Co-trustees,
how far liable
for each other.

Sec. 1188. A trustee is responsible for the wrongful acts of a co-trustee, to which he consented, or which by his negligence he enabled the latter to commit; but for no others.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

SECTION 1189. Third person, when involuntary trustee.

1190. When third person must see to application of trust property.

Third person,
when involun-
tary trustee.

Sec. 1189. Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration.

when third
person must
see to applica-
tion of trust
property.

Sec. 1190. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof; and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE I. Nature and creation of the trust.

II. Obligations of trustees.

III. Powers of trustees.

IV. Rights of trustees.

V. Termination of the trust.

VI. Succession or appointment of new trustees.

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

SECTION 1191. Who are trustees within scope of this chapter.

1192. Creation of trust.

1193. Trustee appointed by court.

1194, 1195. Declaration of trust.

Sec. 1191. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators and guardians, as such.

Who are trustees within scope of this chapter.

Sec. 1192. The mutual consent of a trustor and trustee creates a trust, of which the beneficiary may take advantage at any time prior to its rescission.

Creation of trust.

Sec. 1193. When a trustee is appointed by a court or public officer as such, such court or officer is the trustor, within the meaning of the last section.

Trustee appointed by court.

Sec. 1194. The nature, extent and object of a trust are expressed in the declaration of trust.

Declaration of trust.

Sec. 1195. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

SECTION 1196. Trustee must obey declaration of trust.

1197. Degree of care and diligence in execution of trust.

1198. Duty of trustee as to appointment of successor.

1199. Investment of money by trustee.

1200. Interest, simple or compound, on omission to invest trust moneys.

1201. Purchase by trustee of claims against trust fund,

Trustee must
obey declara-
tion of trust.

Sec. 1196. A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

Degree of care
and diligence
in execution
of trust.

Sec. 1197. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

Duty of trustee
as to appoint-
ment of
successor.

Sec. 1198. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

Investment of
money by
trustee

Sec. 1199. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

Interest, simple
or compound,
on omission to
invest trust
moneys.

Sec. 1200. If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

Purchase by
trustee of
claims against
trust fund.

Sec. 1201. A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.

POWERS OF TRUSTEES.

Section 1202. Trustee's powers as agent.

1203. All must act.

1204. Discretionary powers.

Trustee's
powers as
agent

Sec. 1202. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust, and by this chapter, and none other. His

acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

Sec. 1203. Where there are several co-trustees, all must unite in any act to bind the trust property, unless declaration of trust otherwise provides. All must act.

Sec. 1204. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the district court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust. Discretionary powers.

ARTICLE IV.

RIGHTS OF TRUSTEES.

~~Section~~ 1205. Indemnification of trustee.

1206. Compensation of trustee.

1207. Involuntary trustee.

Sec. 1205. A trustee is entitled to the payment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate. Indemnification of trustee.

Sec. 1206. When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified, and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. Compensation of trustee.

Sec. 1207. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article. Involuntary trustee.

ARTICLE V.

TERMINATION OF THE TRUST.

SECTION 1208. Trust, how extinguished.

1209. Not revocable.

1210. Trustee's office, how vacated.

1211. Trustee, how discharged.

1212. Removal by district court.

Trust, how
extinguished.

Sec. 1208. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

Not revocable.

Sec. 1209. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

Trustee's office,
how vacated.

Sec. 1210. The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

Trustee, how
discharged.

Sec. 1211. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he has capacity to contract.
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the district court.

Removal by
supreme court.

Sec. 1212. The district court may remove any trustee who has violated or is unfit to execute the trust.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

SECTION 1213. Vacant trusteeship filled by court.

1214. Survivorship between co-trustees.

1215. District court as trustee.

Sec. 1213. The district court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment. Vacant trusteeship filled by court.

Sec. 1214. On the death, renunciation or discharge of one of several co-trustees, the trust survives to the others. Survivorship between co-trustees.

Sec. 1215. When a trust exists without any appointed trustee, or where all the trustees renounce, die or are discharged, the district court must execute the trust until another trustee is appointed. Supreme court as trustee.

TITLE IX.

AGENCY.

CHAPTER I. Agency in general.

II. Particular agencies.

CHAPTER I.

AGENCY IN GENERAL.

ARTICLE I. Definition of agency.

II. Authority of agents.

III. Mutual obligations of principals and third persons.

IV. Obligations of agents to third persons.

V. Delegation of agency.

VI. Termination of agency.

ARTICLE I.

DEFINITION OF AGENCY.

SECTION 1216. Agency, what.

1217. Who may appoint and who may be an agent.

1218. Agents, general or special.

1219. Agency, actual or ostensible.

1220. Actual agency.

1221. Ostensible agency.

Agency, what.

Sec. 1216. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

Who may appoint and who may be an agent.

Sec. 1217. Any person, having capacity to contract, may appoint an agent; and any person may be an agent.

Agents, general or special.

Sec. 1218. An agent for a particular act or transaction, is called a special agent. All others are general agents.

Agency, actual or ostensible.

Sec. 1219. An agency is either actual or ostensible.

Actual agency.

Sec. 1220. An agency is actual when the agent is really employed by the principal.

Ostensible agency.

Sec. 1221. An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.

ARTICLE II.

AUTHORITY OF AGENTS.

SECTION 1222. What authority may be conferred.

1223. Agent may perform acts required of principal by Code.

1224. Agent cannot have authority to defraud principal.

1225. Creation of agency.

1226. Consideration, unnecessary.

1227. Form of authority.

1228. Ratification of agent's act.

1229. Ratification of part of a transaction.

SECTION 1230. When ratification void.

- 1231. Ratification not to work injury to third persons.
- 1232. Rescission of ratification.
- 1233. Measure of agent's authority.
- 1234. Actual authority, what.
- 1235. Ostensible authority, what.
- 1236. Agent's authority as to persons having notice of restrictions upon it.
- 1237. Agent's necessary authority.
- 1238. Agent's power to disobey instructions.
- 1239. Authority to be construed by its specific, rather than by its general terms.
- 1240. Exceptions to general authority.
- 1241. What included in authority to sell personal property.
- 1242. What included in authority to sell real property.
- 1243. Authority of general agent to receive price of property.
- 1244. Authority of special agent to receive price.

Sec. 1222. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention. What authority may be conferred.

Sec. 1223. Every act which, according to this Code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears. Agent may perform acts required of principal by Code.

Sec. 1224. An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals to be, a fraud upon the principal. Agent cannot have authority to defraud principal.

Sec. 1225. An agency may be created, and an authority may be conferred, by a precedent authorization, or a subsequent ratification. Creation of agency.

Sec. 1226. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal. Consideration, unnecessary.

Sec. 1227. An oral authorization is sufficient for any purpose, except that: Form of authority.

1. An authority to enter into a contract under seal can only be given by an instrument under seal; and,

2. An authority to enter into a contract for the transfer of real property, or to declare a trust in relation thereto, can only be given in writing.

Ratification of agent's act.

Sec. 1228. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or, where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

Ratification of part of a transaction.

Sec. 1229. Ratification of part of an indivisible transaction is a ratification of the whole.

When ratification void.

Sec. 1230. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

Ratification not to work injury to third persons.

Sec. 1231. No authorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

Rescission of ratification.

Sec. 1232. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

Measure of agent's authority.

Sec. 1233. An agent has such authority as the principal, actually or ostensibly, confers upon him.

Actual authority, what.

Sec. 1234. Actual authority is such as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, allows the agent to believe himself to possess.

Ostensible authority, what.

Sec. 1235. Ostensible authority is such as a principal intentionally, or by want of ordinary care, causes or allows a third person to believe the agent to possess.

Agent's authority as to persons having notice of restrictions upon it.

Sec. 1236. Every agent has actually such authority as is defined by this Title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

Agent's necessary authority.

Sec. 1237. An agent has authority :

1. To do everything necessary, or proper and usual in the ordinary course of business, for effecting the purpose of his agency ; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

Sec. 1238. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

Agents power to disobey instructions.

Sec. 1239. When an authority is given partly in general, and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

Authority to be construed by its specific, rather than its general terms.

Sec. 1240. An authority expressed in general terms, however broad, does not authorize an agent :

Exceptions to general authority!

1. To act in his own name, unless it is the usual course of his business to do so ;

2. To define the scope of his agency ; or,

3. To do any act which a trustee is forbidden to do by article II, of chapter I, of the last Title.

Sec. 1241. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

What included in authority to sell personal property.

Sec. 1242. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

What included in authority to sell real property.

Sec. 1243. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

Authority of general agent to receive price of property.

Sec. 1244. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

Authority of special agent to receive price.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

SECTION 1245. Principal, how affected by acts of agent within the scope of his authority.

1246. Principal, when bound by incomplete execution of authority.

SECTION 1247. Notice to agent, when notice to principal.

1248. Obligation of principal when agent exceeds his authority.

1249. For acts done under a merely ostensible authority.

1250. When exclusive credit is given to agent.

1251. Rights of person who deals with agent without knowledge of his agency.

1252. Effect of a written instrument by which the agent intends to bind the principal.

1253. Principal's responsibility for agent's negligence or omission.

1254. Principal's responsibility for wrongs willfully committed by the agent.

Principal, how
affected by acts
of agent within
the scope of his
authority.

Sec. 1245. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

Principal, when
bound by
incomplete
execution of
authority.

Sec. 1246. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

Notice to
agent, when
notice to
principal.

Sec. 1247. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

Obligation of
principal when
agent exceeds
his authority.

Sec. 1248. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are authorized.

For acts done
under a merely
ostensible
authority.

Sec. 1249. A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability, or parted with value, upon the faith thereof.

When exclusive
credit is given
to agent.

Sec. 1250. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

Sec. 1251. One who deals with an agent, without knowing or having reason to believe that the agent acts as such in the transaction, may set off, against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

Rights of persons who deal with agent without knowledge of his agency.

Sec. 1252. Any instrument within the scope of his authority, whether under seal or not, by which an agent intends to bind his principal, does bind him, if such intent is plainly inferable from the instrument itself.

Effect of a written instrument by which the agent intends to bind the principal.

Sec. 1253. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in, and as a part of, the transaction of such business; and for his willful omission to fulfill the obligations of the principal.

Principal's responsibility for agent's negligence or omission.

Sec. 1254. A principal is responsible for no other wrongs committed by his agent, than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

Principal's responsibility for wrongs willfully committed by the agent.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

SECTION 1255. Warranty of authority.

1256. Agent's responsibility to third persons.

1257. Obligation of agent to surrender property to third person.

1258. Agent not having capacity to contract.

Sec. 1255. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

Warranty of authority.

Sec. 1256. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

Agent's responsibility to third persons.

1. When, with his consent, credit is given to him personally in a transaction;

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so ; or,

3. When his acts are wrongful in their nature.

Obligation of agent to surrender property to third person.

Sec. 1257. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same ; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

Agent not having capacity to contract.

Sec. 1258. The provisions of this article are subject to the provisions of Part I of the First Division of this Code.

ARTICLE V.

DELEGATION OF AGENCY.

SECTION 1259. Agent's delegation of his powers.

1260. Agent's unauthorized employment of sub-agent.

1261. Sub-agent rightfully appointed, represents principal.

Agent's delegation of his powers.

Sec. 1259. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others :

1. When the act to be done is purely mechanical ;
2. When it is such as the agent cannot himself, and the sub-agent can, lawfully perform ;
3. When it is the usage of the place to delegate such powers ; or,
4. When such delegation is specially authorized by the principal.

Agent's unauthorized employment of sub-agent.

Sec. 1260. If an agent employs a sub-agent without authority, the former is a principal, and the latter his agent, and the principal of the former has no connection with the latter.

Sub-agent rightfully appointed represents principal.

Sec. 1261. A sub-agent, lawfully appointed, represents the principal in like manner with the original agent ; and the original agent is not responsible to third persons for the acts of sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

SECTION 1262, 1263. Termination of agency.

Sec. 1262. An agency is terminated, as to every person having notice thereof, by : Termination
of agency.

1. The expiration of its term ;
2. The extinction of its subject ;
3. The death of the agent ;
4. His renunciation of the agency ; or,
5. The incapacity of the agent to act as such.

Sec. 1263. Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof, by :

1. Its revocation by the principal ;
2. His death ; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I. Auctioneers.

II. Factors.

III. Shipmasters and pilots.

IV. Ship's managers.

ARTICLE I.

AUCTIONEERS.

SECTION 1264. Auctioneer's authority from the seller.

1265. Auctioneer's authority from the bidder.

Auctioneer's
authority from
the seller.

Sec. 1264. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows :

1. To sell by public auction to the highest bidder ;
2. To sell for cash only, except such articles as are usually sold on credit at auction ;
3. To warrant in like manner with other agents to sell, according to section 1241 ;
4. To prescribe reasonable rules and terms of sale ;
5. To deliver the thing sold, upon payment of the price ;
6. To collect the price ; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for affecting these purposes.

Auctioneer's
authority from
the bidder.

Sec. 1265. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract as prescribed in the Title on SALE.

ARTICLE II.

FACTORS.

SECTION 1266. Factor, what.

1267. Actual authority of factor.

1268. Ostensible authority.

Factor, what.

Sec. 1266. A factor is an agent, who is employed to buy or sell property in his own name, and who is intrusted by his principal with the possession thereof.

Actual author-
ity of factor.

Sec. 1267. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted :

1. To insure property consigned to him uninsured ;
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit ; but not to pledge, mortgage, or barter the same ; and,
3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

Sec. 1268. A factor has ostensible authority, as to persons Ostensible authority. having no notice that the property with which he deals is not his own, to deal with it in any manner.

ARTICLE III.

SHIP MASTERS AND PILOTS.

SECTION 1269. Authority of shipmaster on behalf of shipowner.

1270. Authority to borrow.

1271. Authority on behalf of owners of cargo.

1272. Power to make contracts.

1273. Power to hypothecate.

1274. Master's power to sell ship.

1275. Master's power to sell cargo.

1276. Authority to ransom ship,

1277. Abandonment terminates master's power.

1278. Personal liability for contracts concerning the ship

1279. Liability for acts of persons employed upon the ship.

1280. Responsibility for negligence of pilot.

Sec. 1269. The master of a ship is a general agent for its owner in all matters concerning the same. Authority of shipmaster on behalf of shipowner.

Sec. 1270. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted, without injurious delay. Authority to borrow.

Sec. 1271. The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, except to sell or hypothecate the same. Authority on behalf of owners of cargo.

Sec. 1272. The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and in a foreign port, may enter into a charter-party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage. Power to make contracts.

Sec. 1273. The master of a ship may hypothecate the ship, freightage and cargo, in the cases prescribed by the chapters on **BOTTOMRY** and **RESPONDENTIA**, and in no others. Power to hypothecate.

Master's power
to sell ship.

Sec. 1274. When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication, he can inform the owners, and await their instructions.

Master's power
to sell cargo.

Sec. 1275. The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

Authority to
ransom ship.

Sec. 1276. The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage and cargo.

Abandonment
terminates
master's power.

Sec. 1277. The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

Personal
liability for
contracts
concerning
the ship.

Sec. 1278. Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

Liability for
acts of persons
employed upon
the ship.

Sec. 1279. The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

Responsibility
for negligence
of pilot.

Sec. 1280. The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is so responsible to third persons.

ARTICLE IV.

SHIP'S MANAGERS.

SECTION 1281. What powers manager has.

1282. What powers he has not.

Sec. 1281. A ship's manager has power to make contracts ^{What powers manager has.} requisite for the performance of his duties as such ; to enter into charter-parties, or make contracts for carriage ; and to settle for freightage and adjust averages.

Sec. 1282. Without special authority, a ship's manager ^{What powers he has not.} cannot borrow money, or give up the ship for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

TITLE X.

PARTNERSHIP.

CHAPTER I. Partnership in general.

II. General partnership.

III. Special partnership.

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I. What constitutes a partnership.

II. Partnership property.

III. Mutual obligations of partners.

IV. Renunciation of partnership.

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

SECTION 1283. Partnership, what.

1284. Ship owners.

1285. Formation of partnership.

Sec. 1283. Partnership is the association of two or more ^{Partnership, what.} persons, for the purpose of carrying on business together, and dividing its profits between them.

Ship owners. Sec. 1284. Part owners of a ship do not, by simply using it in joint enterprise, become partners as to the ship.

Formation of partnership. Sec. 1285. A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership, without the consent of every existing partner.

ARTICLE II.

PARTNERSHIP PROPERTY.

SECTION 1286. Partnership property, what.

1287. Partner's interest in partnership property.

1288. Partner's share in profits and losses.

1289. When division of losses implied:

1290. Partner may require application of partnership property.

1291. What property is partnership property.

Partnership property, what. Sec. 1286. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and of all that is subsequently acquired thereby.

Partner's interest in partnership property. Sec. 1287. The interest of each member of a partnership extends to every portion of its property.

Partner's share in profits and losses. Sec. 1288. In the absence of an agreement on the subject, the shares of partners in the profits or loss of the business are equal; and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

When division of losses implied. Sec. 1289. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

Partner may require application of partnership property to payment of debts. Sec. 1290. Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

What property is partnership property. Sec. 1291. Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 1292. Partners, trustees for each other.

1293. Good faith to be observed between partners.

1294 Mutual liability of partners to account.

1295. No compensation for services to firm.

Sec. 1292. The relations of partners are confidential. They are trustees for each other, within the meaning of Chapter I of the Title on TRUSTS. Their obligations, as such trustees, are defined by that chapter.

Partners,
trustees for
each other.

Sec. 1293. In all proceedings connected with the formation, conduct, dissolution, and liquidation of the partnership, every partner is bound to act in the highest good faith toward his co-partners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Good faith to
be observed
between
partners.

Sec. 1294. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

Mutual liability
of partners
to account.

Sec. 1295. A partner is not entitled to any compensation for services rendered by him to the partnership.

No compensa-
tion for ser-
vices to firm.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

SECTION 1296. Renunciation of future profits exonerates from liability.

1297. Effect of renunciation.

Renunciation
of future
profits exone-
rates from
liability.

Sec. 1296. A partner may exonerate himself from all future liability to a third person on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as ~~by him in his power~~ he dissolves the partnership, and does not intend to be liable on account thereof for the future.

Effect of
Renunciation.

Sec. 1297. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

- ARTICLE I. What is a general partnership.
- II. Powers and authority of partners.
- III. Mutual obligations of partners.
- IV. Liability of partners.
- V. Termination of partnership.
- VI. Liquidation.
- VII. Of the use of fictitious names.

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

SECTION 1298. General partnership, what.

General part-
nership, what.

Sec. 1298. Every partnership that is not formed in accordance with the law concerning special partnership, and every special partnership, so far only as the general partners are concerned, is a general partnership.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

SECTION 1299. Power of majority of partners.

1300. Authority of individual partner.

1301. What authority partner has not.

1302. Partner's acts in bad faith, when ineffectual.

Sec. 1299. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business. Power of majority of partners.

Sec. 1300. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement under seal. Authority of individual partner.

Sec. 1301. A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting: What authority partner has not,

1. To make an assignment of the partnership property, or any portion thereof, to a creditor, or to a third person, in trust for the benefit of a creditor or of all creditors;

2. To dispose of the good will of the business;

3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;

4. To do any act which would make it impossible to carry on the ordinary business of the partnership; or,

5. To do any other act not within the scope of section 1300.

Sec. 1302. A partner is not bound by any act of a copartner in bad faith toward him, though within the scope of a partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act. Partner's acts in bad faith, when ineffectual.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 1303. Profits of individual partner.

1304. In what business partner may not engage.

1305. In what he may engage.

1306. Must account to the firm for profits.

Profits of individual partner.

Sec. 1303. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

In what business partner may not engage.

Sec. 1304. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

In what he may engage.

Sec. 1305. A partner may engage in any separate business, except as otherwise provided by the last two sections.

Must account to the firm for profits.

Sec. 1306. A general partner, transacting business contrary to the provisions of this article, may be required by any co-partner to account to the partnership for the profits of such business.

ARTICLE IV.

LIABILITY OF PARTNERS.

SECTION 1307, 1308. Liability of partners to third persons,

1309. Liability of one held out as partner.

1310. No one liable as partner, unless held out as such.

Liability of partners to third persons.

Sec. 1307. Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

Sec. 1308. The liability of general partners for each other's acts is defined by the Title on AGENCY.

Sec. 1309. Any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, and who on the faith thereof give credit to the partnership.

Liability of
one held out
as partner.

Sec. 1310. No one is liable as a partner, who is not such in fact, except as provided by the last section.

No one liable
as partner,
unless held out
as such.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

- SECTION 1311. Duration of partnership,
 1312. Total dissolution of partnership.
 1313. Partial dissolution.
 1314. Partner entitled to dissolution.
 1315. Notice of termination.
 1316. Notice by change of name.

Sec. 1311. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

Duration of
partnership.

Sec. 1312. A general partnership is dissolved, as to all the partners:

Total dissolu-
tion of
partnership,

1. By lapse of the time prescribed by agreement for its duration ;
2. By the expressed will of any partner, if there is no such agreement ;
3. By the death of a partner ;
4. By the transfer, to a person not a partner, of the interest of any partner in the partnership property ;
5. By war, or the prohibition of commercial intercourse, between the country in which one partner resides, and that in which another resides ; or,
6. By a judgment of dissolution.

Sec. 1313. A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

Partial
dissolution.

Partner entitled
to dissolution.

Sec. 1314. A general partner is entitled to a judgment of dissolution :

1. When he, or another partner, becomes legally incapable of contracting ;

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct ; or,

3. When the business of the partnership can be carried on only at a permanent loss.

Notice of
termination,

Sec. 1315. The liability of a general partner for the acts of his copartners continues, even after a dissolution of the partnership, in favor of persons who have had dealings with, and given credit to, the partnership, during its existence, until they have had personal notice of the dissolution ; and in favor of other persons, until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business ; to the extent, in either case, to which such persons part with value, in good faith, and in the belief that such partner is still a member of the firm.

Notice by
change of name.

Sec. 1316. A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated. But a change in the name which does not contain such an indication, is not notice of the withdrawal of any partner.

ARTICLE. VI.

LIQUIDATION.

SECTION 1317. Powers of partners after dissolution.

1318. Who may act in liquidation.

1319. Who may not act in liquidation.

1320, 1321. Powers of partners in liquidation.

Powers of
partners after
dissolution.

Sec. 1317. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

Sec. 1318. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section. Who may act in liquidation.

Sec. 1319. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein ; but their acts are valid in favor of persons parting with value, in good faith, upon the credit thereof. Who may not act in liquidation.

Sec. 1320. A partner authorized to act in liquidation may collect, compromise or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property. Powers of partners in liquidation.

Sec. 1321. A partner authorized to act in liquidation may enter, in the name of the firm, into any obligation by way of satisfaction of a partnership debt, or as a collateral security therefor, but he cannot make, draw or indorse, any other obligation in its name, nor revive a debt against the firm, by any acknowledgment or part payment, within the provisions of the CODE OF CIVIL PROCEDURE concerning the times of commencing actions.

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

SECTION 1322. Fictitious name.

1323. Style of foreign partnership.

1324. Continuation of style of firm having foreign business relations.

1325. Certificate stating names, &c., of persons using such firm name to be filed and published.

1326. Register of such firms to be kept by register of deeds.

1327. Certified copies from register of deeds, and affidavits of publication to be evidence.

Sec. 1322. No partnership or person may transact business by a fictitious name, or in the name of a person not interested in such business, except as prescribed in this article. Fictitious name.

Style of foreign partnership.

Sec. 1323. A commercial partnership, established and transacting business in a place without the United States, may use in this Territory the partnership name used by it there, although fictitious.

Continuation of style of firm having foreign business relations.

Sec. 1324. The name of a partnership, which has had business relations with places without the United States, may be continued in use by the persons succeeding to its business, and by their successors, upon compliance with the provisions of this article, and with the consent of the persons, if living, whose names are used.

Certificates stating names, &c., of persons using such firm name to be filed and published.

Sec. 1325. On every change of the persons continuing the use of a partnership name, under the last section, the person acquiring the right to use it must sign and acknowledge before a proper officer for that purpose, a certificate, stating the name of each person dealing under such name, and his place of residence, and must file the same with the register of deeds of the county in which their principal place of business is situated, and must publish such certificate, or a statement containing the substance thereof, once in each week, for four successive weeks, beginning within one week after his first using such name, in a newspaper of this Territory.

Register of such firms to be kept by county clerk.

Sec. 1326. Every register of deeds must keep a register of the names of firms and persons mentioned in certificates filed with him, pursuant to the last section, entering in alphabetical order the name of every such partnership, and of each partner therein.

Certified copies from register and affidavit of publication to be evidence.

Sec. 1327. Copies of the entries of a register of deeds herein directed, when certified by him, and affidavits of publication as herein directed, made by the printer, publisher or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I. Formation of the partnership.

II. Powers, rights and duties of the partners.

ARTICLE III. Liability of partners.**IV. Alteration and dissolution of the partnership.****ARTICLE I.****FORMATION OF THE PARTNERSHIP.**

- SECTION** 1328. Special partnership, how formed.
 1329. Constitution of.
 1330. Certificate of special partnership.
 1331. Proof of certificate.
 1332, 1333. Certificate to be filed and recorded.
 1334. Affidavit of actual payment of capital by special partner to be filed.
 1335. Special partnership, when formed.
 1336. Publication of certificate.
 1337. Affidavit of publication.
 1338. Effect of omission or informality of publication.
 1339. Renewal of special partnership to be certified and published.

Sec. 1328. A special partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business, except banking or insurance. Special partnership, how formed.

Sec. 1329. A special partnership may consist of one or more persons, called general partners, and one or more persons called special partners. Constitution of.

Sec. 1330. Persons desirous of forming a special partnership must severally sign a certificate, stating : Certificate of special partnership.

1. The name under which such partnership is to be conducted ;

2. The general nature of the business intended to be transacted ;

3. The names of all the partners, and their residences, specifying which are general and which are special partners ;

4. The amount of capital which each special partner has contributed to the common stock ; and,

5. The periods at which such partnership will begin and end.

Proof of
certificate.

Sec. 1331. A certificate under the last section must be acknowledged or proved, as to the several persons signing the same, in the manner prescribed by sections 516 to 529.

Certificate to
be filed and
recorded.

Sec. 1332. The certificate of a special partnership, when duly acknowledged and certified, must be filed with the register of deeds of the county in which the partnership is to have its principal place of business, and must be recorded by him at large, in a book kept for that purpose, open to public inspection.

Id.

Sec. 1333. A transcript of the record made pursuant to the last section, duly certified by the register of deeds under his official seal, must be filed and recorded in like manner in the office of the register of deeds of every county in which the partnership has a place of business.

Affidavit of
actual payment
of capital by
special partner
to be filed.

Sec. 1334. An affidavit of one or more of the general or special partners in a special partnership, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid in cash, must be filed in the same office with the original certificate.

Special partner-
ship, when
formed.

Sec. 1335. No special partnership is formed, until the provisions of the last five sections are complied with.

Publication of
certificate.

Sec. 1336. The certificate mentioned in section 1330, or a statement of its substance, must be published in one or more newspapers, designated by the register of deeds with whom the original certificate is filed, and published in this Territory.—Such publication must be made once a week for six weeks, beginning within one week from the time of filing the certificate.

Affidavit of
publication.

Sec. 1337. An affidavit of publication pursuant to this chapter, made by the printer, publisher or chief clerk of a newspaper, may be filed with the register of deeds with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

Effect of
omission or
informality of
publication.

Sec. 1338. If the publication directed by section 1336 is not made, the partnership is general from its beginning. But if, from any cause beyond the control of the partners, the publication is not made in exact conformity with that section, it is suf-

ficient if made as nearly in conformity therewith as may be in their power.

Sec. 1339. Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation.

Renewal of special partnership to be certified and published.

ARTICLE II.

POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

SECTION 1340. Firm name, how composed.

1341. Authority of special partner.

1342. His relation to his copartners.

1343. Loans of special partner to firm.

1344. Special partner need not be joined in suit with general partners.

1345. May not withdraw his capital.

1346. May draw profits, &c.

1347. Capital withdrawn to be restored.

1348. Certain transfers of property, void

Sec. 1340. The business of a special partnership must be conducted under a name, consisting of the names of one or more of the general partners only, with or without the addition of the words "and company."

Firm name, how composed.

Sec. 1341. The general partners only have authority to transact the business of a special partnership. The special partners may negotiate business for it, subject to the subsequent approval of a general partner, but must not act on its behalf in any other manner.

Authority of special partner.

Sec. 1342. A special partner may at all times investigate the partnership affairs, and advise his partners or their agents as to their management.

His relation to his co-partners.

Sec. 1343. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but, in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

Loans of special partner to firm.

Special partner
need not be
joined in suit
with general
partners.

Sec. 1344. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

May not with-
draw his capital

Sec. 1345. No special partner under any pretense, may withdraw any part of the capital invested by him in the partnership during its continuance.

May draw
profits, &c.

Sec. 1346. A special partner may receive such lawful interest, and such proportion of profits, as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

Capital with-
drawn to be
restored.

Sec. 1347. If a special partner withdraws capital from the firm, contrary to the provisions of section 1345, he must restore the same with interest.

Certain
transfers of
property, void.

Sec. 1348. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner, over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent is in like manner void.

ARTICLE III.

LIABILITY OF PARTNERS.

SECTION 1349. Liability of general partner in special partnership.

1350, 1351. Liability of special partner; what acts render him a general partner.

1352. Who may not question existence of special partnership.

Liability of
general partner
in special
partnership.

Sec. 1349. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

Liability of
special partner;
what acts
render him a
general partner.

Sec. 1350. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner to all creditors of the firm ;

2. If he has willfully interfered with the business of the firm, except as permitted by sections 1341 and 1342, he is liable in like manner ; or,

3. If he has willfully joined in, or assented to an act contrary to any of the provisions of sections 1340, 1345 and 1348, he is liable in like manner.

Sec. 1351. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice.

Sec. 1352. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of any error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by law.

Who may not question existence of special partnership.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

SECTION 1353. Partnership made general, by omission to notify changes.

1354. Admission of new special partners to be notified.

1355. Purchaser of interest of special partner, &c., may become a special partner.

1356. Dissolution of special partnership.

Sec. 1353. A special partnership becomes general, if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business, or in its name, a certificate of such fact, signed

Partnership made general, by omission to notify changes;

by one or more of the partners, is not filed with the clerk with whom the original certificate of the partnership was filed.

Admission of
new special
partners to
be notified.

Sec. 1354. New special partners may be admitted into a special partnership, upon a certificate, stating the names, residences and contributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified according to section 1334, acknowledged or proved, and filed, according to sections 1331 and 1332, with the register of deeds with whom the original certificate of the partnership was filed.

Purchaser of
interest of
special partner,
K. C., may
become special
partner

Sec. 1355. A special partner, or his legal representatives, may sell his interest in the partnership, and the purchaser thereof may, with the consent of the other partners, become a special partner, without changing the nature of the partnership, upon filing a notice of sale within ten days thereafter with the register of deeds with whom the original certificate of such partnership was filed.

Dissolution
of special
partnership.

Sec. 1356. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete, until a notice thereof has been filed and recorded in the office of the register of deeds with whom the original certificate was recorded, and published once in each week for four weeks, in a newspaper published in this Territory.

TITLE XI.

INSURANCE.

CHAPTER I. Insurance in general.

II. Marine insurance.

III. Fire insurance,

IV. Life and health insurance.

CHAPTER I.

INSURANCE IN GENERAL.

ARTICLE I. Definition of insurance.

- II. What may be insured.
- III. Parties.
- IV. Insurable interest.
- V. Concealment and representation.
- VI. The policy.
- VII. Warranties.
- VIII. Premiums.
- IX. Loss.
- X. Notice of loss.
- XI. Double insurance.
- XII. Re-insurance.

ARTICLE I.

DEFINITION OF INSURANCE.

SECTION 1357. Insurance, what.

Sec. 1357. Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability, arising from an unknown or contingent event.

ARTICLE II.

WHAT MAY BE INSURED.

SECTION 1358. What events may be insured against.

1359. Usual kinds of insurance.

1360. All subject to this chapter.

Sec. 1358. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

Usual kinds of insurance.

Sec. 1359. The most usual kinds of insurance are :

1. Marine insurance ;
2. Fire insurance ;
3. Life insurance ; and,
4. Health insurance.

All subject to this chapter.

Sec. 1360. All kinds of insurance are subject to the provisions of this chapter.

ARTICLE III.

PARTIES TO THE CONTRACT.

SECTION 1361. Designation of parties.

1362. Who may insure.

1363. Who may be insured,

1364, 1365. Assignment to mortgagee of thing insured.

Designation of parties.

Sec. 1361. The person who undertakes to indemnify another, by a contract of insurance, is called the insurer, and the person indemnified is called the insured.

Who may insure.

Sec. 1362. Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents and others.

Who may be insured.

Sec. 1363. Any one except a public enemy may be insured.

Assignment to mortgagee of thing insured.

Sec. 1364. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

Sec. 1365. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.

INSURABLE INTEREST.

- SECTION 1366. Insurable interest, what.
 1367. In what may consist.
 1368. Interest of carrier or depositary.
 1369. Mere expectancies.
 1370. Measure of interest in property.
 1371. Insurance without interest, illegal.
 1372. When interest must exist.
 1373. Effect of transfer.
 1374. Transfer after loss.
 1375. Exception in the case of several subjects in one policy.
 1376. In case of the death of the insurer.
 1377. In the case of transfer between co-tenants.

Sec. 1366. Every interest in property, or any relation there-
 to, or liability in respect thereof, of such a nature that a con-
 templated peril might directly damnify the insured, is an insur-
 able interest. Insurable interest, what.

Sec. 1367. An insurable interest in property may consist
 in: In what may consist.

1. An existing interest ;
2. An inchoate interest founded on an existing interest ; or,
3. An expectancy, coupled with an existing interest in that
 out of which the expectancy arises.

Sec. 1368. A carrier or depositary of any kind has an in-
 surable interest in a thing held by him as such, to the extent of
 its value. Interest of carrier or depositary.

Sec. 1369. A mere contingent or expectant interest in any-
 thing, not founded on an actual right to the thing, nor upon any
 valid contract for it, is not insurable. Mere expectancies.

Sec. 1370. The measure of an insurable interest in property
 is the extent to which the insured might be damnified by loss
 or injury thereof. Measure of interest in property.

Sec. 1371. The sole object of insurance is the indemnity of
 the insured, and if he has no insurable interest the contract is
 void. Insurance without interest, illegal.

When interest
must exist.

Sec. 1372. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

Effect of
transfer.

Sec. 1373. Except in the cases specified in the next four sections, and in the cases of life and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

Transfer after
loss.

Sec. 1374. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

Exception in
the case of
several sub-
jects in one
policy.

Sec. 1375. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

In the case
of the death of
the insured.

Sec. 1376. A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

In the case of
transfer
between
co-tenants.

Sec. 1377. A transfer of interest by one of several partners, joint owners or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured,

ARTICLE V.

CONCEALMENT AND REPRESENTATION.

SECTION 1378. Concealment, what.

1379. Effect of concealment.

1380. What must be disclosed.

1381. Matters which need not be communicated without inquiry.

1382. Test of materiality.

1383. Matters which each is bound to know.

1384. Waiver of communication.

1385. Interest of insured.

SECTION 1386. Fraudulent warranty.

1387. Matters of opinion.

1388. Representation, what.

1389. When made.

1390. How interpreted.

1391. Representation as to future.

1392. How may affect policy.

1393. When may be withdrawn.

1394. Time intended by representation.

1395. Representing information.

1396. Falsity.

1397. Effect of falsity.

1398. Materiality.

1399. Application of provisions of this article.

Sec. 1378. A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

Concealment,
what.

Sec. 1379. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

Effect of
concealment.

Sec. 1380. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge, which are, or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

What must be
disclosed.

Sec. 1381. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

Matters which
need not be
communicated
without inquiry

1. Those which the other knows;

2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;

3. Those of which the other waives communication;

4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,

5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

Sec. 1382. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming

Test of
materiality.

his estimate of the disadvantages of the proposed contract, or in making his inquiries.

Matters which each is bound to know.

Sec. 1383. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade.

Waiver of communication.

Sec. 1384. The right to information of material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

Interest insured.

Sec. 1385. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as prescribed by section 1401.

Fraudulent warranty.

Sec. 1386. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

Matters of opinion.

Sec. 1387. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

Representation what.

Sec. 1388. A representation may be oral or written.

When made.

Sec. 1389. A representation may be made at the same time with the policy, or before it.

How interpreted.

Sec. 1390. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

Representation as to future.

Sec. 1391. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

How may affect policy.

Sec. 1392. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

When may be withdrawn.

Sec. 1393. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

Time intended by representation.

Sec. 1394. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

Sec. 1395. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which Representing information. he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence.

Sec. 1396. A representation is to be deemed false when the Falsity. facts fail to correspond with its assertions or stipulations.

Sec. 1397. If a representation is false in a material point, Effect of falsity. whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

Sec. 1398. The materiality of a representation is deter- Materiality. mined by the same rule as the materiality of a concealment.

Sec. 1399. The provisions of this article apply as well to a Application of provisions of this article. modification of a contract of insurance as to its original formation.

ARTICLE VI.

THE POLICY.

SECTION 1400. Policy, what.

- 1401. What must be specified in a policy.
- 1402. Whose interest is covered.
- 1403. Insurance by agent or trustee.
- 1404. Insurance by part owner.
- 1405. General terms.
- 1406. Successive owners.
- 1407. Transfer of the thing insured.
- 1408. Open and valued policies.
- 1409. Open policy, what.
- 1410. Valued policy, what.
- 1411. Running policy, what.
- 1412. Effect of receipt.
- 1413. Agreement not to transfer.

Sec. 1400. The written instrument, in which a contract of Policy, what. insurance is set forth, is called a policy of insurance.

What must be specified in a policy.

Sec. 1401. A policy of insurance must specify :

1. The parties between whom the contract is made ;
2. The rate of premium ;
3. The property or life insured ;
4. The interest of the insured in property insured, if he is not the absolute owner thereof ;
5. The risks insured against ; and,
6. The period during which the insurance is to continue.

Whose interest is covered.

Sec. 1402. When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

Insurance by agent or trustee.

Sec. 1403. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

Insurance by part owner.

Sec. 1404. To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

General terms.

Sec. 1405. When the description of the insured in a policy is so general that it may comprehend any person, or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

Successive owners.

Sec. 1406. A policy may be so framed that it will insure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

Transfer of the thing insured.

Sec. 1407. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both the policy and the thing insured.

Opened and valued policies

Sec. 1408. A policy is either open or valued.

Open policy, what.

Sec. 1409. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

Valued policy, what.

Sec. 1410. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Sec. 1411. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

Running
policy, what.

Sec. 1412. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Effect of receipt

Sec. 1413. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

Agreement
not to transfer.

ARTICLE VII.

WARRANTIES.

SECTION 1414. Warranty, express or implied.

1415. Form.

1416. Warranty must be in policy.

1417. Past, present and future warranties.

1418. Warranty as to past or present.

1419. Warranty as to the future.

1420. Performance excused.

1421, 1422. What acts avoid the policy.

1423. Breach without fraud.

Sec. 1414. A warranty is either express or implied.

Warranty,
express or
implied.

Sec. 1415. No particular form of words is necessary to create a warranty.

Form.

Sec. 1416. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, and another instrument, whether upon the same paper or not, cannot be referred to as making a party of the policy for this purpose, even by agreement of the parties.

Warranty
must be in
policy.

Sec. 1417. A warranty may relate to the past, the present, the future, or to any or all of these.

Past, present
and future
warranties.

Sec. 1418. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

Warranty as
to past or
present.

Warranty as to
the future.

Sec. 1419. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

Performance
excused.

Sec. 1420. When, before the time arrives for performance of a warranty relating to the future, a loss insured against happens, or performance is made illegal, the omission to fulfill the warranty for either reason does not avoid the policy.

What acts
avoid the
policy.

Sec. 1421. The violation of a material warranty, or other material provisions of a policy, on the part of either party thereto, entitles the other to rescind.

Id.

Sec. 1422. A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy.

Breach without
fraud.

Sec. 1423. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or, where it is broken in its inception, prevents the policy from attaching to the risk.

ARTICLE VIII.

PREMIUM.

SECTION 1424. When premium is earned.

1425, 1426. Return of premium.

1427. When none allowed,

1428. Over insurance by several insurers.

1429, 1430. Contribution.

When premium
is earned.

Sec. 1424. An insurer is entitled to payment of the premium, as soon as the thing insured is exposed to the peril insured against.

Return of
premium.

Sec. 1425. A person insured is entitled to a return of premium paid, or a ratable proportion thereof, if no part of his interest in the thing insured is exposed to any of the perils insured against, or, where the insurance is made for a definite period of time, if it is not exposed to such peril for the whole of that time.

Sec. 1426. A person insured is entitled to a return of the ^{Id.} premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

Sec. 1427. If a peril insured against has existed, and the insurer has been liable, for any period, however short, the insured is not entitled to a return of premium, so far as that particular risk is concerned, unless the insurance was for a definite period of time, in which case he is entitled to a proportionate return under section 1425. ^{When none allowed.}

Sec. 1428. In case of an over-insurance by several insurers, the insurer is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk. ^{Over-insurance by several insurers.}

Sec. 1429. When an over-insurance is affected by simultaneous policies, the insurers contribute to the premium to be returned, in proportion to the amount insured by their respective policies. ^{Contribution.}

Sec. 1430. When an over-insurance is effected by successive policies, those only contribute to a return of the premium, who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable. ^{Id.}

ARTICLE IX.

LOSS.

SECTION 1431. Perils, remote and proximate.

1432. Loss incurred in rescue from peril.

1433. Excepted perils.

1434. Negligence and fraud.

Perils, remote
and proximate.

Sec. 1431. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

Loss incurred
in rescue
from peril.

Sec. 1432. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to peril, not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

Excepted
perils.

Sec. 1433. Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted.

Negligence
and fraud.

Sec. 1434. An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, nor by fraud or negligence on the part of his agents or others.

ARTICLE X.

NOTICE OF LOSS.

SECTION 1435. Notice of loss.

1436. Preliminary proofs.

1437. Waiver of defects in notice, &c.

1438. Waiver of delay.

1439. Certificate, when dispensed with.

Notice of loss,

Sec. 1435. In case of loss, an insurer is exonerated, if notice thereof is not given to him by some person insured, or entitled to the benefit of an insurance, without unnecessary delay.

Preliminary
proofs.

Sec. 1436. Where preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

Sec. 1437. All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived. Waiver of defects in notice, &c.

Sec. 1438. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground. Waiver of delay.

Sec. 1439. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of another person than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified. Certificate, when dispensed with.

ARTICLE XI.

DOUBLE INSURANCE.

SECTION 1440. Double insurance.

1441. Contribution in case of double insurance.

Sec. 1440. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest. Double insurance.

Sec. 1441. In case of double insurance, the insured may claim payment of a loss from any one of the insurers, who, on paying it, may require the others to contribute ratably thereto. Contribution in case of double insurance.

ARTICLE XII.

RE-INSURANCE.

SECTION 1442. Re-insurance, what.

1443. Disclosure required.

1444. Re-insurance presumed to be against liability.

1445. Original insured has no interest.

Re-insurance,
what.

Sec. 1442. A contract of re-insurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

Disclosure
required.

Sec. 1443. Where an insurer obtains re-insurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which is material to the risk.

Re-insurance
presumed to
be against
liability.

Sec. 1444. A re-insurance is presumed to be a contract of indemnity against liability, and not merely against damage.

Original
insured has
no interest.

Sec. 1445. The original insured has no interest in a contract of re-insurance.

CHAPTER II.

MARINE INSURANCE.

ARTICLE I. Definition of marine insurance.

II. Insurable interest.

III. Concealment,

IV. Representations.

V. Implied warranties.

VI. The voyage, and deviation.

VII. Loss.

VIII. Abandonment.

IX. Measure of indemnity.

ARTICLE I.

DEFINITION OF MARINE INSURANCE.

SECTION 1446. Marine insurance, what.

Marine insu-
rance, what.

Sec. 1446. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

ARTICLE II.

INSURABLE INTEREST.

SECTION 1447. Insurable interest in ship.

1448. Interest reduced by bottomry.

1449. Freightage, what.

1450, 1451. Expected freightage.

1452. Insurable interest in profits.

1453. Insurable interest of charterer.

Sec. 1447. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss. Insurable interest in ship.

Sec. 1448. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry. Interest reduced by bottomry.

Sec. 1449. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others. Freightage, what.

Sec. 1450. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against. Expected freightage.

Sec. 1451. The interest mentioned in the last section exists, Id. in the case of a charter-party, when the ship has broken ground on the chartered voyage; and, if a price is to be paid for the carriage of goods, when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage.

Sec. 1452. One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits. Insurable interest in profits.

Sec. 1453. The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss. Insurable interest of charterer.

ARTICLE III.

CONCEALMENT.

SECTION 1454. Information must be communicated.

1455. Material information.

1456. Presumption of knowledge of loss.

1457. Concealments which only affect the risk in question.

Information
must be com-
municated.

Sec. 1454. In marine insurance each party is bound to communicate, in addition to what is required by section 1380, all the information which he possesses, material to the risk, except such as is mentioned in section 1381, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

Material in-
formation.

Sec. 1455. In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material.

Presumption
of knowledge
of loss.

Sec. 1456. A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

Concealments
which only
affect the
risk in question.

Sec. 1457. The effect of a concealment in a marine insurance, in respect to any of the following matters, is not to vitiate the entire contract, but merely to exonerate the insurer from a loss resulting from the risk concealed :

1. The national character of the insured ;
2. The liability of the thing insured to capture and detention ;
3. The liability to seizure from breach of foreign laws of trade ;
4. The want of necessary documents ; and,
5. The use of false and simulated papers.

ARTICLE IV.

REPRESENTATIONS.

SECTION 1458. Effect of intentional falsity.

1459. Representation of expectation.

Sec. 1458. If a representation, by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract. Effect of intentional falsity.

Sec. 1459. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance. Representation of expectation.

ARTICLE V.

IMPLIED WARRANTIES.

SECTION 1460. Warranty of seaworthiness.

1461. Seaworthiness, what.

1462. At what time seaworthiness must exist.

1463. What things are required to constitute seaworthiness.

1464. Different degrees of seaworthiness at different stages of the voyage.

1465. Unseaworthiness during the voyage.

1466. Seaworthiness for purposes of insurance on cargo.

1467. Neutral papers.

Sec. 1460. In every marine insurance upon ship or freightage or upon anything belonging to the shipowner, unless made for a specified length of time; a warranty is implied that the ship shall be seaworthy. Warranty of seaworthiness.

Sec. 1461. A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy. Seaworthiness, what.

Sec. 1462. An implied warranty of seaworthiness is complied with if the ship is seaworthy at the time of the commencement of the risk. At what time seaworthiness must exist.

What things
are required to
constitute
seaworthiness.

Sec. 1463. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments.

Different
degrees of
seaworthiness
at different
stages of the
voyage.

Sec. 1464. Where different portions of the voyage, contemplated by a policy, differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with, if, at the commencement of each portion, the ship is seaworthy with reference to that portion.

Unseaworthi-
ness during
the voyage.

Sec. 1465. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability for any loss arising therefrom.

Seaworthiness
for purposes
of insurance
on cargo.

Sec. 1466. A ship which is seaworthy for the purpose of an insurance upon the ship, may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

Neutral papers.

Sec. 1467. Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE. VI.

THE VOYAGE AND DEVIATION.

SECTION 1468, 1469. Voyage insured, how determined.

1470. Deviation, what.

1471. When proper.

1472. When improper.

1473. Deviation exonerates the insurer.

Voyage insured,
how deter-
mined.

Sec. 1468. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course from point to point fixed by mercantile usage between those places,

Sec. 1469. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which, to a master of ordinary skill and discretion, would seem the most natural, direct and advantageous.

Sec. 1470. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage; or the commencement of an entirely different voyage. Deviation, what

Sec. 1471. A deviation is proper :

When proper.

1. When caused by circumstances over which neither the master nor the owner of the ship has any control ;

2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not ;

3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril ; or,

4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

Sec. 1472. Every deviation, not specified in the last section, is improper. When improper.

Sec. 1473. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation. Deviation exonerates the insurer.

ARTICLE VII.

LOSS.

Section 1474. Total and partial loss.

1475. Partial loss.

1476. Actual and constructive total loss.

1477. Total loss, what.

1478. Constructive total loss.

1479. Presumed actual loss.

1480. Insurance on cargo, &c., when voyage is broken up.

1481. Cost of reshipment, &c.

1482. When insured is entitled to payment.

1483. Abandonment of goods on insurance of profits.

1484. Average loss.

1485. Insurance against total loss.

Total and partial loss.	Sec. 1474. A loss may be either total or partial.
Partial loss.	Sec. 1475. Every loss which is not total is partial.
Actual and constructive total loss.	Sec. 1476. A total loss may be either actual or constructive.
Total loss, what.	Sec. 1477. An actual total loss is caused by : <ol style="list-style-type: none"> 1. A total destruction of the thing insured ; 2. The loss of the thing by sinking, or by being broken up ; 3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it ; or, 4. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured.
Constructive total loss.	Sec. 1478. A constructive total loss is one which gives to a person insured a right to abandon under section 1487.
Presumed actual loss.	Sec. 1479. An actual loss may be presumed from the continued absence of a ship without being heard of ; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.
Insurance on cargo, &c., when voyage is broken up.	Sec. 1480. When a ship is prevented, at an intermediate port, from completing the voyage, the master must make every exertion to procure in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination ; and the liability of a marine insurer thereon continues after they are thus reshipped.
Cost of reshipment, &c.	Sec. 1481. In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured.
When insured is entitled to payment.	Sec. 1482. Upon an actual total loss a person insured is entitled to payment without notice of abandonment.
Abandonment of goods on insurance of profits.	Sec. 1483. Where profits are insured, but the goods are not insured, a marine insurer is not liable for a constructive total loss unless the insured offers to abandon the goods.
Average loss.	Sec. 1484. Where it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average, a marine insurer is not liable for any loss, not depriving the insured of the possession, at the port of destination,

of the whole of such thing, or class of things, even though it becomes entirely worthless.

Sec. 1485. An insurance confined in terms to a total loss, ^{Insurance against total loss.} does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured; and also a general average loss.

ARTICLE VIII.

ABANDONMENT.

SECTION 1486. Abandonment, what.

1487. When insured may abandon.

1488. Must be unqualified.

1489. When may be made.

1490. Abandonment may be defeated.

1491. How made.

1492. Requisites of notice.

1493. No other cause can be relied on.

1494. Effect.

1495. Waiver of formal abandonment.

1496. Agents of the insured become agents of the insurer.

1497. Acceptance not necessary.

1498. Acceptance conclusive.

1499. Accepted abandonment, irrevocable.

1500. Freightage, how affected by abandonment of ship.

1501. Refusal to accept.

1502. Omission to abandon.

Sec. 1486. Abandonment is the act by which, after a constructive total loss, a person insured by a contract of marine insurance, declares to the insurer that he relinquishes to him his interest in the thing insured. ^{Abandonment, what.}

Sec. 1487. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof, separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against: ^{When insured may abandon.}

1. If more than half thereof, in value, is actually lost, or would have to be expended to recover it from the peril;

2. If it is injured to such an extent as to reduce its value more than one-half.

3. If, the thing insured being a ship, the contemplated voyage cannot be lawfully performed, without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If, the thing insured being cargo or freightage, the voyage cannot be performed, nor another ship procured by the master, within a reasonable time, and with reasonable diligence, to forward the cargo, without incurring the like expenses or risk.— But freightage cannot in any case be abandoned, unless the ship is also abandoned.

Must be un-qualified.

Sec. 1488. An abandonment must be neither partial nor conditional.

When may be made.

Sec. 1489. An abandonment must be made within a reasonable time after information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

An abandonment may be defeated.

Sec. 1490. Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made, that there was then in fact no total loss, the abandonment becomes ineffectual.

How made.

Sec. 1491. Abandonment is made by giving notice thereof to the insurer; which may be done orally, or in writing.

Requisites of notice.

Sec. 1492. A notice of abandonment must be explicit; and must specify the particular cause of the abandonment; but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

No other cause can be relied on.

Sec. 1493. An abandonment can be sustained only upon the cause specified in the notice thereof.

Effect.

Sec. 1494. An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

Sec. 1495. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

Waiver of formal abandonment.

Sec. 1496. Upon an abandonment, acts done in good faith, by those who were agents of the thing insured, in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit.

Agents of the insured become agents of the insurer.

Sec. 1497. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment.

Acceptance not necessary.

Sec. 1498. The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment.

Acceptance conclusive.

Sec. 1499. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

Accepted abandonment, irrevocable.

Sec. 1500. On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned, belongs to the insurer of the ship.

Freightage, how affected by abandonment of ship.

Sec. 1501. If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured.

Refusal to accept.

Sec. 1502. If a person insured omits to abandon, he may nevertheless recover his actual loss.

Omission to abandon.

ARTICLE IX.

MEASURE OF INDEMNITY.

SECTION 1503. Valuation, when conclusive.

1504. Partial loss.

1505. Profits,

1506. Valuation apportioned.

1507. Valuation applied to profits.

SECTION 1508. Estimating loss under an open policy.

1509. Arrival of thing damaged.

1510. Labor and expenses.

1511. General average.

1512. Contribution.

1513. One-third new for old.

Valuation,
when
conclusive.

Sec. 1503. A valuation in a policy of marine insurance is conclusive between the parties thereto, in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

Partial loss.

Sec. 1504. A marine insurer is liable, upon a partial loss, only for such proportion of the amount insured by him, as the loss bears to the value of the whole interest of the insured in the property insured.

Profits.

Sec. 1505. Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

Valuation
apportioned.

Sec. 1506. In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

Valuation
applied to
profits.

Sec. 1507. When profits are valued and insured, by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

Estimating loss
under an open
policy.

Sec. 1508. In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

2. The value of cargo is its actual cost to the insured, when

laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way, or on arrival;

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

Sec. 1509. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value, which the market price at that port of the thing so damaged, bears to the market price it would have brought if sound.

Arrival of thing damaged

Sec. 1510. A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby; such expense, in either case, being in addition to a total loss if that afterwards occurs.

Labor and expenses.

Sec. 1511. A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against.

General average

Sec. 1512. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution.

Contribution.

Sec. 1513. In the case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, and whether the ship is new or old, a marine insurer is liable for only two thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one-half per cent for each month that it has been fastened to the ship.

One third new for old.

CHAPTER III.

FIRE INSURANCE.

SECTION 1514. False representation.

1515. Alteration increasing risk.

1516. Alteration not increasing risk.

1517. Acts of the insured.

1518. Measure of indemnity.

False representation.

Sec. 1514. An insurance against fire is not affected by concealment, nor by the falsity of a representation not inserted in the policy, though in a material particular, unless made with a fraudulent intent.

Alteration.

Sec. 1515. An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Alteration.

Sec. 1516. An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Acts of the insured.

Sec. 1517. A contract of fire insurance is not affected by any act of the insured, subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk, and is the cause of a loss.

Measure of indemnity.

Sec. 1518. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured in the condition in which it was at the time of the injury; but the effect of a violation in a policy of fire insurance is the same as in a policy of marine insurance.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

SECTION 1519. Insurance upon life, when payable.

1520. Insurable interest.

1521. Assignee, &c., of life policy need have no interest.

1522. Notice of transfer.

1523. Measure of indemnity.

Sec. 1519. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life. Insurance upon life, when payable.

Sec. 1520. Every person has an insurable interest in the life and health : Insurable interest.

1. Of himself ;
2. Of any person on whom he depends wholly or in part for education or support ;
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,
4. Of any person upon whose life any estate or interest, vested in him, depends.

Sec. 1521. A policy of insurance upon life or health may pass by transfer, will or succession, to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered. Assignee, &c., of life policy need have no interest.

Sec. 1522. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health unless thereby expressly required. Notice of transfer.

Sec. 1523. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy. Measure of indemnity.

TITLE XII.

INDEMNITY.

SECTION 1524. Indemnity, what.

1525. Indemnity for a future wrongful act, void.

1526. Indemnity for a wrongful act, valid.

1527. Indemnity extends to acts of agent.

1528. Indemnity to several.

1529. Person indemnifying, liable jointly or severally with person indemnified.

1530. Rules for interpreting agreement of indemnity.

1531. When person indemnifying is a surety.

1532. Bail, what.

1533. How regulated.

Indemnity,
what.

Sec. 1524. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

Indemnity for
a future wrong-
ful act, void.

Sec. 1525. An agreement to indemnify a person against an act thereafter to be done, is void, if the act is known by such person, at the time of doing it, to be wrongful.

Indemnity for
a past wrongful
act, valid.

Sec. 1526. An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

Indemnity
ext. nds to acts
of agent.

Sec. 1527. An agreement to indemnify against the acts of a certain person, applies not only to his acts, and their consequences, but also to those of his agents.

Indemnity to
several.

Sec. 1528. An agreement to indemnify several persons applies to each unless a contrary intention appears.

Person indem-
nifying, liable
jointly or sever-
ally with person
indemnified.

Sec. 1529. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately, to every person injured by such act.

Rules for
interpreting
agreement of
indemnity.

Sec. 1530. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears :

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith, and in the exercise of a reasonable discretion;

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is applicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

Sec. 1531. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay. When person indemnifying is a surety.

Sec. 1532. Upon those contracts of indemnity which are taken in legal proceedings, as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail. Bail, what.

Sec. 1533. The obligations of bail are governed by the statutes specially applicable thereto. How regulated.

TITLE XIII.

GUARANTY.

CHAPTER I. Guaranty in general.

II. Suretyship.

CHAPTER I.

GUARANTY IN GENERAL.

ARTICLE I. Definition of guaranty.

I. Creation of guaranty.

III. Interpretation of guaranty.

IV. Liability of guarantors.

V. Continuing guaranty.

VI. Exoneration of guarantors.

ARTICLE I.

DEFINITION OF GUARANTY.

SECTION 1534. Guaranty, what.

1535. Knowledge of principal not necessary to creation of guaranty.

Guaranty, what

Sec. 1534. A guaranty is a promise to answer for the debt, default or miscarriage of another person.

Knowledge of principal not necessary to creation of guaranty.

Sec. 1535. A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.

CREATION OF GUARANTY.

SECTION 1536. Necessity of a consideration.

1537. Guaranty to be in writing, &c.

SECTION 1538. Engagement to answer for obligation of another,
when deemed original.

1539. Acceptance of guaranty.

Sec. 1536. Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms, with that obligation, a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Necessity of a consideration.

Sec. 1537. Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

Guaranty to be in writing, &c.

Sec. 1538. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promiser, and need not be in writing:

Engagement to answer for obligation of another, when deemed original.

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promiser, whether moving from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to

him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Acceptance of guaranty.

Sec. 1539. A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.

INTERPRETATION OF GUARANTY.

SECTION 1540. Guaranty of incomplete contract.

1541. Guaranty that an obligation is good or collectible.

1542. Recovery upon such guaranty.

1543. Guarantor's liability upon such guaranty.

Guaranty of incomplete contract.

Sec. 1540. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common, in similar contracts, at the place where the principal contract is to be performed.

Guaranty that an obligation is good or collectible.

Sec. 1541. A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

Recovery upon such guaranty.

Sec. 1542. A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

Guarantor's liability upon such guaranty.

Sec. 1543. In the cases mentioned in section 1541, the removal of the principal from the Territory, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal, in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.

LIABILITY OF GUARANTORS.

SECTION 1544. Guaranty, how construed.

1545. Liability upon guaranty of payment or performance.

1546. Liability upon guaranty of a conditional obligation.

1547. Obligation of guarantor cannot exceed that of the principal.

1548. Guarantor not liable on an illegal contract.

Sec. 1544. A guaranty is to be deemed to be unconditional unless its terms import some condition precedent to the liability of the guarantor. Guaranty, how construed.

Sec. 1545. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice. Liability upon guaranty of payment or performance.

Sec. 1546. Where one guaranties a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof. Liability upon guaranty of a conditional obligation.

Sec. 1547. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if, in its terms, it exceeds it, it is reducible in proportion to the principal obligation. Obligation of guarantor cannot exceed that of the principal.

Sec. 1548. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal. Guarantor not liable on an illegal contract.

ARTICLE V.

CONTINUING GUARANTY.

SECTION 1549. Continuing guaranty, what.

1550. Revocation.

Continuing guaranty, what.

Sec. 1549. A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

Revocation,

Sec. 1550. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.

EXONERATION OF GUARANTORS.

SECTION 1551. What dealings with debtor exonerate guarantor.

1552. Void promises.

1553. Rescission of alteration.

1554. Part performance.

1555. Delay of creditor does not discharge guarantor.

1556. Guarantor indemnified by the debtor, not exonerated.

1557. Discharge of principal by act of law does not discharge guarantor.

What dealings with debtor exonerate guarantor.

Sec. 1551. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

Void promises.

Sec. 1552. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

Rescission of alteration.

Sec. 1553. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

Part performance.

Sec. 1554. The acceptance, by a creditor, of any thing in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

Sec. 1555. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

Delay of
creditor does
not discharge
guarantor.

Sec. 1556. A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Guarantor
indemnified by
the debtor not
exonerated.

Sec. 1557. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

Discharge of
principal by act
of law does
not discharge
guarantor.

CHAPTER II.

SURETYSHIP.

- ARTICLE I. Who are sureties.
- II. Liability of sureties.
- III. Rights of sureties.
- IV. Rights of creditors.
- V. Letter of credit.

ARTICLE I.

WHO ARE SURETIES.

SECTION 1558. Surety, what.

1559. Apparent principal may show that he is surety.

Sec. 1558. A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

Surety, what.

Sec. 1559. One who appears to be a principal, whether by the terms of a written instrument, or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

Apparent
principal may
show that he
is surety.

ARTICLE II.

LIABILITY OF SURETIES.

SECTION 1560. Limit of surety's obligation.

1561. Rules of interpretation.

1562. Judgment against surety does not alter the relation.

1563. Surety exonerated by performance or offer of performance.

1564. Surety discharged by certain acts of the creditor.

Limit of
surety's
obligation.

Sec. 1560. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

Rules of
interpretation.

Sec. 1561. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

Judgment
against surety
does not alter
the relation.

Sec. 1562. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

Surety exone-
rated by per-
formance or
offer of per-
formance.

Sec. 1563. Performance of the principal obligation, or an offer of such performance, duly made, whether by the principal or by another person, exonerates a surety.

Surety dis-
charged by
certain acts of
the creditor.

Sec. 1564. A surety is exonerated:

1. In like manner with a guarantor;

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

ARTICLE III.

RIGHTS OF SURETIES.

SECTION 1565. Surety has rights of guarantor.

1566. Surety may require the creditor to proceed against the principal.

1567. Surety may compel principal to perform obligation, when due.

1568. A principal bound to reimburse his surety.

1569. The surety acquires the right of the creditor.

1570. Surety entitled to benefit of securities held by creditor.

1571. The property of principal to be taken first.

Sec. 1565. A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

Surety has rights of guarantor.

Sec. 1566. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

Surety may require the creditor to proceed against the principal.

Sec. 1567. A surety may compel his principal to perform the obligation when due.

Surety may compel principal to perform obligation when due.

Sec. 1568. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefitted by his act, except as prescribed by the next section.

A principal bound to reimburse his surety.

Sec. 1569. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal, to the extent of reimbursing what he has expended; and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

The surety acquires the right of the creditor.

Surety entitled
to benefit of
securities held
by creditor.

Sec. 1570. A surety is entitled to the benefit of every security for the performance of the principal obligation, held by the creditor, or by a co-surety, at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

The property
of principal
to be taken first.

Sec. 1571. Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE. IV.

RIGHTS OF CREDITORS.

SECTION 1572. Creditor entitled to benefit of securities held by surety.

Creditor entitled to benefit of securities held by surety.

Sec. 1572. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation ; and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

ARTICLE V.

LETTER OF CREDIT,

SECTION 1573. Letter of credit, what.

1574. How addressed.

1575. Liability of the writer.

1576. Letter of credit either general or special.

1577. Nature of general letter of credit,

1578. Extent of general letter of credit.

1579. A letter of credit may be a continuing guaranty.

1580. When notice to the writer necessary.

1581. The credit given must agree with the terms of the letter.

Sec. 1573. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn. Letter of credit, what.

Sec. 1574. A letter of credit may be addressed to several persons in succession. How addressed.

Sec. 1575. The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms. Liability of the writer.

Sec. 1576. A letter of credit is either general or special. When the request for credit, in a letter, is addressed to specified persons by name or description, the letter is special. All other letters of credit are general. Letter of credit either general or special.

Sec. 1577. A general letter of credit gives any person to whom it may be shown, authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name. Nature of general letter of credit.

Sec. 1578. Several persons may successively give credit upon a general letter. Extent of general letter of credit.

Sec. 1579. If the parties to a letter of credit appear by its terms to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor; but is to be deemed a continuing guaranty. A letter of credit may be a continuing guaranty.

Sec. 1580. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice. When notice to the writer necessary.

Sec. 1581. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter. The credit given must agree with the terms of the letter.

TITLE XIV.

LIEN.

CHAPTER I. Liens in general.

II. Mortgage.

III. Pledge.

IV. Bottomry.

V. Respondentia.

VI. Other liens.

VII. Stoppage in transit.

CHAPTER I.

LIENS IN GENERAL.

ARTICLE I. Definition of liens.

II. Creation of liens.

III. Effect of liens.

IV. Priority of liens.

V. Redemption from liens.

VI. Extinction of liens.

ARTICLE I.

DEFINITION OF LIENS.

SECTION 1582. Lien, what.

1583. Liens, general or special.

1584. General lien, what.

1585. Special lien, what.

1586. Contracts subject to provisions of this chapter.

Lien, what.

Sec. 1582. A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

Liens general
special.

Sec. 1583. Liens are either general or special.

Sec. 1584. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

General lien,
what.

Sec. 1585. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

Special lien,
what.

Sec. 1586. Contracts of mortgage, pledge, bottomry or respondentia, are subject to all the provisions of this chapter.

Contracts
subject to
provisions of
this chapter.

ARTICLE II.

CREATION OF LIENS.

SECTION 1587. Lien, how created.

1588. No lien for claim not due.

1589. Lien on future interest.

1590. Lien may be created by contract.

Sec. 1587. A lien is created:

1. By contract of the parties; or,
2. By operation of law.

Lien how
created.

Sec. 1588. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

No lien for
claim not due.

Sec. 1589. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

Lien on future
interest.

Sec. 1590. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

Lien may be
created by
contract.

ARTICLE III.

EFFECT OF LIENS.

SECTION 1591. Lien, or contract for lien, transfers no title.

1592. Certain contracts, void.

1593. Creation of lien does not imply personal obligation.

1594. Extent of lien.

1595. Existence of lien does not affect the right of creditor.

1596. Holder of lien not entitled to compensation.

Lien or contract for lien transfers no title.

Sec. 1591. Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

Certain contracts void.

Sec. 1592. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void, except in the case specified in section 945.

Creation of lien does not imply personal obligation.

Sec. 1593. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

Extent of lien.

Sec. 1594. The existence of a lien upon property does not of itself entitle the person, in whose favor it exists, to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

Existence of lien does not affect the right of creditor.

Sec. 1595. The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien.

Holder of lien not entitled to compensation.

Sec. 1596. One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 956 and 957.

ARTICLE IV.

PRIORITY OF LIENS.

SECTION 1597. Priority of liens.

1598. Priority of mortgage for price.

1599. Order of resort to different funds.

Sec. 1597. Other things, being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia. Priority of liens.

Sec. 1598. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser. Priority of mortgage for price.

Sec. 1599. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested : Order of resort to different funds.

First. To the things upon which he has an exclusive lien ;

Second. To the things which are subject to the fewest subordinate liens ;

Third. In like manner inversely to the number of subordinate liens upon the same thing ; and,

Fourth. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had :

1. To the things which have not been transferred since the prior lien was created.

2. To the things which have been so transferred without a valuable consideration ; and,

3. To the things which have been so transferred for a valuable consideration.

ARTICLE V.

REDEMPTION FROM LIEN.

SECTION 1600. Right to redeem.

1601. Rights of inferior lienor.

1602. Redemption from lien, how made.

Right to redeem Sec. 1600. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Rights of inferior lienor. Sec. 1601. One who has a lien, inferior to another upon the same property, has a right :

1. To redeem the property in the same manner as its owner might, from the superior lien ; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

Redemption from lien, how made. Sec. 1602. Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.

EXTINCTION OF LIENS.

SECTION 1603. Lien deemed accessory to the act whose performance it secures.

1604. Extinction by sale or conversion.

1605. Lien not extinguished by lapse of time under statute of limitations.

1606. Apportionment of lien.

1607. When restoration extinguishes lien.

Lien deemed accessory to the act whose performance it secures. Sec. 1603. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

Sec. 1604. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or, in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

Extinction by sale or conversion.

Sec. 1605. A lien is not extinguished by the mere lapse of the time within which, under the provisions of the CODE OF CIVIL PROCEDURE, an action can be brought upon the principal obligation.

Lien, not extinguished by lapse of time under statute of limitations.

Sec. 1606. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

Apportionment of lien.

Sec. 1607. The voluntary restoration of property to its owner, by the holder of a lien thereon, dependent upon possession, extinguishes the lien, as to such property, unless otherwise agreed by the parties; and extinguishes it, notwithstanding any such agreement, as to creditors of the owner, and persons acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration; unless such restoration is made to the owner as a mere employee of the holder of the lien, or for a merely transient purpose.

When restoration extinguishes lien.

CHAPTER II.

MORTGAGE.

ARTICLE I. Mortgage in general.

II. Mortgage of real property.

III. Mortgage of personal property.

ARTICLE I.

MORTGAGE IN GENERAL.

SECTION 1608. Mortgage, what.

1609. Lien of a mortgage, when special.

1610. Transfer of interest, when deemed a mortgage.

1611. Provisions of this chapter do not affect bottomry or respondentia.

1612. Transfer made subject to defeasance, may be proved.

SECTION 1613. What interests may be mortgaged.

1614. Property adversely held may be mortgaged.

1615. Power of sale.

1616. Power of sale, how executed.

1617. On what a lien.

1618. Against whom a mortgage is a lien.

1619. Mortgage of thing held adversely.

1620. Mortgage does not entitle mortgagee to possession.

1621. Foreclosure.

1622. Waste.

**Mortgage,
what.**

Sec. 1608. Mortgage is a contract, by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

**Lien of a
mortgage, when
special.**

Sec. 1609. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

**Transfer of
interest, when
deemed a
mortgage.**

Sec. 1610. Every transfer of an interest in property, made only as a security for the performance of another act, is to be deemed a mortgage, except when, in the case of personal property, it is accompanied by an actual change of possession, in which case it is to be deemed a pledge.

**Provisions of
this chapter
do not affect
bottomry or
respondentia.**

Sec. 1611. Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

**Transfer made
subject to
defeasance
may be proved.**

Sec. 1612. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved, except as against a subsequent purchaser or incumbrancer, for value and without notice, though the fact does not appear by the terms of the instrument.

**What interest
may be mort-
gaged.**

Sec. 1613. Any interest in property, which is capable of being transferred, may be mortgaged.

**Property
adversely held
may be mort-
gaged.**

Sec. 1614. A mortgage may be created upon property held adversely to the mortgagor.

Power of sale.

Sec. 1615. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

**Power of sale
how executed.**

Sec. 1616. A power of sale under a mortgage is a trust, and can be executed only in the manner prescribed by the CODE OF CIVIL PROCEDURE, or by statute.

Sec. 1617. A mortgage is a lien upon everything that would pass by a grant of the property, and upon nothing more. On what a lien.

Sec. 1618. A mortgage is a lien upon the property mortgaged, in the hands of every one claiming under the mortgagor subsequently to its execution, except purchasers or incumbrancers in good faith, without notice and for value, and except as otherwise provided by article III of this chapter. Against whom a mortgage is a lien.

Sec. 1619. A mortgage of property held adversely to the mortgagor takes effect from the time at which he, or one claiming under him, obtains possession of the property; but has precedence over every lien upon the mortgagor's interest in the property, created subsequently to the recording of the mortgage. Mortgage of thing held adversely.

Sec. 1620. A mortgage does not entitle the mortgagee to the possession of the property, but after the execution of the mortgage the mortgagor may agree to such change of possession upon a new consideration. Mortgage does not entitle mortgagee to possession.

Sec. 1621. A mortgagee may foreclose the right of redemption of the mortgagor, in the manner prescribed by the CODE OF CIVIL PROCEDURE, or by statute. Foreclosure.

Sec. 1622. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security. Waste.

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

SECTION 1623. Mortgage, how created.

1624. Mortgage not a personal obligation.

1625. Mortgages on lands inherited or devised, by whom to be paid.

1626. Mortgage how recorded.

1627. Effect of record.

1628. What must be recorded as a mortgage.

1629. Recording assignment.

1630. Discharge of records, &c., of mortgage.

1631. Certificate, how to be recorded.

Mortgage, how created.

Sec. 1623. A mortgage of real property can be created, renewed or extended, only by writing, under seal, with the formalities required in the case of a grant of real property.

Mortgage not a personal obligation.

Sec. 1624. A mortgage of real property does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

Mortgages on lands inherited or devised, by whom to be paid.

Sec. 1625. When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property, without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor, that the mortgage shall be otherwise paid.

Mortgage, how recorded.

Sec. 1626. Mortgages of real property may be recorded in like manner with grants thereof, except that they must be recorded in books kept for mortgages exclusively.

Effect of record.

Sec. 1627. The record of a mortgage, duly made, operates as notice to all subsequent purchasers and incumbrancers.

When must be recorded as a mortgage.

Sec. 1628. Every grant of real property, or of any estate therein, which appears, by any other writing, to be intended as a mortgage within the meaning of chapter I of this Title, must be recorded as a mortgage; and if such grant and other writing explanatory of its true character, are not recorded together, at the same time and place, the grantee can derive no benefit from such record.

Recording assignment.

Sec. 1629. An assignment of a mortgage may be recorded in like manner with a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Discharge of records, &c., of mortgage.

Sec. 1630. A recorded mortgage must be discharged upon the record, by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged, or proved and certified, as prescribed by the chapter on RECORDING TRANSFERS, stating that the mortgage has been paid, or otherwise satisfied and discharged.

Certificate, how to be recorded.

Sec. 1631. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at

length ; and a reference made in the record, to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage, to the book and page where the discharge is recorded.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

SECTION 1632. To be in writing.

1633. Foreclosure.

1634. Mortgage must be filed.

1635. Effect of filing.

1636. How filed.

1637. Mortgage valid only in respect to things as to which it is filed.

1638. Renewal of filing.

1639, 1640. Duty of officers.

1641. Where mortgages on vessels must be filed.

1642. Duty of auditor upon filing.

1643. Certain errors to be disregarded.

1644. Negligence of officer.

1645. Copy, &c., when evidence.

1646. To what mortgages this article does not apply.

Sec. 1632. A mortgage of personal property can be created, To be in writing renewed, or extended, only by a writing subscribed by the mortgagor.

Sec. 1633. A mortgagee of personal property, when the debt Foreclosure. for which it is given is due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the Title on PLEDGE, or by proceedings under the CODE OF CIVIL PROCEDURE.

Sec. 1634. A mortgage of personal property is void as Mortgage must be filed. against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith and for value, unless it is filed as hereafter prescribed.

Sec. 1635. The filing of a mortgage of personal property, in Effect of filing. conformity to the provisions of this article, operates as notice thereof to all subsequent purchasers and incumbrancers.

How filed.

Sec. 1636. A mortgage of personal property is duly filed by depositing the original, or an authenticated copy thereof, in the office of the register of deeds of the county where the property mortgaged is at such time situated.

Mortgage valid only in respect to things as to which it is filed.

Sec. 1637. A single mortgage of personal property situated in more than one county, must be filed, or an authenticated copy thereof, in each county where any of such property is situated. And the mortgage is only valid in respect to the property as to which it is duly filed as herein provided.

Renewal of filing.

Sec. 1638. A mortgage of personal property ceases to be valid, as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith, after the expiration of two years from the filing thereof, unless, within thirty days next preceding the expiration of such term, a copy of the mortgage, and a statement of the amount of existing debt for which the mortgagee claims a lien, subscribed by him, are filed anew in the office of register of deeds, in the county in which the mortgagor then resides, or, if he does not then reside in the Territory, in the same office in which the mortgage was originally filed.

Duty of officers

Sec. 1639. The officer mentioned in the last section must receive and file all such instruments as are offered to him under this article, and must keep the same in *him* [his] office for the public.

14.

Sec. 1640. Every officer with whom an instrument is filed, pursuant to this chapter, must indorse a number upon the same in regular order, together with the time of receiving the same, and must enter the name of every party thereto in a book kept for the purpose, alphabetically, placing mortgagors and mortgagees under a separate head, and stating in separate columns, opposite each name, the number indorsed on the instrument, the date thereof and of the filing, the amount secured thereby, and the time at which it is due.

Where mortgages upon vessels must be filed.

Sec. 1641. A mortgage of a canal boat, steam tug, screw, or other craft, intended for navigating canals, must be filed in the office of the register of deeds, of the county in which such boat, tug, screw, or other craft is at the time the mortgage is given.

Sec. 1642. The register of deeds must cause every mortgage filed with him pursuant to the last section, upon receipt thereof, to be respectively numbered, the time of receiving the same to be indorsed thereon, and the substance thereof to be entered in a book provided for that purpose, entering alphabetically the names of all the parties to such instrument, with the number indorsed thereon opposite to each name; which entry shall be repeated in the index alphabetically under the name of every party thereto, also indexing the name of each boat mortgaged, with the number of the mortgage opposite to each.

Duty of register of deeds upon filing.

Sec. 1643. A mortgage is not to be deemed defectively filed, by reason of any errors in the copy filed, which do not tend to mislead a party interested to his prejudice.

Certain errors to be disregarded.

Sec. 1644. The negligence of the officer with whom a mortgage is filed cannot prejudice the rights of the mortgagee.

Negligence of officer.

Sec. 1645. A copy of any instrument required to be filed under this article, when certified by the officer with whom it is filed, or his deputy, is presumptive evidence of such filing, in the manner and at the time stated in the official indorsement on such instrument. The original indorsement is also evidence to the same extent only.

Copy, &c., when evidence.

Sec. 1646. Sections 1634 to 1645 inclusive, do not apply to any mortgage of a vessel, fitted for navigation, other than the kind mentioned in section 1641, which is required by law to be filed or recorded in any other manner.

To what mortgages this article does not apply.

CHAPTER III.

PLEDGE.

Section 1647. Pledge, what.

1648. When contract is to be deemed a pledge.

1649. Delivery essential to validity of pledge.

1650. Increase of thing.

1651. Lienor may pledge property to extent of his lien.

1652. Real owner cannot defeat pledge of property transferred to apparent owner for purposes of pledge.

1653. Pledge lender, what.

1654. Pledgeholder, what.

- SECTION 1655. When pledge lender may withdraw property pledged.
 1656. Obligations of pledgeholder.
 1657. Pledgeholder must enforce rights of pledgee.
 1658. Obligation of pledgee and pledgeholder, for reward.
 1659. Gratuitous pledgeholder.
 1660. Debtor's misrepresentation of value of pledge.
 1661. When pledgee may sell.
 1662. When pledgee must demand performance.
 1663. Notice of sale to pledgor.
 1664. Waiver of notice of sale.
 1665. Waiver of demand.
 1666. Sale must be by auction.
 1667. Pledgee's sale of securities.
 1668. Sale on the demand of the pledgor.
 1669, 1670. Surplus to be paid to pledgor.
 1671. Pledgee's purchase of property pledged.
 1672. Pledgee may foreclose right of redemption.

Pledge, what. Sec. 1647. Pledge is a deposit of personal property by way of security for the performance of another act.

When contract is to be deemed a pledge. Sec. 1648. Every contract by which the possession of personal property is transferred, as a security only, is to be deemed a pledge.

Delivery essential to validity of pledge. Sec. 1649. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledgeholder, as hereafter prescribed.

Increase of thing. Sec. 1650. The increase of property pledged is pledged with the property.

Lienor may pledge property to extent of his lien. Sec. 1651. One who has a lien upon property may pledge it to the extent of his lien.

Real owner cannot defeat pledge of property transferred to apparent owner for purpose of pledge. Sec. 1652. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, and for value.

Pledge lender, what. Sec. 1653. Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

Pledge holder, what. Sec. 1654. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged ; who, if he accepts the deposit, is called a pledgeholder.

Sec. 1655. One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might; and, if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

When pledge
lender may
withdraw
property
pledged.

Sec. 1656. A pledgeholder for reward cannot exonerate himself from his undertaking; and a gratuitous pledgeholder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledgeholder, and, in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

Obligations of
pledgeholder.

Sec. 1657. A pledgeholder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Pledgeholder
must enforce
rights of
pledgee.

Sec. 1658. A pledgee, or a pledgeholder for reward, assumes the duties and liabilities of a depositary for reward.

Obligation of
pledgee and
pledgeholder
for reward.

Sec. 1659. A gratuitous pledgeholder assumes the duties and liabilities of a gratuitous depositary.

Gratuitous
pledgeholder.

Sec. 1660. Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

Debtor's
misrepresenta-
tion of value
of pledge.

Sec. 1661. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

When pledgee
may sell.

Sec. 1662. Before property pledged may be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor.

When pledgee
must demand
performance.

Sec. 1663. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale, as will enable the pledgor to attend.

Notice of sale
to the pledgor.

Sec. 1664. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

Waiver of
notice of sale.

Waiver of demand.

Sec. 1665. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due, but cannot waive it in any other manner except by contract.

Sale must be by auction.

Sec. 1666. The sale, by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

Pledgee's sale of securities.

Sec. 1667. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due.

Sale on the demand of the pledgor.

Sec. 1668. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

Surplus to be paid to pledgor

Sec. 1669. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

Id.

Sec. 1670. When property pledged is sold before the claim of the pledgee is due, he may retain out of the proceeds all that can possibly become due under his claim, until it becomes due; with the proper rebate of interest.

Pledgee's purchase of property pledged.

Sec. 1671. A pledgee, or pledgeholder, cannot purchase the property pledged except by direct dealing with the pledgor.

Pledgee may foreclose right of redemption.

Sec. 1672. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER IV.

BOTTOMRY.

SECTION 1673. Bottomry, what.

1674. Owner of ship may hypothecate.

1675, 1676. When master may hypothecate ship.

1677. When master may hypothecate freight money.

1678. Rate of interest.

1679. Rights of lender when no necessity for bottomry existed.

1680. Stipulation for personal liability, void.

1681. When money loaned is to be repaid.

1682. When bottomry loan becomes due.

1683. Bottomry lien, how lost.

1684. Preference of bottomry lien over other liens.

1685. Priority of bottomry liens.

Sec. 1673. Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period. Bottomry, what.

Sec. 1674. The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place. Owner of ship may hypothecate.

Sec. 1675. The master of a ship may hypothecate it upon bottomry, only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship. When master may hypothecate ship.

Sec. 1676. The master of a ship can hypothecate it upon bottomry, only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

Sec. 1677. The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him. When master may hypothecate freight money.

- Rate of interest.** Sec. 1678. Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.
- Rights of lender when no necessity for bottomry existed.** Sec. 1679. A lender upon a contract of bottomry, made by the master of a ship as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.
- Stipulation for personal liability, void.** Sec. 1680. A stipulation, in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void.
- When money loaned is to be repaid.** Sec. 1681. In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.
- When bottomry loan becomes due.** Sec. 1682. Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.
- Bottomry lien, how lost.** Sec. 1683. A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time.
- Preference of bottomry lien over other liens.** Sec. 1684. A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for supplies or repairs, indispensable to the safety of the ship, and a subsequent lien for salvage.
- Priority of bottomry liens.** Sec. 1685. Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

CHAPTER V.

RESPONDENTIA.

SECTION 1686. Respondentia, what.

1687. Respondentia by owner.

1688. Respondentia by master.

1689. Rate of interest.

1690. Obligations of ship owner.

Sec. 1686. Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risk. Respondentia, what.

Sec. 1687. The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose. Respondentia by owner.

Sec. 1688. The master of a ship may hypothecate its cargo upon respondentia, only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby. Respondentia by master.

Sec. 1689. The provisions of sections 1678 to 1685 apply equally to loans on respondentia. Rate of interest.

Sec. 1690. The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay, under a contract of respondentia made by the master, in order to discharge its lien. Obligations of ship owner.

CHAPTER VI.

OTHER LIENS.

SECTION 1691. Lien of seller of real property.

1692. When transfer of contract waives lien.

1693. Extent of seller's lien.

1694. Lien of seller of personal property.

1695. Purchaser's lien on real property.

- SECTION 1696. Lien for services.**
 1697. Lien of factor.
 1698. Banker's lien.
 1699. Shipmaster's lien.
 1700. Seamen's lien.
 1701. Officer's lien.
 1702. Attorney's lien.
 1703. Judgment lien.
 1704. Mechanic's lien.
 1705. Lien on ships.
 1706. Enforcement of lien.

Lien of seller
of real property.

Sec. 1691. One who sells real property has a special lien thereon, independent of possession, for so much of the price as remains unpaid, and unsecured otherwise than by the personal obligation of the buyer.

When transfer
of contract
waives lien.

Sec. 1692. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract, by the seller, waives his lien to the extent of the sum payable under the contract.

Extent of
seller's lien.

Sec. 1693. The liens defined in sections 1691 and 1695 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

Lien of seller of
personal
property.

Sec. 1694. One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price.

Purchaser's
lien on real
property.

Sec. 1695. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

Lien for
services.

Sec. 1696. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service.

Sec. 1697. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal. Lien of factor.

Sec. 1698. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business. Banker's lien.

Sec. 1699. The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages. Shipmaster's lien.

Sec. 1700. The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage for their wages, which is superior to every other lien. Seamen's lien.

Sec. 1701. An officer, who levies an attachment or execution upon personal property, acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had. Officer's lien.

Sec. 1702. An attorney-at-law has a lien, which is defined and regulated by the CODE OF CIVIL PROCEDURE, or by statute. Attorney's lien.

Sec. 1703. The lien of a judgment is regulated by the CODE OF CIVIL PROCEDURE, or by statute. Judgment lien.

Sec. 1704. The liens of mechanics, for materials and services upon real property, are regulated by special statutes. Mechanic's lien.

Sec. 1705. Debts amounting to at least fifty dollars, contracted for the benefit of ships, are liens in the cases provided by the CODE OF CIVIL PROCEDURE, or by statute. Lien on ships.

Sec. 1706. The mode of proceeding by a creditor to enforce a lien within this Territory, is regulated by the CODE OF CIVIL PROCEDURE, or by statute. Enforcement of lien.

CHAPTER VII.

STOPPAGE IN TRANSIT.

SECTION 1707. When consigner may stop goods.

1708. What is insolvency of consignee.

1709. Transit, when ended.

1710. Stoppage, how effected.

1711. Effect of stoppage.

When consigner
may stop goods.

Sec. 1707. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

What is insol-
vency of
consignee.

Sec. 1708. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

Transit, when
ended.

Sec. 1709. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

Stoppage, how
effected.

Sec. 1710. Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

Effect of
stoppage.

Sec. 1711. Stoppage in transit does not of itself rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

CHAPTER I. Negotiable instruments in general.

II. Bills of exchange.

III. Promissory notes.

CHAPTER IV. Cheques.

V. Bank notes and certificates of deposit.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I. General definitions.

II. Interpretation.

III. Indorsement.

IV. Presentment for payment.

V. Dishonor.

VI. Excuse of presentment and notice.

VII. Extinction.

ARTICLE I

GENERAL DEFINITIONS.

SECTION 1712. To what instruments this Title is applicable.

1713. Negotiable instrument, what.

1714. Must be for unconditional payment of money.

1715. Payee.

1716. Instrument may be in alternative.

1717. Date, seal, &c.

1718. May contain a pledge, &c.

1719. What it must not contain.

1720. Date.

1721. Different classes of negotiable instruments.

Sec. 1712. The provisions of this Title apply only to negotiable instruments, as defined in this article.

To what instruments this Title is applicable.

Sec. 1713. A negotiable instrument is a written promise or request for the payment of a certain sum of money, to order or bearer, in conformity to the provisions of this article.

Negotiable instrument, what.

Sec. 1714. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

Must be for unconditional payment of money.

Sec. 1715. The person, to whose order a negotiable instrument is made payable, must be ascertainable at the time the instrument is made.

Payee.

- Instrument may be in alternative.** **Sec. 1716.** A negotiable instrument may give to the payee an option between the payment of the sum specified therein, and the performance of another act ; but as to the latter, the instrument is not within the provisions of this Title.
- Date, seal, &c.** **Sec. 1717.** A negotiable instrument may be with or without date ; with or without seal ; and with or without designation of the time or place of payment.
- May contain a pledge, &c.** **Sec. 1718.** A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.
- What it must not contain.** **Sec. 1719.** A negotiable instrument must not contain any other contract than such as is specified in this article.
- Date.** **Sec. 1720.** Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.
- Different classes of negotiable paper** **Sec. 1721.** There are six classes of negotiable instruments, namely :
 1. Bills of exchange ;
 2. Promissory notes ;
 3. Bank notes ;
 4. Cheques ;
 5. Bonds ;
 6. Certificates of deposit.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

- SECTION 1722.** Time and place of payment.
1723. Place of payment not specified.
1724. Instruments payable to a person or his order, how construed.
1725. Unindorsed note, when negotiable.
1726. Fictitious payee.
1727. Presumption of consideration.
- Time and place of payment.** **Sec. 1722.** A negotiable instrument which does not specify the time of payment, is payable immediately.

Sec. 1723. A negotiable instrument which does not specify a place of payment, is payable wherever it is held at its maturity. Place of payment not specified.

Sec. 1724. An instrument, otherwise negotiable in form, payable to a person named, but adding the words, "or to his order," or "or to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case, payable to the bearer. Instruments payable to a person or his order, how construed.

Sec. 1725. A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts, as if payable to the bearer. Unindorsed note, when negotiable.

Sec. 1726. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer. Fictitious payee.

Sec. 1727. The signature of every drawer, acceptor and indorser of a negotiable instrument, is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business. Presumption of consideration

ARTICLE III.

INDORSEMENT.

SECTION 1728. Indorsement, what.

1729. Agreement to indorse.

1730. When may be made on separate paper.

1731. Kinds of indorsement.

1732. General indorsement, what.

1733. Special indorsement, what.

1734. General indorsement, how made special.

1735. Destruction of negotiability by indorser.

1736. Implied warranty of indorser.

1737. Indorser, when liable to payee.

1738, 1739. Indorsement without recourse.

1740. Indorsee privy to contract.

1741. Indorser has rights of guarantor.

1742. Rights of accommodation indorser.

1743. Effect of want of consideration.

1744. Indorsee in due course, what.

1745. Rights of indorsee in due course.

1746. Instrument left blank,

- Indorsement, what.** Sec. 1728. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an indorser, and his act is called indorsement.
- Agreement to indorse.** Sec. 1729. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.
- When may be made on separate paper.** Sec. 1730. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.
- Kinds of indorsement.** Sec. 1731. An indorsement may be general or special.
- General indorsement, what.** Sec. 1732. A general indorsement is one by which no indorsee is named.
- Special indorsement, what.** Sec. 1733. A special indorsement specifies the indorsee.
- General indorsement, how made special.** Sec. 1734. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one by writing above it a direction for payment to a particular person.
- Destruction of negotiability by indorser.** Sec. 1735. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.
- Implied warranty of indorser.** Sec. 1736. Every indorser of a negotiable instrument warrants to every subsequent holder thereof, who is not liable thereon to him :
1. That it is in all respects what it purports to be ;
 2. That he has a good title to it ;
 3. That the signatures of all prior parties are binding upon them ;
 4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay so much of the same as the holder paid therefor, with interest ; unless exonerated under the provisions of section 1786, 1824, or 1826.
- Indorser, when liable to payee.** Sec. 1737. One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee, thereon, as an indorser.

Sec. 1738. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement. Indorsement without recourse.

Sec. 1739. Except as otherwise prescribed by the last section, an indorsement without recourse has the same effect as any other indorsement. Id.

Sec. 1740. An indorsee of a negotiable instrument has the same rights against every prior party thereto, that he would have had if the contract had been made directly between them in the first instance. Indorsee privy to contract.

Sec. 1741. An indorser has all the rights of a guarantor, as defined by the chapter on GUARANTY IN GENERAL, and is exonerated from liability in like manner. Indorser has rights of guarantor.

Sec. 1742. One who indorses a negotiable instrument, at the request, and for the accommodation of another party to the instrument, has all the rights of a surety, as defined by the chapter on SURETYSHIP, and is exonerated in like manner, in respect to every one having notice of the facts, except that he is not entitled to contribution from subsequent indorsers. Rights of accommodation indorser.

Sec. 1743. The want of consideration for the undertaking of a maker, acceptor, or indorser of a negotiable instrument, does not exonerate him from liability thereon to an indorsee in good faith for a consideration. Effect of want of consideration.

Sec. 1744. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer. Indorsee in due course, what.

Sec. 1745. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it. Rights of indorsee in due course.

Sec. 1746. One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the Instrument left blank.

instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

SECTION 1747. Effect of want of demand on principal debtor.

1748. Presentment, how made.

1749. Apparent maturity, when.

1750. Presumptive dishonor of bill, payable after sight.

1751. Apparent maturity of bill, payable at sight.

1752, 1753. Apparent maturity of note.

1754. Surrender of instrument, when a condition of payment.

Effect of want
of demand on
principal
debtor.

Sec. 1747. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument, in order to charge him ; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

Presentment,
how made.

Sec. 1748. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable ;

1. The instrument must be presented by the holder ;
2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made, and if not, then it must be presented to some other person of discretion, if one can be found there, and if not, then it must be presented to a notary public within the Territory ;
3. An instrument which specifies a place for its payment must be presented there, and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein ;
4. An instrument which does not specify a place for its payment, must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presenter ; and,

5. The instrument must be presented upon the day of its apparent maturity, or, if it is payable on demand, at any time before its apparent maturity, within reasonable hours, and, if it is payable at a banking-house, within the usual banking hours of the vicinity; but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

Sec. 1749. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which by its terms it becomes due; or, when that is a holiday, the next business day.

Apparent maturity, when.

Sec. 1750. A bill of exchange, payable at a specified time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Presumptive dishonor of bill, payable after sight.

Sec. 1751. The apparent maturity of a bill of exchange, payable at sight or on demand, is:

Apparent maturity of bill, payable at sight.

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Sec. 1752. The apparent maturity of a promissory note, payable at sight or on demand, is:

Apparent maturity of note

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, six months after its date.

Sec. 1753. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

Sec. 1754. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

Surrender of instrument, when a condition of payment.

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,
2. If the holder has a right to retain the instrument, and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,
3. If the instrument is lost, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon; or,

4. If the instrument is destroyed, then that proof of its destruction be given to him.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

SECTION 1755. Dishonor, what.

1756. Notice, by whom given.

1757. Form of notice.

1758. Notice, how served.

1759. Notice, how served after indorser's death.

1760. Notice given in ignorance of death, valid.

1761. Notice, when to be given.

1762. Notice of dishonor, when to be mailed.

1763. Notice, how given by agent.

1764. Additional time for notice by indorser.

1765. Effect of notice of dishonor.

Dishonor, what. Sec. 1755. A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused.

Notice, by whom given Sec. 1756. Notice of the dishonor of a negotiable instrument may be given :

1. By a holder thereof; or,

2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

Form of notice. Sec. 1757. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

Notice, how served. Sec. 1758. A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally, at any place; or,

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,

8. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post-office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

Sec. 1759. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resided with him at his death; or if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of the last section.

Notice, how served after indorser's death.

Sec. 1760. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Notice given in ignorance of death, valid.

Sec. 1761. Notice of dishonor, when given by the holder of an instrument, or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

Notice, when to be given.

Sec. 1762. When notice of dishonor is given by mail, it must be deposited in the post-office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

Notice of dishonor, when to be mailed.

Sec. 1763. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

Notice, how given by agent.

Sec. 1764. Every party to a negotiable instrument receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties, as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

Additional time for notice by indorser.

Sec. 1765. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto, whose right to give the like notice has not then been lost.

Effect of notice of dishonor.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 1766. Notice of dishonor, when excused.

1767, 1768. Presentment and notice, when excused.

1769. Delay, when excused.

1770. Waiver of presentment and notice.

1771. Waiver of protest.

Notice of dishonor, when excused.

Sec. 1766. Notice of dishonor is excused :

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged ; or,

2. When there is no post-office communication between the town of the party by whom the notice should be given, and the town in which the place of residence or business of the party to be charged, is situated ; or,

3. When the party to be charged is the same person who dishonors the instrument ; or,

4. When the notice is waived by the party entitled thereto.

Presentment and notice, when excused.

Sec. 1767. Presentment and notice are excused as to any party to a negotiable instrument, who informs the holder, within ten days before its maturity, that it will be dishonored.

Id.

Sec. 1768. If, before or at the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

Delay, when excused.

Sec. 1769. Delay in presentment, or in giving notice of dishonor, is excused, when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

Waiver of presentment and notice.

Sec. 1770. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated ; but a waiver of notice does not waive presentment.

Waiver of protest.

Sec. 1771. A waiver of protest on any negotiable instrument other than a foreign bill of exchange, waives presentment and notice.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

SECTION 1772. Obligation of party, when extinguished.

1773. Revival of obligation.

Sec. 1772. The obligation of a party to a negotiable instrument is extinguished: obligation of party, when extinguished.

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof, and appearing, by its terms, to be entitled to payment.

Sec. 1773. If, after its extinction, a negotiable instrument comes into the possession of an indorsee in due course, the obligation thereof revives in his favor. Revival of obligation.

CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE I. Form and interpretation.

II. Days of grace.

III. Presentment for acceptance.

IV. Acceptance.

V. Acceptance or payment for honor.

VI. Presentment for payment.

VII. Excuse of presentment and notice.

VIII. Foreign bills.

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

SECTION 1774. Bill of exchange, what.

1775. Drawee, in case of need.

1776. Bill in parts of a set.

SECTION 1777. When must be in a set.

1778. Presentment, &c., of part of a set.

1779. Bill, where payable.

1780. Rights and obligations of drawer.

**Bill of exchange,
what.**

Sec. 1774. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

**Drawee in case
of need.**

Sec. 1775. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

**Bill in parts of
a set.**

Sec. 1776. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

**When must be
in a set.**

Sec. 1777. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

**Presentment,
&c., of part
of set.**

Sec. 1778. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

**Bill, where
payable.**

Sec. 1779. A bill of exchange is payable :

**1. At the place where, by its terms, it is made payable ;
or,**

2. If it specifies no place of payment, then at the place to which it is addressed ; or,

3. If it is not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found ; or,

4. If this cannot be done, then at the office of any notary public in the Territory.

**Rights and
obligations of
drawer.**

Sec. 1780. The rights and obligations of the drawer of a bill of exchange, are the same as those of the first indorser of any negotiable instrument.

ARTICLE II.

DAYS OF GRACE.

SECTION 1781. Days of grace.

Sec. 1781. Days of grace are not allowed.

Days of grace.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

SECTION 1782. When a bill may be presented.

1783. Presentment, how made.

1784. Presentment to joint drawees.

1785. When presentment to be made to drawee in case of need.

1786. Presentment, when must be made.

Sec. 1782. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored.

When bill may be presented.

Sec. 1783. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable :

Presentment, how made.

1. The bill must be presented by the holder ;
2. It must be presented on a business day, and within reasonable hours ;
3. It must be presented to the drawee, if he can be found within the Territory, and if not, then at his place of residence or business, if within the Territory, to any person of discretion therein, and if he has no such place of residence or business, or there is no person of discretion therein, then to any notary public in the Territory ; and,
4. If the drawee requests it, the bill must be left with him, until the same hour of the next day, to which time he may postpone his acceptance or refusal.

Sec. 1784. Presentment for acceptance to one of several joint drawees, and refusal by him, dispense with presentment to the others.

Presentment to joint drawees.

When present-
ment to be made
to drawee in
case of need.

Sec. 1785. A bill of exchange, which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

Presentment,
when must be
made.

Sec. 1786. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated, if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

ARTICLE IV.

ACCEPTANCE.

SECTION 1787. Acceptance, how made.

1788. Holder entitled to acceptance on face of bill.

1789. What acceptance sufficient with consent of holder.

1790. Acceptance by separate instrument.

1791. Promise to accept, when equivalent to acceptance.

1792. Cancellation of acceptance.

1793. What is admitted by acceptance.

Acceptance,
how made.

Sec. 1787. An acceptance of a bill must be made in writing, by the drawee, or by an acceptor for honor; and may be made by the acceptor writing his name across the face of the bill, with or without other words.

Holder entitled
to acceptance
on face of bill.

Sec. 1788. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored, if the drawee refuses to write across its face an unqualified acceptance.

What accep-
tance sufficient,
with consent
of holder.

Sec. 1789. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper;

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city, or town, in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment; in which case the bill is payable immediately, without regard to its terms.

Sec. 1790. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor only to one to whom it has been shown, and who, upon the faith thereof, has given value for the bill. Acceptance by separate instrument.

Sec. 1791. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person to whom it has been shown, and who, upon the faith thereof, has given value for the bill. Promise to accept, when equivalent to acceptance.

Sec. 1792. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance. Cancellation of acceptance.

Sec. 1793. The acceptance of a bill of exchange admits the capacity of the drawer to draw and indorse it; and if written upon the bill, it also admits the same to be genuine, and binding upon the drawer; but it does not admit the signature of any indorser to be genuine. What is admitted by acceptance.

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

SECTION 1794. When bill may be accepted or paid for honor.

1795. Holder of bill of exchange, bound to accept payment for honor.

1796. Acceptance for honor, how made.

1797. How enforced.

1798. Notice of dishonor not excused by acceptance for honor.

Sec. 1794. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto. When bill may be accepted or paid for honor.

Sec. 1795. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor. Holder of bill of exchange.

Acceptance
for honor,
how made.

Sec. 1796. An acceptor or payer for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

How enforced.

Sec. 1797. A bill of exchange, which has been accepted for honor, must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor in like manner as to an indorser; after which the acceptor for honor must pay the bill.

Notice of dis-
honor, not ex-
cused by accep-
tance for
honor.

Sec. 1798. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

SECTION. 1799. Presentment, when bill not accepted, where made.

1800. Presentment of bill, payable at particular place.

1801. Effect of delay in presentment in certain cases.

1802. Effect, in other cases.

Presentment,
when bill not
accepted,
where made.

Sec. 1799. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

Presentment
of bill payable
at particular
place.

Sec. 1800. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

Effect of delay
in presentment
in certain cases.

Sec. 1801. If a bill of exchange, payable at sight, or on demand, without interest, is not duly presented for payment, within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

Effect, in
other cases.

Sec. 1802. Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 1803. Presentment, when excused.

1804. Delay, when excused.

1805. Presentment and notice, when excused.

Sec. 1803. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it. Presentment, when excused.

Sec. 1804. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control. Delay, when excused.

Sec. 1805. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same. Presentment and notice, when excused.

ARTICLE VIII.

FOREIGN BILLS.

SECTION 1806. Definitions.

1807. Protest necessary.

1808. Protest, by whom made.

1809. Protest, how made.

1810. Protest, where made.

1811. Protest, when to be made.

1812. Protest, when excused.

1813. Notice of protest, how given.

1814. Waiver of protest.

1815. Declaration before payment for honor.

1816. Damages allowed on dishonor of foreign bill.

1817. Rate of damages.

1818, 1819. Damages, how estimated.

Sec. 1806. An inland bill of exchange is one drawn and payable within this Territory. All others are foreign. Definitions.

- Protest necessary.** Sec. 1807. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.
- Protest, by whom made.** Sec. 1808. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses.
- Protest, how made.** Sec. 1809. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept, or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and finally protesting against all the parties to be charged.
- Protest, where made.** Sec. 1810. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance; and a protest for non-payment in the city or town in which it is presented for payment.
- Protest, when to be made.** Sec. 1811. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.
- Protest, when excused.** Sec. 1812. The want of protest of a foreign bill of exchange or delay in making the same, is excused in like cases with the want or delay of presentment.
- Notice of protest, how given.** Sec. 1813. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.
- Waiver of protest.** Sec. 1814. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.
- Declaration before payment for honor.** Sec. 1815. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Sec. 1816. Damages are allowed as hereinafter prescribed, Damages allowed on dishonor of foreign bill. as a full compensation for interest, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this Territory, and protested for non-acceptance or non-payment.

Sec. 1817. Damages are allowed under the last section upon Rate of damages, bills drawn upon any person :

1. In any part of the United States except this Territory, at the rate of three per centum on the principal sum ;
2. In any other part of the continent of America, or Europe, or the islands in the Atlantic ocean, at the rate of ten per centum thereon ;
3. In any other place, at the rate of twenty per centum thereon.

Sec. 1818. If the amount of a protested bill of exchange is Damages, how estimated. expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

Sec. 1819. If the amount of a protested bill of exchange is ^{14.} expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

SECTION 1820. Promissory note, what

1821. Certain instruments, promissory notes.
1822. Bill of exchange, when converted into a note.
1823. Certain sections applicable to notes.
1824. Effect of delay in presentment.

Sec. 1820. A promissory note is an instrument, negotiable Promissory note, what. in form, whereby the signer promises to pay a specified sum of money.

Sec. 1821. An instrument in the form of a bill of exchange, Certain instruments, promissory notes. but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

Bill of exchange
when converted
into a note.

Sec. 1822. A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

Certain
sections ap-
plicable to
notes.

Sec. 1823. Chapter I of this Title, and sections 1781 and 1802, of this Code, apply to promissory notes.

Effect of delay
in presentment.

Sec. 1824. If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment, within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused.

CHAPTER IV.

CHEQUES.

SECTION 1825. Cheque, what.

1826. Rules applicable to cheques.

Cheque, what.

Sec. 1825. A cheque is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

Rules appli-
cable to cheques

Sec. 1826. A cheque is subject to all the provisions of this Code concerning bills of exchange, except that :

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby ; and are exonerated to that extent by a delay of more than one day in presentment ;

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

CHAPTER V.

BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

SECTION 1827. Bank note negotiable after payment.

1828. Title acquired by indorsee.

Sec. 1827. A bank note remains negotiable, even after it has been paid by the maker. Bank note negotiable after payment.

Sec. 1828. A transferee of a bond, bank note or certificate of deposit, after its apparent maturity or actual dishonor with- Title acquired by indorsee.
in his knowledge, acquires a title equal to that of a transferee before such event.

TITLE XVI.

GENERAL PROVISIONS.

SECTION 1829. Parties may waive provisions of Code.

Sec. 1829. Except where it is otherwise declared, the provisions of the foregoing fifteen Titles of this Part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the INTERPRETATION OF CONTRACTS; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy. Parties may waive provisions of Code.

DIVISION FOURTH.

GENERAL PROVISIONS.

APPLICABLE TO PERSONS, PROPERTY, AND OBLIGATIONS,
OR TO TWO OF THOSE SUBJECTS.

PART I. Relief.

II Special Relations of Debtor and Creditor.

III. Nuisance.

IV. Maxims of Jurisprudence.

V. Definitions and General Provisions.

P A R T I.

RELIEF.

TITLE I. Relief in general.

II. Compensatory relief.

III. Specific relief.

IV. Preventive relief.

TITLE I.

RELIEF IN GENERAL.

SECTION 1830. Species of relief.

1831. Relief in case of forfeiture.

Species of
relief.

Sec. 1830. As a general rule, compensation is the relief or remedy provided by the law of this Territory for the violation of private rights, and the means of securing their observance ; and specific and preventive relief may be given in no other cases than those specified in this Part of the CIVIL CODE.

Relief in case
of forfeiture.

Sec. 1831. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER I. Damages in general.

II. Measure of damages.

CHAPTER I.

DAMAGES IN GENERAL.

- ARTICLE I. General principles.
 II. Interest as damages.
 III. Exemplary damages.

ARTICLE I.

GENERAL PRINCIPLES.

SECTION 1832. Person suffering detriment, may recover damages.

1833. Detriment, what.

1834. Injuries resulting or probable after suit brought.

Sec. 1832. Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

Persons suffering detriment, may recover damages.

Sec. 1833. Detriment is a loss or harm suffered in person or property.

Detriment, what.

Sec. 1834. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

Injuries resulting or probable after suit brought.

ARTICLE II.

INTEREST AS DAMAGES.

SECTION 1835. Person entitled to recover damages, may recover interest thereon.

1836. In actions other than contract.

1837. Limit of rate by contract.

1838. Acceptance of principal waives claim to interest.

Person entitled
to recover
damages, may
recover interest
thereon.

Sec. 1835. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

In actions other
than on
contract.

Sec. 1836. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

Limit of rate
by contract.

Sec. 1837. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

Acceptance
of principal
waives claim
to interest.

Sec. 1838. Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.

EXEMPLARY DAMAGES.

SECTION 1839. Exemplary damages, in what cases allowed.

Exemplary
damages, in
what cases
allowed.

Sec. 1839. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

ARTICLE I. Damages for breach of contract.

II. Damages for wrongs.

III. Penal damages.

IV. General provisions.

ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

- Section** 1840. Measure of damages for breach of contract.
1841. Damages must be certain.
1842. Breach of promise to pay liquidated sum.
1843. Dishonor of bills of exchange.
1844. Breach of covenant of seizure, &c.
1845. Breach of covenant against incumbrances.
1846. Breach of agreement to convey real property.
1847. Breach of agreement to buy real property.
1848. Breach of agreement to sell personal property, not paid for.
1849. Breach of agreement to sell personal property, paid for.
1850. Breach of agreement to pay for personal property sold.
1851. Breach of agreement to buy personal property.
1852. Breach of warranty of title to personal property.
1853. Breach of warranty of quality of personal property.
1854. Breach of warranty of quality for special purpose.
1855. Breach of carrier's obligation to receive goods, &c.
1856. Breach of carrier's obligation to deliver.
1857. Carrier's delay.
1858. Breach of warranty of authority.
1859. Breach of promise of marriage.

Sec. 1840. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, which the party in fault had notice, at the time of entering into the contract, or at any time before the breach, and while it was in his power to perform the contract upon his part, would be likely to result from such breach, or which, in the ordinary course of things, would be likely to result therefrom.

Measure of
damages for
breach of
contract.

Sec. 1841. No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin.

Damages must
be certain.

Breach of
promise to pay
liquidated sum.

Sec. 1842. The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

Dishonor of
bills of
exchange.

Sec. 1843. For the dishonor of foreign bills of exchange, the damages are prescribed by sections 1817 to 1819, inclusive.

Breach of
covenant of
seizin, &c.

Sec. 1844. The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment, in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor, or if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore, at the time of the grant, to the value of the whole property;

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,

3. Any expenses properly incurred by the covenantee in defending his possession.

Breach of
covenant
against in-
cumbrances.

Sec. 1845. The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value, at the time of the grant, of the property affected by the breach, as compared with the whole; or, in the latter case, interest on a like amount.

Breach of
agreement to
convey real
property.

Sec. 1846. The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

Breach of
agreement to
buy real
property.

Sec. 1847. The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

Sec. 1848. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

Breach of agreement to sell personal property, not paid for.

Sec. 1849. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of a wrongful conversion.

Breach of agreement to sell personal property, paid for.

Sec. 1850. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

Breach of agreement to pay for personal property sold.

Sec. 1851. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be :

Breach of agreement to buy personal property.

1. If the property has been resold pursuant to section 1694, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale ; or,

2. If the property has not been resold in the manner prescribed by section 1694, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller; together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

Sec. 1852. The detriment caused by the breach of a warranty of the title of personal property sold, is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay, in an action brought for the property by the true owner.

Breach of warranty of title to personal property.

Sec. 1853. The detriment caused by the breach of a warranty of the quality of personal property, is deemed to be the excess, if any, of the value which the property would have had, at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

Breach of warranty of quality of personal property.

Sec. 1854 The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose, is deemed to be that which is defined by the

Breach of warranty of quality for special purpose.

last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

Breach of
carrier's
obligation to
receive goods &c

Sec. 1855. The detriment caused by the breach of a carrier's obligation to accept freight, messages or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage, and the amount it would be necessary to pay for the same service, when it ought to be performed.

Breach of
carrier's
obligation to
deliver.

Sec. 1856. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof, at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled, if he had completed the delivery.

Carrier's delay.

Sec. 1857. The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day, at which it ought to have been delivered, and the day of its actual delivery.

Breach of
warranty of
authority.

Sec. 1858. The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

Breach of
promise of
marriage

Sec. 1859. The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

CHAPTER II.

DAMAGES FOR WRONGS.

SECTION 1860. Breach of obligation other than contract.

1861. Wrongful occupation of real property.

1862. Willful holding over.

1863. Conversion of personal property.

SECTION 1864. Damages of lienor.

1865. Seduction.

1866. Injuries to animals.

Sec. 1860. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

Breach of obligation other than contract.

Sec. 1861. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 1862, 1863, 1869, and 1870, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

Wrongful occupation of real property.

Sec. 1862. For willfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

Willful holding over.

Sec. 1863. The detriment caused by the wrongful conversion of personal property, is presumed to be:

Conversion of personal property.

1. The value of the property at the time of the conversion, with interest from that time, or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and,
2. A fair compensation for the time and money properly expended in pursuit of the property.

Sec. 1864. The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Sec. 1865. One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged,

Damages of lienor.

than the amount secured by the lien, and the compensation allowed by section 1863 for loss of time and expenses.

Seduction.

Sec. 1866. The damages for seduction rest in the sound discretion of the jury.

Injuries to animals.

Sec. 1867. For wrongful injuries to animals, being subjects of property, committed willfully, or by gross negligence, in disregard of humanity, exemplary damages may be given.

ARTICLE III.

PENAL DAMAGES.

SECTION 1868. Failure to quit, after notice.

1869. Tenant willfully holding over.

1870. Forcible exclusion from possession of real property.

1871. Injuries to trees, &c.

Failure to quit, after notice.

Sec. 1868. For the failure of a tenant to give up the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay.

Tenant willfully holding over.

Sec. 1869. For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

Forcible exclusion from possession of real property.

Sec. 1870. For forcibly ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

Injuries to trees, &c.

Sec. 1871. For wrongful injuries to timber, trees or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

ARTICLE IV.

GENERAL PROVISIONS.

SECTION 1872. Value, how estimated in favor of seller.

1873. Value, how estimated in favor of buyer.

1874. Property of peculiar value.

1875. Value of thing in action.

1876. Damages allowed in this chapter, exclusive of others.

1877. Limitation of damages.

1878. Damages to be reasonable.

1879. Nominal damages.

Sec. 1872. In estimating damages, the value of property, Value, how estimated in favor of seller. to a seller thereof, is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

Sec. 1873. In estimating damages, except as provided by Value, how estimated in favor of buyer. sections 1874 and 1875, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing, in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

Sec. 1874. Where certain property has a peculiar value to Property of peculiar value. a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willfull wrongdoer.

Sec. 1875. For the purpose of estimating damages, the val- Value of thing in action. ue of a thing in action is presumed to be equal to that of the property to which it entitles its owner.

Sec. 1876. The damages prescribed by this chapter are ex- Damages allowed in this chapter exclusive of others. clusive of exemplary damages and interest, except where those are expressly mentioned.

Limitation of
damages.

Sec. 1877. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on EXEMPLARY DAMAGES and PENAL DAMAGES, and in sections 1859, 1866 and 1867.

Damages to
be reasonable.

Sec. 1878. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

Nominal
damages.

Sec. 1879. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

CHAPTER I. General principles.

II. Specific relief.

III. Preventive relief.

CHAPTER I.

GENERAL PRINCIPLES.

SECTION 1880. Specific relief, &c., when allowed.

1881. Specific relief, how given.

1882. Preventive relief, how given.

1883. Not to enforce penalty, &c.

Specific relief,
&c. when
allowed.

Sec. 1880. Specific or preventive relief may be given in the cases specified in this Title, and in no others.

Specific relief,
how given.

Sec. 1881. Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant;

2. By compelling a party himself to do that which ought to be done; or,

3. By declaring and determining the rights of parties, otherwise than by an award of damages.

Sec. 1882. Preventive relief is given by prohibiting a party from doing that which ought not to be done. Preventive relief, how given.

Sec. 1883. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case. Not to enforce penalty, &c.

CHAPTER II.

SPECIAL RELIEF.

- ARTICLE I. Possession of real property.
- II. Possession of personal property.
- III. Specific performance of obligations.
- IV. Revision of contracts.
- V. Rescission of contracts.
- VI. Cancellation of instruments.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

SECTION 1884. Judgment for possession or title.

Sec. 1884. A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the CODE OF CIVIL PROCEDURE, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property. Judgment for possession or title.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

SECTION 1885. Judgment for delivery.

1886. When holder may be compelled to deliver.

Judgment for
delivery.

Sec. 1885. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the CODE OF CIVIL PROCEDURE.

When holder
may be com-
pelled to
deliver.

Sec. 1886. Any person, having the possession or control, of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in either of the following cases :

1. When the thing claimed is held subject to an express trust in favor of the claimant ;
2. When pecuniary compensation would not afford adequate relief for the loss of the thing claimed ; or,
3. When it would be extremely difficult to ascertain the actual damage caused by its loss.

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

SECTION 1887. In what cases compelled.

1888. Remedy mutual.

1889. No remedy unless mutual.

1890. Distinction between real and personal property.

1891. Contract signed by one party only, may be enforced by other.

1892. Liquidation of damages not a bar to specific performance.

1893. What cannot be specifically enforced.

1894. What parties cannot be compelled to perform.

1895. What parties cannot have specific performance in their favor.

1896. Specific performance not required when oppressive

1897. Agreement to sell property, by one who has no title.

1898. Relief against parties claiming under person bound to perform.

In what cases
compelled.

Sec. 1887. Except as otherwise provided in this article, the specific performance of an obligation may be compelled :

1. When the act to be done is in the performance, wholly or partly, of an express trust ;

2. When the act to be done is such that pecuniary compensation for its non-performance would not afford adequate relief;

3. When it would be extremely difficult to ascertain the actual damage caused by the non-performance of the act to be done; or,

4. When it has been expressly agreed, in writing, between the parties to the contract, that specific performance thereof may be required by either party, or that damages shall not be considered adequate relief.

Sec. 1888. When either of the parties to an obligation is entitled to a specific performance thereof, according to the provisions of the last section, the other party is also entitled to it, though not within those provisions.

*Remedy:
mutual*

Sec. 1889. Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely, or nearly so, together with full compensation for any want of entire performance.

*No remedy
unless mutual.*

Sec. 1890. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

*Distinction
between real
and personal
property.*

Sec. 1891. A party, who has signed a written contract, may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

*Contract
signed by one
party only may
be enforced
by others.*

Sec. 1892. A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

*Liquidation
of damages
not a bar to
specific per-
formance.*

Sec. 1893. The following obligations cannot be specifically enforced:

*What cannot
be specifically
enforced.*

1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. An agreement to submit a controversy to arbitration;

4. An agreement to perform an act, which the party has not power lawfully to perform when required to do so;

5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done, clearly ascertainable.

What parties cannot be compelled to perform.

Sec. 1894. Specific performance cannot be enforced against a party to a contract, in any of the following cases :

1. If he has not received an adequate consideration for the contract ;

2. If it is not, as to him, just and reasonable ;

3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party, which has not been substantially fulfilled ; or,

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

What parties cannot have specific performance in their favor.

Sec. 1895. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated ; in which case specific performance may be compelled, upon full compensation being made for the default.

Specific performance not required, when oppressive.

Sec. 1896. Specific performance cannot be compelled, when it would operate more harshly upon the party required to perform, than its refusal would operate upon the party seeking it.

Agreement to sell property by one who has no title.

Sec. 1897. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

Sec. 1898. Whenever an obligation in respect to real property would be specifically enforced against a particular person,

it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

Relief against parties claiming under person bound to perform.

ARTICLE IV.

REVISION OF CONTRACTS.

SECTION 1899. When contract may be revised.

1900. Presumption as to intent of parties.

1901. Principles of revision.

1902. Enforcement of revised contract.

Sec. 1899. When through fraud, or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

When contract may be revised.

Sec. 1900. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Presumption as to intent of parties.

Sec. 1901. In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Principles of revision.

Sec. 1902. A contract may be first revised, and then specifically enforced.

Enforcement of revised contract.

ARTICLE V.

RESCISSION OF CONTRACTS.

SECTION 1903. When rescission may be adjudged.

1904. Rescission for mistake.

1905. Court may require party rescinding to do equity.

When rescission
may be adjudged

Sec. 1903. The rescission of a written contract may be adjudged, on the application of a party aggrieved :

1. In any of the cases mentioned in section 839 ; or,
2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault ; or,
3. When the public interest will be prejudiced by permitting it to stand.

Rescission for
mistake.

Sec. 1904. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Court may
require party
rescinding to
do equity.

Sec. 1905. On adjudging the rescission of a contract, for any other cause than usury, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

SECTION 1906. When cancellation may be ordered.

1907. Instrument obviously void.

1908. Cancellation in part.

When cancella-
tion may be
ordered

Sec. 1906. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may upon his application, be so adjudged, and ordered to be delivered up or canceled.

Sec. 1907. An instrument, the validity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury within the provisions of the last section.

Instrument
obviously void.

Sec. 1908. Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

Cancellation
in part.

CHAPTER III.

PREVENTIVE RELIEF.

SECTION 1909. Preventive relief, how granted.

1910. Provisional injunctions.

1911. Injunction, when allowed.

1912. Injunction, when not allowed.

Sec. 1909. Preventive relief is granted by injunction provisional or final.

Preventive
relief, how
granted.

Sec. 1910. Provisional injunctions are regulated by the CODE OF CIVIL PROCEDURE.

Provisional
injunction.

Sec. 1911. Except where otherwise provided by this Title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

Injunction
when allowed.

1. Where pecuniary compensation would not afford adequate relief;

2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. Where the obligation arises from a trust.

Sec. 1912. An injunction cannot be granted:

Injunction,
when not
allowed.

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded; unless such restraint is necessary to prevent a multiplicity of such proceedings.

2. To stay proceedings in a court of the United States;

3. To stay proceedings, in another state, upon a judgment of a court of that state ;

4. To prevent the execution of a public statute, by officers of the law, for the public benefit ;

5. To prevent the breach of a contract, the performance of which would not be specifically enforced ;

6. To prevent an injury to the person, character, or personal relations of the applicant, not amounting to a nuisance ; except that in an action for divorce, an injunction may be granted to prevent interference with a wife or child ;

7. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession ;

8. To prevent a legislative act by a municipal corporation ; or,

9. Where relief, equally efficacious, can be obtained by any other usual mode of proceeding, except in case of breach of trust.

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I. General Principles.

II. Fraudulent Instruments and Transfers.

III. Assignments for the Benefit of Creditors.

TITLE I.

GENERAL PRINCIPLES.

SECTION 1913. Who is a debtor.

1914. Who is a creditor.

1915. Contracts of debtor are valid.

1916. Payments in preference.

1917. Relative rights of different creditors.

Sec. 1913. A debtor, within the meaning of this Title, is who is debtor. one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

Sec. 1914. A creditor, within the meaning of this Title, is Who is a creditor. one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

Sec. 1915. In the absence of fraud, every contract of a Contracts of debtor are valid, debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

Sec. 1916. A debtor may pay one creditor in preference to Payments in preference. another, or may give to one creditor security for the payment of his demand, in preference to another.

Sec. 1917. Where a creditor is entitled to resort to each of Relative rights of different creditors. several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to, some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

SECTION 1918. Transfers, &c. with intent to defraud creditors.

1919. Certain transfers presumed fraudulent.

1920. Presumption, how repelled.

1921. Rights of purchasers and mortgagees.

1922. Creditor's right must be judicially ascertained.

1923. Question of fraud, how determined.

Sec. 1918. Every transfer of property or charge thereon Transfers, &c. with intent to defraud creditors. made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any per-

sons upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Certain transfers presumed fraudulent.

Sec. 1919. Every transfer of personal property, other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a contract of bottomry or respondentia, is presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any person on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Presumption how repelled.

Sec. 1920. The presumption declared by the last section may be repelled by showing that the transfer was made in good faith and without intent to defraud.

Rights of purchasers and mortgagees.

Sec. 1921. The provisions of this Title do not affect the rights of a purchaser or incumbrancer, in good faith and for value.

Creditor's right must be judicially ascertained.

Sec. 1922. A creditor can avoid the act or obligation of his debtor, for fraud, only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

Question of fraud, how determined.

Sec. 1923. In all cases arising under this Title, or under section 535 of this Code, the question of fraudulent intent is one of fact, and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

SECTION 1924. When debtor may execute assignment.

1925. Insolvency, what.

1926. Certain transfers not affected.

SECTION 1927. What debts may be secured.

1928. What preferences may be given.

1929. Preference must be absolute.

1930. Certain rights not affected by preferences in assignment.

1931. Joint and separate debts.

1932. Assignment, when void.

1933. The instrument of assignment.

1934. Compliance with provisions of last section necessary to validity of assignment.

1935. Assignee takes subject to rights of third parties.

1936. Inventory required.

1937. Verification of inventory.

1938, 1939. Recording assignment and filing inventory.

1940. Effect of omitting to record.

1941. Assignment of real property.

1942. Bond of assignees.

1943. Conditions of disposal and conversion.

1944. Accountings.

1945. Property exempt.

1946. Compensation.

1947. Assignees protected for acts done in good faith.

1948. Assent of creditor necessary to modification of assignment.

Sec. 1924. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this Code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specific classes of persons.

When debtor
may execute
assignment.

Sec. 1925. A debtor is insolvent, within the meaning of this Title, when he is unable to pay his debts from his own means, as they become due.

Insolvency,
What.

Sec. 1926. The provisions of this Title do not prevent a person residing in another state or country from making there, in good faith, and without intent to evade the laws of this Territory, a transfer of property situated within it, nor do they affect the power of a person, although insolvent and within this Territory, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

Certain trans-
fers not affected

What debts
may be secured.

Sec. 1927. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

What prefer-
ences may be
given.

Sec. 1928. Except as otherwise specially provided by statute, an assignment by an insolvent debtor, for the benefit of creditors, may give a preference to one or more creditors, or classes of creditors, in the following cases, and in no others:

1. Judgments may be preferred to debts not in judgment;
2. Debts which are liens or charges upon the assigned property, or upon some part of it, may be preferred to debts which are not such liens or charges;
3. Debts for money or other property lent without interest, may be preferred to debts for money lent upon interest, or for property sold, or for services rendered;
4. Debts due from the assignor by virtue of a trust, may be preferred to debts which are not thus due; and,
5. Debts for personal services performed within six months next before the assignment, may, to an extent not exceeding fifty dollars to any one person, be preferred to other debts not within any of the preceding classes.

Preference
must be
absolute.

Sec. 1929. A preference, in an assignment for the benefit of creditors, can only be given absolutely, and without reserving any power of revocation.

Certain rights
not affected by
preferences
in assignment.

Sec. 1930. No provisions in an assignment, giving a preference to a creditor, can affect or impair any right of another creditor to priority of payment, whether created by law, or arising from an obligation or transaction of the parties.

Joint and
separate
debts.

Sec. 1931. Joint, or joint and several debtors can prefer their joint creditors only out of joint property; and can prefer the individual creditors of each only out of the separate property of each.

Assignment
when void.

Sec. 1932. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

1. If it gives an unlawful preference of one debt or class of debts over another;
2. If it gives a preference dependent upon any condition or contingency, or with any power of revocation reserved;

3. If it tends to coerce any creditor to release or compromise his demand ;

4. If it provides for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is justly due from the assignor ;

5. If it reserves any interest in the assigned property, or in any part thereof, to the assignor or for his benefit, before all his existing debts are paid ;

6. If it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust ;

7. If it exempts him from liability for neglect of duty or misconduct ; or,

8. If it violates section 1931 of this Code.

Sec. 1933. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent there-
to authorized by writing, and, if it embraces a fee or freehold estate in real property, it must be sealed. It must be acknowledged by the person executing it, or proved by a subscribing witness, in the mode prescribed by the article on Proof and Acknowledgment of Instruments, and the acknowledgment or proof must be certified, before its delivery.

The instrument of assignment.

Sec. 1934. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

Compliance with provisions of last section, necessary to validity of assignment.

Sec. 1935. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

Assignee takes subject to rights of third parties.

Sec. 1936. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 1938, a full and true inventory, showing :

Inventory required.

1. All the creditors of the assignor ;

2. The place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated ;

3. The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account or otherwise ;

4. The true consideration of the liability in each case, and the place where it arose ;

5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor ;

6. All property of the assignor at the date of the assignment which is exempt by law from execution ; and,

7. All of the assignor's property at the date of the assignment, both real and personal, of every kind not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

Verification
of inventory.

Sec. 1937. An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

Recording
assignment and
filing inventory.

Sec. 1938. An assignment for the benefit of creditors must be recorded, and the inventory required by section 1936 filed, with the register of deeds of the county in which the assignor resided at the date of the assignment ; or, if he did not then reside in this Territory, with the like officer of the county in which his principal place of business was then situated ; or if he had not then a residence or place of business in this Territory, with the like officer of the county in which the principal part of the assigned property was then situated.

Id.

Sec. 1939. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded, and a copy of the inventory required by section 1936 must be filed, with the register of deeds, of every county in which any of the assignors resided at its date, or in which any of them, not then residing in this Territory, had then a place of business.

Effect of
omitting to
record.

Sec. 1940. An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers from him, if the assignment is not recorded, and the inventory required by section 1936 filed, pursuant to section 1938, within twenty days after the date of the assignment.

Assignment of
real property.

Sec. 1941. Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of

article IV of the chapter on Recording Transfers, as well as to those of this Title.

Sec. 1942. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the people of this Territory, in such amount as may be fixed by the probate judge of the county in which the original inventory is filed, with sufficient sureties, to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory. Bond of assignees.

Sec. 1943. Until the inventory and affidavit required by sections 1936 and 1937 have been made, and the assignment has been duly recorded, and the inventory filed, and the assignee has given a bond as required by the last section, an assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust. Conditions of disposal and conversion.

Sec. 1944. After one year from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the probate judge of the county where the accompanying inventory was filed, in the manner prescribed by the CODE OF CIVIL PROCEDURE. Accountings.

Sec. 1945. Property exempt from execution, and insurances upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby. Property exempt.

Sec. 1946. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether. Compensation.

Sec. 1947. An assignee for the benefit of creditors is not to be held liable for his acts done in good faith in the execution of the trust, merely for the reason that the assignment is afterward adjudged void. Assignees protected for acts done in good faith.

Assent of
creditors
necessary to
modification of
assignment:

Sec. 1948. An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

PART III.

NUISANCE.

TITLE I. General Principles.

II. Public Nuisances.

III. Private Nuisances.

TITLE I.

GENERAL PRINCIPLES.

Section 1949. Nuisance, what.

1950. Public nuisance.

1951. Private nuisance.

1952. What is not deemed a nuisance.

1953. Successive owners.

1954. Abatement does not preclude action.

Nuisance,
what.

Sec. 1949. A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

1. Annoys, injuries or endangers the comfort, repose, health or safety of others; or,

2. Offends decency; or,

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,

4. In any way renders other persons insecure in life, or in the use of property.

Sec. 1950. A public nuisance is one which affects equally Public nuisance. the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

Sec. 1951. Every nuisance not included in the definition of Private nuisance. the last section is private.

Sec. 1952. Nothing which is done or maintained under the What is not deemed a nuisance. express authority of a statute can be deemed a nuisance.

Sec. 1953. Every successive owner of property who neglects Successive owners. to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

Sec. 1954. The abatement of a nuisance does not prejudice Abatement does not preclude action. the right of any person to recover damages for its past existence.

TITLE II.

PUBLIC NUISANCES.

~~SECTION~~ 1955. Lapse of time does not legalize.

1956. Abatement.

1957. When notice is required.

1958. Remedies for public nuisances.

1959. Action.

1960. How abated.

Sec. 1955. No lapse of time can legalize a public nuisance, Lapse of time does not legalize. amounting to an actual obstruction of public right.

Sec. 1956. The remedies against a public nuisance are : Remedies for public nuisance.

1. Indictment ;

2. A civil action ; or,

3. Abatement.

Sec. 1957. The remedy by indictment is regulated by the Indictment, how regulated. PENAL CODE and the CODE OF CRIMINAL PROCEDURE.

Sec. 1958. A private person may maintain an action for a Action. public nuisance if it is specially injurious to himself, but not otherwise.

Sec. 1959. A public nuisance may be abated by any public How abated. body or officer authorized thereto by law.

Id.

Sec. 1960. Any person may abate a public nuisance which is specially injurious to him, by removing, or, if necessary, destroying the thing, which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

TITLE III.

PRIVATE NUISANCES.

SECTION 1961. Remedies for private nuisances.

1962. Abatement, when allowed.

1963. When notice is required.

Remedies for
private
nuisances.

Sec. 1961. The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

Abatement,
when allowed. §

Sec. 1962. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

When notice
is required.

Sec. 1963. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART IV.

MAXIMS OF JURISPRUDENCE.

Sec. 1964. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this Code, but to aid in their just application.

Sec. 1965. When the reason of a rule ceases, so should the rule itself.

Sec. 1966. Where the reason is the same, the rule should be the same.

Sec. 1967. One must not change his purpose to the injury of another.

Sec. 1968. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

Sec. 1969. One must so use his own rights as not to infringe upon the rights of another.

Sec. 1970. He who consents to an act is not wronged by it.

Sec. 1971. Acquiescence in error takes away the right of objecting to it.

Sec. 1972. No one can take advantage of his own wrong.

Sec. 1973. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

Sec. 1974. He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.

Sec. 1975. No one should suffer by the act of another.

Sec. 1976. He who takes the benefit must bear the burden.

Sec. 1977. One who grants a thing is presumed to grant also whatever is essential to its use.

Sec. 1978. For every wrong there is a remedy.

Sec. 1979. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

Sec. 1980. Between rights otherwise equal, the earliest is preferred.

Sec. 1981. No man is responsible for that which no man can control.

Sec. 1982. The law helps the vigilant, before those who sleep on their rights.

Sec. 1983. The law respects form less than substance.

Sec. 1984. That which ought to have been done, is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

Sec. 1985. That which does not appear to exist is to be regarded as if it did not exist.

Sec. 1986. The law never requires impossibilities.

Sec. 1987. The law neither does nor requires idle acts.

Sec. 1988. The law disregards trifles.

Sec. 1989. Particular expressions qualify those which are general.

Sec. 1990. Contemporaneous exposition is in general the best.

Sec. 1991. The greater contains the less.

Sec. 1992. Superfluity does not vitiate.

Sec. 1993. That is certain which can be made certain.

Sec. 1994. Time does not confirm a void act.

Sec. 1995. The incident follows the principal, not the principal the incident.

Sec. 1996. An interpretation which gives effect is preferred to one which makes void.

Sec. 1997. Interpretation must be reasonable.

Sec. 1998. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

PART V.

DEFINITIONS AND GENERAL PROVISIONS.

SECTION 1999. Words, how used.

2000. Sundry words.

2001. Degrees of care and diligence.

2002. Care and diligence.

2003. Degrees of negligence.

2004. Negligence.

2005. Children.

2006. Debtor and creditor.

2007. Good faith.

2008. Notice.

2009. Actual notice.

2010. Constructive notice.

2011. Certain persons deemed to have constructive notice.

2012. Notice, when impossible.

2013. Paper.

2014. Persons.

SECTION 2015. Several.

- 2016. Third persons.
- 2017, 2018. Holidays.
- 2019. Business days.
- 2020. Certain acts not to be done on holidays.
- 2021, 2022. Usage, what.
- 2023. Value.
- 2024. Verdict.
- 2025. Time.
- 2026. Genders.
- 2027. Numbers.
- 2028. Commissioners of deeds.
- 2029. Compound interest. 2030. Writing. 2031. Forms.
- 2032. Construction of the Code.
- 2033. Repeal of former statutes.
- 2034. Time when Code takes effect..

Sec. 1999. Words used in this Code are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained. Words, how used.

Sec. 2000. Whenever the meaning of a word or phrase is defined in any part of this Code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears. Sundry words.

Sec. 2001. There are three degrees of care and of diligence mentioned in this Code, namely, slight, ordinary and great. The latter include the former. Degrees of care and diligence.

Sec. 2002. Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as they usually exercise about their own affairs of great importance. Care and diligence.

Sec. 2003. There are three degrees of negligence mentioned in this Code, namely, slight, ordinary and gross. The latter include the former. Degrees of negligence.

Sec. 2004. Slight negligence consists in the want of great care and diligence; ordinary negligence, in the want of ordinary care and diligence; and gross negligence, in the want of slight care and diligence. Negligence.

- Children.** Sec. 2005. The term "children," as used in this Code, includes children by birth and by adoption.
- Debtor and creditor.** Sec. 2006. Except in Part III of this Division, every one who owes to another the performance of an obligation is called a debtor, and the one to whom he owes it is called a creditor.
- Good faith.** Sec. 2007. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious.
- Notice.** Sec. 2008. Notice is either actual or constructive.
- Actual notice.** Sec. 2009. Actual notice consists in express information of a fact.
- Constructive notice.** Sec. 2010. Constructive notice is notice imputed by the law to a person not having actual notice.
- Certain persons deemed to have constructive notice.** Sec. 2011. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.
- Notice when impossible.** Sec. 2012. A notice which is false when given, is not made valid by the subsequent happening of the event.
- Paper.** Sec. 2013. The word "paper," as used in this Code, means any flexible material upon which it is usual to write.
- Person.** Sec. 2014. The word "person," as used in this Code, except when used by way of contrast, includes not only human beings, but bodies politic or corporate.
- Several.** Sec. 2015. The word "several," as used in this Code in relation to number, means two or more.
- Third persons.** Sec. 2016. The words "third persons," as used in this Code, include all who are not parties to the obligation or transaction concerning which the phrase is used.
- Holidays.** Sec. 2017. Holidays, within the meaning of this Code, are, every Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the Territory, and every day appointed by the president of the

United States, or by the governor of this Territory, for a public fast, thanksgiving, or holiday.

Sec. 2018. If the first of January, the twenty-second of February^{Id.}, the fourth of July, or the twenty-fifth of December, falls upon a Sunday, the Monday following is a holiday.

Sec. 2019. All other days than those mentioned in the last two sections are to be deemed business days, for all purposes.^{Business days.}

Sec. 2020. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.^{Certain acts not to be done on holidays.}

Sec. 2021. Usage, within the meaning of this Code, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties, or so well established, general and uniform, that they must be presumed to have acted with reference thereto.^{Usage, what.}

Sec. 2022. The words "usual," and "customary," as used in this Code, mean "according to usage."^{Id.}

Sec. 2023. A valuable consideration, within the meaning of this Code, is a thing of value parted with, or a new obligation assumed, at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value."^{Value.}

Sec. 2024. The word "verdict," as used in this Code, includes not only the verdict of a jury, but also the finding upon the facts, of a judge, or of a referee appointed to determine the issues in a cause.^{Verdict.}

Sec. 2025. The word "year" as used in this Code, means a calendar year, and "month" a calendar month. Fractions of a year are to be computed by the number of months, thus, half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day, and involve no questions of priority.^{Time.}

- Gender.** Sec. 2026. Words used in this Code in the masculine gender include the feminine, except where a contrary intention plainly appears.
- Numbers.** Sec. 2027. Words used in this Code in the singular number include the plural, and the plural the singular, except where a contrary intention plainly appears.
- Commissioner of deeds.** Sec. 2028. Any act required to be done by or before a commissioner of deeds, may be done by or before any officer mentioned in sections 517, 518 and 519 of this Code, subject to the regulations contained in those sections.
- Compound interest.** Sec. 2029. The words "compound interest," as used in this Code, mean interest computed with semi-annual rests.
- Writing.** Sec. 2030. The words "writing" and "written," as used in this Code, include "printing" and "printed," except in the case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made.
- Forms.** Sec. 2031. The forms contained in the schedule annexed to this Code are to be deemed sufficient for the purposes designated in the caption of each respectively, and whenever any person is entitled to receive an instrument now commonly known by any such designation, he is entitled to receive it in the form given in the schedule, and cannot require it to be given in any other form, unless it has been otherwise expressly agreed.
- Construction of the Code.** Sec. 2032. The rule that statutes in derogation of the common law are to be strictly construed has no application to this Code.
- Repeal of former statutes.** Sec. 2033. All statutes, laws and rules heretofore in force in this Territory, inconsistent with the provisions of this Code, are hereby repealed or abrogated; but such repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any proceeding already taken, except as in this Code provided; *Provided:* That the practice and procedure as established by chapter I, of the laws of 1862, entitled "An act to establish a code of civil procedure," approved May, 1862, so

far as applicable to this code, shall remain in full force and effect; and, *provided further*, That nothing contained in this Code shall be so construed as to abrogate or impair the provisions of any statute exempting property from levy under execution for debt.

Sec. 2034. This Code shall take effect from and after the date of its approval. When to take effect.

SCHEDULE OF FORMS.

No. 1.

GRANT OF REAL PROPERTY, WITHOUT COVENANTS.

THIS GRANT, made the day of, in the year, between A. B., of, of the first part, and C. D., of, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of dollars, now received, all the real property situated in, and bounded

WITNESS the hand and seal of the party of the first part.

A. B. [*Seal.*]

Sealed and delivered in the }
presence of }
E. F.

No. 2.

GRANT OF REAL PROPERTY, WITH COVENANTS.

THIS GRANT, made the day of, in the year, between A. B., of... .., of the first part, and C. D., of, of the second part, witnesseth: .

I. That the party of the first part hereby grants to the party of the second part, in consideration of dollars, now received, all the real property situated in..... and bounded

II. That the party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

WITNESS the hand and seal of the party of the first part.

A. B. [*Seal.*]

Sealed and delivered in the }
presence of }
E. F.

No. 3.

LEASE.

THIS LEASE, made the day of, in the year, between A. B., of..... of the first part, and C. D., of, of the second part witnesseth:

That the party of the first part lets, and the party of the second part hires, the [*describing the property let*], for the term of....., at the [annual] rent of dollars, to be paid by the party of the second part to the party of the first part [in equal quarterly payments].

[*Signatures.*]

No. 4.

MORTGAGE OF REAL PROPERTY.

THIS MORTGAGE, made the day of....., in the year, between A. B., of....., of the first

part, and C. D., of, of the second part, witnesseth:

[I.] That in consideration of dollars, now received, the party of the first part hereby mortgages to the party of the second part [*here describe the property*], as security for the payment to him of dollars, on [or before] the day of, 18..., with interest thereon [or, as security for the payment of a bond, *describing it, &c.*]

[*If a power of sale is to be given add,*] II. That in case of the non-payment of the principal sum, or of any part of the interest thereon, when due, the party of the second part may enter upon and sell the property above described, in the manner prescribed by the Civil Code and the Code of Civil Procedure of this Territory, and apply the proceeds of such sale to the satisfaction of the amount due under this mortgage, and of the expenses of the sale; the residue to be forthwith paid to the party of the first part.

[*If the interest clause is to be inserted, add,*] III. That, if the interest upon the principal sum mentioned herein is not fully paid as it falls due, the entire principal shall become immediately due and payable, at the option of the party of the second part.

[*If the insurance clause is to be inserted, add,*] IV. That the party of the first part shall, at his own expense, keep the [buildings] on the said property insured against fire in a reputable insurance office, for the benefit of the party of the second part, to the extent of dollars, until this mortgage is paid or otherwise extinguished.

WITNESS the hand and seal of the party of the first part.

A. B. [*Seal.*]

Scaled and delivered in the }
presence of

E. F.

No. 5.

MORTGAGE OF PERSONAL PROPERTY.

THIS MORTGAGE, made the.....day of in the year....., between A. B. of....., of the first part, and C. D., of....., of the second part, witnesseth:

[I.] That in consideration ofdollars, now received, the party of the first part hereby mortgages to the party of the second part [*here describe the pro perty*], as security for the payment to him ofdollars, on [or before] the.....day of....., 18..., with interest thereon [*or, as security for the payment of a bond, describing it, &c.*]

[*If a power of sale is to be given, add,*] II. That in case of the non-payment of the principal sum, or of any part of the interest thereon, when due, the party of the second part may enter upon any place where the said property is situated, and sell the property above described, in the manner prescribed by the Civil Code and the Code of Civil Procedure of this Territory, and apply the proceeds of such sale to the satisfaction of the amount due under this mortgage, and of the expenses of the sale; the residue to be forthwith paid to the party of the first part.

[*If the interest clause is to be inserted, add,*] III. That, if the interest upon the principal sum mentioned herein is not fully paid as it falls due, the entire principal shall become immediately payable, at the option of the party of the second part.

[*If the insurance clause is to be inserted, add,*] IV. That the party of the first part shall, at his own expense, keep the said property insured against [fire] in a reputable insurance office, for the benefit of the party of the second part, to the extent of.....dollars, until this mortgage is paid or otherwise extinguished.

[*In case the principal obligation is for a term longer than one year, add,*] V. That the party of the first part hereby agrees to execute, upon demand, at any time after eleven months from the date hereof, a new mortgage to the same effect, to secure so much of the obligation for which this mortgage is a security as will remain unsatisfied at the end of one year from this date.

WITNESS the hand and seal of the party of the first part.

A. B. [*Seal.*]

Sealed and delivered in the }
presence of

E. F.

No. 6.

BOND.

THIS BOND, made the.....day of....., in the year
....., between A. B., of....., of the first part,
and C. D., of....., of the second part, witnesseth :

That the party of the first part, being indebted unto the party of the second part in the sum of.....dollars, hereby binds himself to pay the same to the said party of the second part, or to his order [*or, to the bearer*], [in....years from the date hereof, with interest at the rate of.....per cent. a year, payable half-yearly on the.....day of.....and.....]

WITNESS the hand and seal of the party of the first part.

A. B. [*Seal*]

Sealed and delivered in the }
presence of
E. F.

No. 7.

BILL OF LADING.

RECEIVED, in good order [on board the ship....., *or*,
on the.....railway], from A. B. [*name of consignor*],
[one thousand barrels of flour, *or otherwise describing the goods*], to be delivered at....., to the order of C. D. [*or, to the bearer*], on payment of.....freightage, [and.....
primage.]

[*Date.*]

[*Signature.*]

No. 8.

CHARTER-PARTY.

THIS CHARTER-PARTY, made the day of,
in the year, between A. B., of, of the
first part, and C. D., of, of the second part, witnesseth :-

I. That the party of the first part lets to the party of the second part, the [ship], now lying at, of which E. F. is master, for a voyage to be made from

..... to [*or, for the term of* from the date hereof.]

II. That the party of the first part warrants that the said [ship] shall be [kept] seaworthy, and in every respect fit for the voyage [and shall be provided with a sufficient crew and provisions.]

III. That the party of the second part may put on board the said [ship] any goods whatever, except such as are contraband of war.

IV. [*If the vessel is chartered for a voyage only*] That the party of the second part shall be allowed days for loading at the port of, and days for discharging [and reloading] at the port of, [and days for final discharge at the port of], exclusive, in each case, of Sundays and legal holidays; and commencing, in each case, from the time that notice is given to the party of the second part, or his proper agent, of the readiness of the vessel to receive or discharge cargo; and that for every day of additional detention of the vessel for these purposes, the party of the second part shall pay to the party of the first part dollars.

V. That the party of the second part shall pay to the party of the first part, at, within days after the arrival of the said [ship] at that port, dollars, in full for the hire of the same [and shall also pay, as they fall due, the expenses of victualing and manning the same, and all port charges and pilotage that may be due thereon].

WITNESS the hands and seals of the parties.

A. B. [*Seal.*]

C. D. [*Seal.*]

Scaled and delivered in the }
presence of }
G. H.,

No. 9.

BOTTOMRY BOND.

THIS BOTTOMRY BOND, made the day of
....., in the year, between A. B., of

the [master] of the [ship], now lying at
, of the first part, and C. D., of, of the
 second part, witnesseth:

I. That whereas [*stating the circumstances which render the hypothecation proper*], and whereas, the party of the second part has lent to the party of the first part, for the use of the said vessel, the sum of dollars; now therefore, the party of the first part binds himself, the said vessel and her freightage, for the payment to the party of the second part of the said sum, with dollars in addition, as maritime interest, within days after the arrival of the said vessel uninjured at [or, on the day of, 18., if the said vessel is not previously lost by perils other than its unseaworthiness at setting out, or the barratry of its master].

II. That, in case of the loss or injury of the said vessel [from any of the above mentioned perils], the party of the first part shall pay to the party of the second part so much only of the said sum and interest as may be equivalent to the net value, to the owner, of any portion or proceeds of the said vessel, saved to him.

WITNESS the hand and seal of the party of the first part.

A. B. [Seal.]

Sealed and delivered in the }
 presence of }
 E. F.

No. 10.

RESPONDENTIA BOND.

THIS RESPONDENTIA BOND, made the day of, in the year, between A. B., of, the [master] of the [ship]., now lying at, of the first part, and C. D. of of the second part witnesseth:

I. That whereas [*stating the circumstances which render the hypothecation proper*], and whereas the party of the second part has lent to the party of the first part, for the use of the said vessel, the sum of dollars; now therefore, the party of the first part binds himself, and all the cargo laden

and to be laden on board the said vessel, for the repayment to the party of the second part of the said sum, with dollars in addition, as maritime interest, within days after the arrival of the said cargo uninjured at.....[or, on the.....day of....., 18., if the said cargo is not previously lost by perils other than the barratry of the master].

II. That in case of the loss or injury of the said cargo [from any of the above mentioned perils], the party of the first part shall pay to the party of the second part so much only of the said sum and interest as may be equivalent to the net value, to the owner, of any portion or proceeds of the said cargo, saved to him.

WITNESS the hand and seal of the party of the first part.

A. B. [*Seal.*]

Sealed and delivered in the }
presence of }
E. F.

No. 11.

POLICY OF MARINE INSURANCE ON VESSEL.

THIS POLICY OF MARINE INSURANCE, made the ... day of, in the year, between A. B. [*name of insurer*], of, and C. D. [*name of insured*, of], witnesseth :

That in consideration of the premium of dollars, being at the rate of per cent. upon the amount of insurance, now received from the said C. D., the said A. B. INSURES him to the extent of dollars, upon his interest [*as mortgagee, or otherwise, if he is not the absolute owner*] in the [one-fourth part of the ship], which interest is hereby valued at dollars.

This insurance is made upon the following terms :

I. The period during which this insurance is to continue is from the day of, 18. . . ., at noon, until the day of, 18. . . ., at noon [*or, at and from the port of to the port of , until the said vessel has been safely moored at the last name port for twenty-four hours*].

II. The risks insured against are all perils and losses of every kind, which may happen to the said vessel during the period above specified, except those which are caused by the unseaworthiness of the vessel.

III. In case of any disaster happening to the subject of insurance, the insured must labor for its recovery, and the insurer will contribute to the expense thereof according to the amount insured.

IV. Partial losses, amounting in the aggregate, on a single voyage, to less than [five] per cent. of the value of the subject of insurance, after making the usual deductions, are excepted from this insurance.

V. No act of the insurer or of the insured, in saving or recovering from disaster the property insured, is to be deemed an acceptance or waiver of abandonment.

VI. In adjusting a partial loss, the old materials are to be applied towards payment for the new, and, except in the case of anchors, cannon, and metal sheathing, one-third is to be deducted from the remaining cost of repairs; in the case of metal sheathing, deduction is to be made from the cost of its repair, at the rate of two and a half per cent. for each month during which the old sheathing was on the vessel; in considering a claim for a constructive total loss, similar deductions are to be made from the estimated expenses of repairs, and if, after making such deductions, the expenses would not exceed one-half the value of the vessel, the loss is to be deemed partial only.

VII. The amount of any note given for premium under this policy, if unpaid, is to be deducted from any payment of loss.

VIII. The amount of a loss insured against is payable to, for the benefit of [whom it may concern], within..... days after proof of loss and interest is given to the insurer.

IX. If the insured has effected any prior insurance upon the same subject, the insurer herein is liable only for so much of a loss as is not covered by such prior insurance, and must return the premium upon the rest; but if the insured effects a subsequent insurance, the insurer herein is nevertheless liable to the full amount herein specified, and has no right to contribution from such subsequent insurer.

X. In case the insured is entitled to a return of premium,

in whole or in part, the insurer is entitled to retain [one half of one per cent.] in all events.

[Signature.]

No. 12.

POLICY OF MARINE INSURANCE ON CARGO.

THIS POLICY OF MARINE INSURANCE, made theday of... ..in the year....., between A. B. [name of insurer], of,and C. D. [name of insured], of....., witnesseth:

That in consideration of a premium ofdollars, being at the rate of.....per cent. upon the amount of insurance, now received from the said C. D., the said A. B. INSURES him to the extent ofdollars, upon his interest [as mortgagor, or otherwise, if he is not the absolute owner] in [describing the property], on board the [ship], of, which interest is hereby valued at.....dollars.

This insurance is made upon the following terms:

I. The period during which this insurance is to continue is from the.....day of....., 18..., at noon until the..... day of....., 18..., at noon [or, from the commencement of loading the cargo insured, at the port of.....until it is safely landed at the port of.....].

II. The risks insured against are all perils and losses of every kind which may happen to the cargo insured, during the period above specified, except those which arise from the inherent nature thereof, without external injury.

III. In case of any disaster happening to the subject of insurance, the insured must labor for its recovery, and the insurer will contribute to the expense thereof according to the amount insured.

IV. Partial losses are excepted from this insurance in the following cases:

1. [Here specify articles particularly, with the rate of particular average allowed.]

2. Losses by dampness, change of flavor, mustiness, or mold, unless caused by actual contact of water with the articles damaged.

3. Leakage of any liquid, unless caused by stranding or collision with another vessel.

V. No act of the insurer or of the insured, in saving or recovering from disaster the property insured, is to be deemed an acceptance or waiver of abandonment.

VI. The amount of any note given for premium under this policy, if unpaid, is to be deducted from any payment of loss.

VII. The amount of a loss insured against is payable to....., for the benefit of....., within.....days after proof of loss and interest is given to the insurer.

VIII. If the insured has effected any prior insurance upon the same subject, the insurer herein is liable only for so much of a loss as is not covered by such prior insurance, and must return the premium upon the rest; but if the insured effects a subsequent insurance, the insurer herein is nevertheless liable to the full amount herein specified, and has no right to contribution from such subsequent insurer.

IX. In case the insured is entitled to a return of premium, in whole or in part, the insurer herein is entitled to retain [one half of one per cent.] in all events.

[Signature.]

No. 13.

POLICY OF MARINE INSURANCE ON FREIGHTAGE.

THIS POLICY OF MARINE INSURANCE, made theday of....., in the year....., between A. B. [name of insurer], of and C. D. [name of insured], of, witnesseth:

That in consideration of a premium of.....dollars, being at the rate of.....per cent. upon the amount of insurance, now received from the said C. D., the said A. B. INSURES him to the extent ofdollars, upon his interest [describe it if not absolute] in the freightage upon all cargo laden or to be laden on board the.....of, which interest is hereby valued at.....dollars.

This insurance is made upon the following terms:

I. The period during which this insurance is to continue is from the.....day of....., 18..., at noon until theday of

18..., at noon [0...], from the commencement of loading cargo on the said vessel, at the port of ..., until it is safely landed at the port of.....].

II. The risks insured against are all perils and losses of every kind, which may happen during the period above specified, to prevent the said ship from earning the freightage insured; except losses arising from the neglect of the master to save freightage by procuring other vessels to convey the cargo to its destination, when necessary and practicable, or from his neglect to preserve damaged cargo.

III. In case of any disaster happening to the subject of insurance, the insured must labor for its recovery, and the insurer will contribute to the expense thereof according to the amount insured.

IV. Partial losses, amounting in the aggregate, on a single voyage, to less than [five] per cent. of the value of the subject of insurance, after making the usual deductions, are excepted from this insurance.

V. No act of the insurer or of the insured, in saving or recovering from disaster the property insured, is to be deemed an acceptance or waiver of abandonment.

VI. The amount of any note given for premium under this policy, if unpaid, is to be deducted from any payment of loss.

VII. The amount of a loss insured against is payable to—.....for the benefit of,..... within.....days after proof of loss and interest is given to the insurer.

VIII. If the insured has effected any prior insurance upon the same subject, the insurer herein is liable only for so much of a loss as is not covered by such prior insurance, and must return the premium upon the rest; but if the insured effects a subsequent insurance, the insurer herein is nevertheless liable to the full amount herein specified, and has no right to contribution from such subsequent insurer.

IX. In case the insured is entitled to a return of premium, in whole or in part, the insurer is entitled to retain [one-half of one per cent.] in all events.

[Signature.]

No. 14

POLICY OF FIRE INSURANCE.

THIS POLICY OF FIRE INSURANCE, made the... .. day of....., in the year....., between A. B. [*name of insurer*], of....., and C. D. [*name of insured*], of....., witnesseth :

That in consideration of a premium of.....dollars, being at the rate of.....per cent. upon the amount of insurance, now received from the said C. D. the said A. B. INSURES him to the extent of.....dollars, upon his interest [*as mortgagee, or otherwise, if he is not the absolute owner*], in [*describing the property*].

This insurance is made upon the following terms :

I. The period during which this insurance is to continue is from the.....day of....., 18—, at noon, until the..... day of....., 18—, at noon.

II. The risks insured against are loss or damage by fire.

III. A loss caused by invasion, insurrection, riot, civil commotion, or any military or usurped power, is excepted.

IV. This policy does not cover books of account, written obligations, securities, or evidences of title or of debt, money or bullion, casts, jewelry, medals, musical or scientific instruments (other than a piano forte in a dwelling house), patterns, pictures, plate, precious stones, printed music, sculptures, statuary, or watches, except so far as the same are specially mentioned herein.

V. If any explosive substance is kept upon the premises herein mentioned, in quantities greater than or in a manner different from that allowed by law, this policy is suspended until the law is obeyed.

VI. This policy is suspended during the use of the premises herein mentioned for any of the following purposes, without the written consent of the insurer [*specifying the purposes*].

VII. In case the property insured is in peril of damage by fire, the insured must use his best efforts to protect it therefrom, the expense of which shall be paid by the insurer to the extent of this insurance.

VIII. The property insured cannot be abandoned to the insurer.

IX. Written notice of loss must be given to the insurer within a reasonable time thereafter, and the insured must deliver to the insurer a statement in writing, verified by his oath or affirmation, showing to the best of his knowledge and belief:

1. The ownership of the thing insured;
2. Its cash value at the time of loss;
3. By whom, and for what purposes, the premises on which the loss occurred were occupied;
4. When and how the fire originated;
5. All other insurance upon the same property, giving a copy of the written portions of each policy.

X. The insurer has a right to enter upon the premises where a loss occurs, and to examine all property insured, after a loss, and all books and papers relating to such property.

XI. The insurer may, at his option, pay for a loss according to the cash value at the time of loss, or replace the thing lost or injured with another thing of the same kind and quality, or repair the injury, if it can be fully repaired; but notice of his election to do so must be given within thirty days after notice of loss, or the right thereof is lost.

XII. In case of any other insurance upon the property hereby insured, the insurer herein is liable only for such proportion of the whole loss, as the amount hereby insured bears to the gross amount of insurance effected; and a floating policy, sufficient in terms to cover the property hereby insured, is to be deemed to cover any excess of the value of such property over the amount specifically insured thereon.

[XIII. This policy shall be void if any other insurance now exists, or is hereafter effected upon the same property, without the written consent of the insurer herein].

XIII. [or XIV.] The amount of a loss insured against is payable to the insured in thirty days after proof of loss and interest is given to the insurer.

XIV. [or XV.] This insurance may be terminated at any time by the insured, on notice to the insurer; in which case the insurer must refund all premium paid in excess of the customary short rates for the time the policy has been in force.

It may also be terminated by the insurer, upon giving notice to the insured, and refunding to him a ratable proportion of the premium paid, according to the time that the policy has been in force.

[Signature.]

No. 15.

POLICY OF LIFE INSURANCE.

THIS POLICY OF LIFE INSURANCE, made the..... day of....., in the year....., between A. B. [*name of insurer*], of, and C. D. [*name of insured*], of..... witnesseth :

That in consideration of a premium of.....dollars, being at the rate of $\frac{\quad}{\quad}$ per cent. upon the amount of insurance, now received from the said C. D. [and of the annual premium of——dollars, to be paid on or before the.....day of —— in every year during the period insured], the said A. B. INSURES him to the extent of..... dollars, upon the life of [*name of person whose life is insured*].

This insurance is made upon the following terms :

I. The period during which this insurance is to continue is the life of[or, from.....to.....].

II. The amount to be paid in case of the death of the saidis.....dollars [with participation in profits], which is to be paid to.....[his executors, administrators, or assigns, or if the policy is issued to the wife of the person whose life is insured, for her sole use, or, in case of her death, to her children, or their guardian, for their use, or, if she leaves no child, then to her executors or administrators], at....., in sixty days after notice and proof of the death of,deducting therefrom so much of the premium for the then current year as may be unpaid.

III. If, without the written consent of the insurer, the person whose life is insured passes beyond the boundaries of the United States of America, otherwise than into Canada, Nova Scotia, or New Brunswick ; or passes west of the 100th degree of west longitude, or north of the 50th degree of north latitude ; or between the 1st of July and the 1st of November passes

south of 36 degrees, 30 minutes of north latitude ; or enters upon a voyage on the high seas ; or becomes personally engaged in blasting, mining, submarine operations, or in the production of highly inflammable or explosive substances, or in working a steam-engine in any capacity, or in service or labor upon any railroad or in any kind of navigation, or in any military or naval service (other than that of the militia when not actually employed in military operations), the insurer shall not be liable to any payment under this policy, in case of his death while so situated or engaged, or in case of his death from any disease contracted or injury suffered while so situated or engaged, and the insurer may in any such case terminate this policy.

IV. If the person whose life is insured commits suicide, or dies from any injury suffered in a duel in which he is in any way engaged, or suffered in consequence of the violation of a penal law, or if the representations made upon the application for this policy are in any material respect untrue, this policy shall be void.

V. Upon the expiration of this policy, or in case it is now or hereafter becomes void, all payments made thereon shall belong to the insurer.

VI. If this policy is transferred or hypothecated, proof of the right of the holder to receive the amount of insurance must be given to the insurer sixty days before payment can be required.

[*Signature.*]

Approved, January 12th, 1866.