

Istnieje tekst jednolity

**The Civil Code**  
**z dnia 23 kwietnia 1964 r. (Dz.U. tłum. gb Nr 16, poz. 93)**

**Księga One. GENERAL PROVISIONS.**

**Tytuł I. Preliminary Provisions.**

**Art. 1. Scope.** This Code governs the civil law relations between natural and legal persons.

**Art. 2** (*deleted*)

**Art. 3. No retroactive effect.** The law has no retroactive effect unless its wording or purpose provides otherwise.

**Art. 4** (*deleted*)

**Art. 5. Abuse of right.** One cannot exercise one's right in a manner contradictory to its social and economic purpose or the principles of community life. Acting or refraining from acting by an entitled person is not deemed an exercise of that right and is not protected.

**Art. 6. Burden of proof.** The burden of proving a fact lies with the person who draws legal effects from that fact.

**Art. 7. Presumption of good faith.** If the law makes legal effects contingent upon good or bad faith, good faith is presumed.

**Tytuł II. Persons.**

**Dział I. Natural Persons (Individuals).**

**Rozdział I. Legal Capacity and Capacity for Legal Acts.**

**Art. 8. Commencement.**

§ 1. Every human being has legal capacity from the moment of birth.

§ 2. (*deleted*)

**Art. 9. Presumption of live birth.** When a child is born it is presumed that it is born alive.

**Art. 10. Age of majority.**

§ 1. An adult is any individual who has attained eighteen years of age.

§ 2. A minor becomes an adult on marriage. He does not lose that status in the event of the marriage being annulled.

**Art. 11. Full capacity for legal acts.** Full capacity for legal acts is acquired at the moment of becoming an adult.

**Art. 12. No capacity for legal acts.** Individuals who have not attained thirteen years of age and persons fully legally incapacitated do not have capacity for legal acts.

**Art. 13. Full legal incapacitation.**

§ 1. A person who has attained thirteen years of age may be fully legally incapacitated if, due to mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, he is incapable of controlling his behavior.

§ 2. A guardian is appointed for a fully legally incapacitated person unless the person is still under parental authority.

**Art. 14. Effects of no capacity for legal acts.**

§ 1. A legal act performed by a person who does not have capacity for legal acts is invalid.

§ 2. However, if a person who does not have capacity for legal acts executes a contract of a type commonly executed in minor current day-to-day matters, this contract becomes valid the moment it is performed unless it causes serious harm to the person who does not have capacity for legal acts.

**Art. 15. Limited capacity for legal acts.** Minors who have attained thirteen years of age and persons partially legally incapacitated have limited capacity for legal acts.

**Art. 16. Partial legal incapacitation.**

§ 1. An adult may be partially legally incapacitated due to mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, if his condition does not justify him being fully legally incapacitated but he requires assistance to manage his affairs.

§ 2. A curator is appointed for an individual partially legally incapacitated.

**Art. 17. Consent of statutory representative.** Subject to the exceptions provided for by the law, to be valid, a legal act whereby a person with limited capacity for legal acts assumes an obligation or disposes of his right requires the consent of his statutory representative.

**Art. 18. Ratification of contract.**

§ 1. The validity of a contract executed by a person with limited capacity for legal acts without the required consent of his statutory representative depends on the contract being ratified by that representative.

§ 2. A person with limited capacity for legal acts may ratify the contract himself upon acquiring full capacity for legal acts.

§ 3. A party who has executed a contract with a person with limited capacity for legal acts cannot plead lack of consent of the statutory representative. It may, however, set that representative an appropriate date by which to ratify the contract; it becomes free when this date passes to no effect.

**Art. 19. Unilateral act.** If a person with limited capacity for legal acts performs a unilateral legal act for which the law requires the consent of the statutory representative, such act is invalid.

**Art. 20. Contracts on minor matters.** A person with limited capacity for legal acts may, without the consent of his statutory representative, execute contracts of a type commonly executed in minor current day-to-day matters.

**Art. 21. Disposition of earnings.** A person with limited capacity for legal acts may, without the consent of his statutory representative, dispose of his earnings unless the guardianship court rules otherwise for good cause.

**Art. 22. Objects of unrestricted use.** If the statutory representative of a person with limited capacity for legal acts gives him specific property items for unrestricted use, that person acquires full capacity for legal acts concerning these property items. Legal acts for which the consent of the statutory representative is, according to the law, insufficient constitute an exception.

**Art. 22<sup>1</sup>. Concept of consumer.** A consumer is any natural person performing a legal act which is not directly related to his business or professional activity.

**Art. 23. Protection of personal interests.** The personal interests of a human being, in particular health, freedom, dignity, freedom of conscience, name or pseudonym, image, privacy of correspondence, inviolability of home, and scientific, artistic, inventive or improvement achievements are protected by civil law, independently of protection under other regulations.

**Art. 24. Means of protection.**

§ 1. Any person whose personal interests are threatened by another person's actions may demand that the actions be ceased unless they are not unlawful. In the case of infringement he may also demand that the person committing the infringement perform the actions necessary to remove its effects, in particular that the person make a declaration of the appropriate form and substance. On the terms provided for in this Code, he may also demand monetary recompense or that an appropriate amount of money be paid to a specific public cause.

§ 2. If, as a result of infringement of a personal interest, financial damage is caused, the aggrieved party may demand that the damage be remedied in accordance with general principles.

§ 3. The above provisions do not prejudice any rights provided by other regulations, in particular by copyright law and the law on inventions.

## **Rozdział II. Domicile.**

**Art. 25. Concept.** The domicile of a natural person is the place where that person stays with the intention of residing permanently.

**Art. 26. Child.**

§ 1. The domicile of a child under parental authority is the domicile of the parents or of the one who has exclusive parental authority or to whom the exercise of parental authority is entrusted.

§ 2. If both parents have equal parental authority and have separate domiciles, the domicile of the child is with the parent with whom the child permanently resides. If the child does not permanently reside with either of the parents, the guardianship court will decide on its place of residence.

**Art. 27. Person under guardianship.** The place of residence of an individual under guardianship is the place of residence of the guardian.

**Art. 28. One domicile.** A person can have only one domicile.

## **Rozdział III. Declaration of death.**

**Art. 29. Premises.**

§ 1. A missing person can be declared dead when ten years have passed from the end of the calendar year in which, according to existing information, that person was still alive; however, if at the time he is declared dead, the missing person had attained seventy years of age, a period of five years is sufficient.

§ 2. A person cannot be declared dead before the end of the calendar year in which the missing person would have attained twenty three years of age.

**Art. 30. Extraordinary occurrences.**

§ 1. Any person who goes missing when traveling by air or sea due to a vessel or aircraft disaster or as a result of any other extraordinary occurrence can be declared dead six months after the day of the disaster or other extraordinary occurrence.

§ 2. If an aircraft or vessel disaster cannot be established, the said six-month period begins running one year from the day the aircraft or vessel was to arrive at its destination port, and if it did not have a destination port, two years after the day it was last heard of.

§ 3. Any person who disappears in circumstances involving direct danger to life not provided for in the preceding paragraphs may be declared dead one year after the day on which the danger ceased or, according to circumstances, should have ceased.

**Art. 31. Presumption of death.**

§ 1. A missing person is presumed to have died at the time given in the

§ 2. The time of the presumed death of a missing person is the time which, according to circumstances, is most probable and, in the absence of any available data, the first day of the period the passing of which makes it possible for the person to be declared dead.

§ 3. If the court decision on the declaration of death indicates only the day, the time of the presumed death of the missing person is the end of that day.

**Art. 32. Simultaneous death.** If several persons lose their lives as a result of danger faced by them collectively, they are presumed to have died at the same time.

**Dział II. Legal Persons.**

**Art. 33. Legal personality.** Legal persons are the State Treasury and organizational units which are accorded legal personality by specific regulations.

**Art. 33<sup>1</sup>. Subsidiary liability for a unit's obligations.**

§ 1. The provisions on legal persons apply accordingly to organizational units with no legal personality but which are granted legal capacity under the law.

§ 2. Subsidiary liability for the obligations of the unit referred to in § 1 is borne by its members unless a separate regulation provides otherwise; the said liability arises when the organizational unit becomes insolvent.

**Art. 34. State Treasury.** In civil law relations, the State Treasury is considered the entity having rights and obligations relating to state property which does not belong to other state legal persons.

**Art. 35. Organization of legal persons.** The establishment, system and dissolution of legal persons are set forth in the relevant regulations; in the instances and to the extent specified in those regulations, the organization and the manner of operation of a legal person is also regulated by its articles of association.

**Art. 36 (deleted)**

**Art. 37. Attaining legal personality.**

§ 1. An organizational unit attains legal personality upon its entry in a relevant register unless specific regulations provide otherwise.

§ 2. The types of registers, their organization and the manner in which they are kept are governed by separate regulations.

**Art. 38. Functions of bodies.** A legal person acts through its bodies in the manner prescribed by the law and its articles of association based on that law.

**Art. 39. Effects of no authorization.**

§ 1. Any person who, acting as a body of a legal person, executes a contract on the legal person's behalf without being its body or by exceeding the scope of authorization of that body is obliged to return anything he receives from the other party in performance of the contract and to remedy any damage which the other party suffers due to the fact that it executed the contract while being unaware of the lack of authorization.

§ 2. The above provision applies accordingly if the contract is executed on behalf of a legal person which does not exist.

**Art. 40. State Treasury's liability.**

§ 1. The State Treasury is not liable for the obligations of state legal persons unless a separate regulation provides otherwise. State legal persons are not liable for the obligations of the State Treasury.

§ 2. In the case of a free of charge take-over, under applicable laws, of a specific property component from a state legal person for the benefit of the State Treasury, the latter is jointly and severally liable with the legal person for any obligations which arose in the period when the component was owned by the said legal person, up to the value of the component set at the time of the take-over and at the prices at the time of payment.

§ 3. The provisions of § 1 and 2 apply accordingly to liability of local government units and local government legal persons.

**Art. 41. Legal person's registered office.** Unless the law or the articles of association based on the law provide otherwise, the registered office of a legal person is the place where its managing body has its registered office.

**Art. 42. No bodies.**

§ 1. If a legal person cannot conduct its own affairs due to the lack of proper bodies, the court will appoint a conservator for it.

§ 2. The conservator should immediately attempt to set up bodies of the legal person or, if necessary, to liquidate the legal person.

**Art. 43. Protection of personal interests.** The provisions on the protection of the personal interests of natural persons apply accordingly to legal persons.

**Dział III. Entrepreneurs and their Designations.**

**Art. 43<sup>1</sup>. Concept of entrepreneur.** An entrepreneur<sup>1)</sup> is a natural person, a legal person or an organizational unit referred to in article 33<sup>1</sup> § 1 conducting business or professional activity on its own behalf.

**Art. 43<sup>2</sup>. Operating under a business name.**

§ 1. An entrepreneur operates under a business name.

§ 2. The business name is disclosed in the relevant register unless separate regulations provide otherwise.

**Art. 43<sup>3</sup>. Distinction of business name.**

§ 1. The entrepreneur's name should differ sufficiently from the names of other entrepreneurs conducting activity on the same market.

§ 2. A business name cannot be misleading, particularly regarding the identity of the entrepreneur, its objects, place of activity, or supply sources.

**Art. 43<sup>4</sup>. Business name of a natural person.** The business name of a natural person is his forename and surname. This does not preclude a pseudonym or expressions denoting the entrepreneur's objects, place of activity or any other freely chosen descriptions being included in the business name.

**Art. 43<sup>5</sup>. Business name of a legal person.**

§ 1. The business name of a legal person is its name.

§ 2. The business name specifies the legal person's legal form, which may be abbreviated, and may indicate the objects and registered office of the legal person and any other freely chosen descriptions.

§ 3. The business name of a legal person may contain the surname or pseudonym of a natural person if its purpose is to indicate that natural person's relations with the establishment or activity of the entrepreneur. The written consent of the natural person is required before his name or pseudonym can be placed in the business name, or, in the event of his death, the consent of his spouse and children.

§ 4. An entrepreneur may use an abbreviated business name. The provision of Article 43<sup>2</sup> § 2 applies accordingly.

**Art. 43<sup>6</sup>. Business name of a branch.** The business name of a branch of a legal person contains the full name of the person and the word „branch” („oddział”) along with an indication of the place where the branch has its registered office.

**Art. 43<sup>7</sup>. Change in business name.** A change in business name must be entered in the register. Where a legal person is transformed, it may retain its former business name except for the expression denoting its legal form if the legal form has changed. This also applies to the transformation of a partnership.

**Art. 43<sup>8</sup>. Business name after the loss of a partner/shareholder.**

§ 1. Where a partner/shareholder whose surname is included in the business name loses his membership, the partnership/company may retain the former partner's/shareholder's surname in its business name only with the written consent of the partner/shareholder, or, in the event of his death, with the consent of his spouse and children.

§ 2. The provision of § 1 applies accordingly to the business activity of a natural person which is continued by another natural person who is his legal successor.

§ 3. Any person who acquires an enterprise may continue to run it under the same name. This person should, however, place an addition to denote the business name or surname of the acquirer unless the parties agree otherwise.

**Art. 43<sup>9</sup>. No business name transfer.**

§ 1. A business name cannot be transferred.

§ 2. An entrepreneur may authorize another entrepreneur to use its business name if it is not misleading.

**Art. 43<sup>10</sup>. Unlawful infringement of rights to business name.** An entrepreneur whose right to a business name is threatened by another person's actions may demand that such actions be ceased unless they are not unlawful. In the case of an infringement, the entrepreneur may also demand that the effects thereof be removed, that a declaration or declarations of the appropriate form and content be made, and that the financial damage be remedied in accordance with general principles or that the benefits obtained by the infringing person be returned.

### Tytuł III. Property.

**Art. 44. Concept.** Property is ownership and other property rights.

**Art. 44<sup>1</sup>. State property entities.**

§ 1. Ownership and other property rights constituting state property are vested in the State Treasury or other state legal persons.

§ 2. The State Treasury's property rights with respect to state legal persons are laid down in separate regulations, in particular those governing their system.

**Art. 45. Thing.** Within the meaning of this Code, „things” are material objects only.

**Art. 46. Real estate.**

§ 1. Real estate is part of the earth's surface constituting a separate object of ownership (land), as well as buildings permanently attached to the land or parts of such buildings if, under specific regulations, they constitute an object of ownership separate from the land.

§ 2. The keeping of land and mortgage registers is governed by separate regulations.

**Art. 46<sup>1</sup>. Agricultural real estate.** Agricultural real estate (agricultural land) is any real estate which is or may be used to conduct agricultural production, both crop and animal farming, including gardening, horticulture and fish farming.

**Art. 47. Component part.**

§ 1. A component part of a thing cannot be a separate object of ownership or other real rights.

§ 2. A component part of a thing is anything which cannot be separated therefrom without damaging or substantially altering the entire thing or without damaging or substantially altering the separated object.

§ 3. Objects which are attached to a thing for temporary use only do not constitute a component part of that thing.

**Art. 48. Component part of land.** Subject to the exceptions provided for in the law, buildings and other facilities permanently attached to the land, as well as trees and other plants are, in particular, considered component parts of the land from the moment they are planted or sown.

**Art. 49. Transmission equipment excluded.**

§ 1. Transmission equipment for supplying or discharging liquids, steam, gas, electricity and similar facilities are not component parts of the real estate if they are part of an enterprise.

§ 2. A person who has incurred costs in constructing the transmission equipment referred to in § 1 and owns that transmission equipment may demand that the entrepreneur which interconnected the transmission equipment to its grid acquire its ownership against relevant remuneration unless in a contract the parties decide otherwise. A demand to transfer the ownership of that transmission equipment may also be made by the entrepreneur.

**Art. 50. Rights as component parts.** Rights related to the ownership of real estate are also deemed component parts of the real estate.

**Art. 51. Appurtenances.**

§ 1. Appurtenances are movables needed to make use of another thing (the principal thing) in accordance with its purpose if they have an actual connection with it corresponding to that purpose.

§ 2. A thing which does not belong to the owner of the principal thing cannot be an appurtenance.

§ 3. An appurtenance does not lose its character by being temporarily deprived of the actual connection with the principal thing.

**Art. 52. Effects of an act.** A legal act whose object is the principal thing also has legal effects on the appurtenance unless it follows otherwise from the substance of the legal act or from specific regulations.

**Art. 53. Profits from a thing.**

§ 1. The natural profits from a thing are its fruits and other component parts separated from it if, according to the principles of proper management, they constitute the normal gains from the thing.

§ 2. Civil profits from a thing are gains which a thing brings on the basis of a legal relationship.

**Art. 54. Profits from rights.** Profits from rights are gains which that right brings in accordance with its social and economic purpose.

**Art. 55. Profits due.**

§ 1. A person entitled to profits collects natural profits which are separated from the thing for the duration of the person's entitlement and civil profits proportionally to the duration of the person's entitlement.

§ 2. If a person entitled to collect profits makes outlays in order to obtain profits which have been collected by another person, he is entitled to recompense from such person for the outlays. The recompense cannot exceed the value of the profits.

**Art. 55<sup>1</sup>. Concept of enterprise.** An enterprise is an organized set of tangible and intangible elements intended for conducting business activity.

It includes in particular:

- 1) a designation distinguishing the enterprise or its separated parts (the name of the enterprise);
- 2) the ownership of immovables or movables, including equipment, materials, goods and products, and other real rights to immovables or movables;
- 3) rights under contracts for the tenancy and lease of immovables or movables and rights to use immovables or movables under other legal relationships;
- 4) receivables, rights attached to securities, and cash;
- 5) concessions, licenses and permits;
- 6) patents and other industrial property rights;
- 7) copyrights and neighboring rights;
- 8) secrets of the enterprise;
- 9) books and documents related to the business activity.

**Art. 55<sup>2</sup>. Acts regarding enterprises.** A legal act whose object is an enterprise covers all that which is part of the enterprise unless it follows otherwise from the substance of the legal act or from specific regulations.

**Art. 55<sup>3</sup>. Agricultural farms.** An agricultural farm means agricultural land together with forest land, buildings or their parts, equipment and livestock if they form or may form an organized economic whole, and the rights related to running an agricultural farm.

**Art. 55<sup>4</sup>. Acquirer's liability for obligations.** The acquirer of an enterprise or an agricultural farm is liable jointly and severally with the transferor for the transferor's obligations related to running the enterprise or agricultural farm unless, at the time of acquisition, the acquirer was not aware of those obligations despite having used due care. The acquirer's liability is limited to the value of the acquired enterprise or farm as at the moment of acquisition and according to the prices as at the time the creditor is satisfied. This liability cannot be excluded or limited without the creditor's consent.

## Tytuł IV. Legal Acts.

### Dział I. General Provisions.

**Art. 56. Effects of legal acts.** A legal act gives rise not only to the effects expressed therein but also to those which stem from the law, principles of community life and established custom.

**Art. 57. Disposition of a right.**

§ 1. A legal act cannot exclude or limit the right to transfer, encumber, change or cancel a right if, in accordance with the law, the right is transferable.

§ 2. The above provision does not exclude the possibility of the holder of the right being obliged not to make specific dispositions of the right.

**Art. 58. Unlawfulness of an act.**

§ 1. A legal act which is contrary to the law or which is designed to circumvent the law is invalid unless a relevant regulation envisages a different effect, in particular that the invalid provisions of the legal act be replaced with relevant provisions of the law.

§ 2. A legal act contrary to the principles of community life is invalid.

§ 3. If only a part of a legal act is affected by invalidity, the remaining parts of the act continue to be effective unless it follows from the circumstances that without the invalid provisions, the act would not have been performed.

**Art. 59. Relative ineffectiveness of a contract.** If a contract is executed whose performance renders the satisfaction of a third party claim partly or wholly impossible, that party may demand that the contract be declared ineffective with respect to it if the parties knew of the claim or if the contract was free of charge. A demand for a contract to be declared ineffective cannot be made after one year has passed from the contract execution.

**Art. 60. Declaration of intent.** Subject to the exceptions provided for in the law, the intention of a person performing a legal act may be expressed by any behavior of that person which manifests his intention sufficiently, including the intent being expressed in electronic form (declaration of intent).

**Art. 61. Time of submission.**

§ 1. A declaration of intent which is to be made to another person is deemed made at the time it reaches that person in such a manner that he could have read its content. The withdrawal of a declaration of intent is effective if it arrives together with the declaration, or earlier.

§ 2. A declaration of intent expressed in electronic form is deemed made to another person at the time it is introduced to the means of electronic communication in such a manner that the person could have read its content.

**Art. 62. Death of a person making a declaration of intent.** A declaration of intent to be made to another person does not lose legal effect due to the fact that, before it reaches the person, the person making the declaration dies or loses his capacity for legal acts unless it follows otherwise from the content of the declaration, the law or the circumstances.

**Art. 63. Third party consent.**

§ 1. If the performance of a legal act requires the consent of a third party, this party may express its consent either before the parties to the legal act make the declaration or thereafter. Consent expressed after the declaration is made has retroactive effect from the declaration date.

§ 2. If a specific form is required for the legal act to be valid, the declaration containing the third party consent should be made in the same form.

**Art. 64. Replacement ruling.** A final and non-revisable court decision stating that a given person is obliged to make a specific declaration of intent replaces that declaration.

**Art. 65. Interpretation.**

§ 1. A declaration of intent should be interpreted in view of the circumstances in which it is made as required by principles of community life and established custom.

§ 2. In contracts, the common intention of the parties and the aim of the contract should be examined rather than its literal meaning.

## **Dział II. Contract Execution.**

**Art. 66. Offer; binding effect.**

§ 1. A declaration made to another party of the intent to execute a contract is deemed an offer if it lays down the key provisions of the contract.

§ 2. If no period for a reply is specified by the offeror in the offer, an offer made in the presence of the other party or by means of direct distance communication ceases to be binding if it is not accepted immediately; if made in another manner, it ceases to be binding when the time has passed in which the offeror could, in the normal course of business, receive a reply sent without unreasonable delay.

**Art. 66<sup>1</sup>. Binding effect of electronic offer.**

§ 1. An offer made electronically binds the offeror if the other party immediately confirms receipt thereof.

§ 2. An entrepreneur submitting an offer electronically is obliged, before executing the contract, to inform the other party unambiguously and clearly of:

- 1) technical actions constituting the contract execution procedure;
- 2) legal effects of the other party confirming receipt of the offer;
- 3) principles and methods by which an entrepreneur records, secures and makes the content of the contract available to the other party;
- 4) technical methods and means for detecting and correcting errors in introduced data that it is obliged to make available to the other party;
- 5) languages in which the contract may be executed;
- 6) ethical codes applied and their availability in electronic form.

§ 3. The provision of § 2 applies accordingly if an entrepreneur invites the other party to enter into negotiations, make offers or execute contracts in any other way.

§ 4. The provisions of § 1-3 do not apply to the execution of contracts by electronic mail or similar means of individual distance communication. Neither do they apply in relations between entrepreneurs if the parties so agree.

**Art. 66<sup>2</sup>. Withdrawal of offer.**

§ 1. In relations between entrepreneurs, an offer may be withdrawn before a contract is executed if a declaration of withdrawal is submitted to the other party before this other party sends a declaration accepting the offer.

§ 2. An offer, however, cannot be withdrawn if this follows from its content or a time limit for its acceptance is given therein.

**Art. 67. Delayed reply.** If a declaration on accepting an offer is received late but it follows from its content or from the circumstances that it was sent in due time, the contract is executed unless the offeror immediately notifies the other party that, due to the delayed reply, he considers the contract not executed.

**Art. 68. Stipulations.** An offer accepted with a stipulation of changes or supplements to its content is deemed a new offer.

**Art. 68<sup>1</sup>. Acceptance of offer with stipulations.**

§ 1. In relations between entrepreneurs, a reply to an offer with a stipulation of changes or supplements which do not materially change the content of the offer is deemed acceptance of the offer. In this case, the parties are bound by the contract as worded in the offer, subject to the stipulations contained in the reply thereto.

§ 2. The provision of the preceding paragraph does not apply if the offer states that it may be accepted only without stipulations or if the offeror immediately objects to the stipulations being incorporated into the contract or if, in the reply to the offer, the other party makes its acceptance conditional on the offeror consenting to incorporate the stipulations into the contract and it does not immediately receive such consent.

**Art. 68<sup>2</sup>. Implied acceptance of offer.** If an entrepreneur receives from a person with whom he has permanent business relations an offer to execute a contract as part of his activity, the lack of immediate reply is deemed acceptance of the offer.

**Art. 69. Tacit acceptance.** If, according to the custom established in given relations or according to the wording of the offer, there is no requirement for the offeror to receive a declaration of acceptance from the other party, in particular if the offeror demands that the contract be immediately performed, the contract is executed if the other party starts to perform it in due time; otherwise the offer ceases to be binding.

**Art. 70. Time and place of contract execution.**

§ 1. In case of doubt, a contract is deemed executed at the time the offeror receives a declaration of acceptance, and if there is no requirement for the offeror to receive a declaration of acceptance, at the time the other party starts to perform the contract.

§ 2. In case of doubt, a contract is deemed executed in the place where the offeror receives a declaration of acceptance, and if there is no requirement for the offeror to receive a declaration of acceptance or the offer is made electronically, in the place of residence or in the registered office of the offeror at the time the contract is executed.

**Art. 70<sup>1</sup>. Auction; tender.**

§ 1. A contract may be executed through an auction or tender.

§ 2. The announcement of an auction or a tender should specify the time, place, subject and terms and conditions of the auction or tender or specify how these terms and conditions are made available.

§ 3. The announcement and the terms and conditions of an auction or tender may be changed or cancelled only if their wording so provides.

§ 4. The organizer, from the time the terms and conditions are made available, and the bidder, from the time the bid is made in accordance with the auction or tender announcement, are obliged to proceed in accordance with the announcement and the terms and conditions of the auction or tender.

**Art. 70<sup>2</sup>. Bid made during auction.**

§ 1. A bid made during an auction ceases to be binding if another auction participant (bidder) makes a more favorable bid unless the terms and conditions of the auction provide otherwise.

§ 2. A contract is executed in an auction at the time a bid is knocked down.

§ 3. If the validity of a contract depends on the fulfillment of specific requirements provided for in the law, both the auction organizer and the participant whose bid has been accepted may demand that the contract be executed.

**Art. 70<sup>3</sup>. Bid made during tender.**

§ 1. A bid made during a tender ceases to be binding if another bid is chosen or if the tender is closed without a bid being chosen unless the terms and conditions of the tender provide otherwise.

§ 2. The organizer is obliged to immediately inform the tender participants in writing of the tender outcome or of the tender being closed without a bid being chosen.

§ 3. The time at which the contract is executed by way of a tender is determined according to the regulations on accepting bids unless the tender terms and conditions provide otherwise. The provision of Article 70<sup>2</sup> § 3 applies accordingly.

**Art. 70<sup>4</sup>. Tender bond.**

§ 1. The auction or tender terms and conditions may provide that a party intending to participate in an auction or tender should, in order to be admitted, pay the organizer a fixed fee or establish appropriate security for its payment (tender bond).

§ 2. If the auction or tender participant whose bid is chosen evades execution of a contract whose validity is conditional on the fulfillment of specific requirements provided for in the law, the auction or tender organizer may either retain the amount collected or claim satisfaction from the security subject. In other instances, the tender bond should be immediately returned and the security established is extinguished. If the auction or tender organizer evades execution of the contract, the participant whose bid is chosen may demand that double the tender bond be paid or that damage be remedied.

**Art. 70<sup>5</sup>. Reasons for contract invalidation.**

§ 1. The auction or tender organizer and participant may demand that a contract executed be invalidated if a party to the contract, another participant or a person acting in agreement with them influenced the outcome of the auction or tender in breach of law or good custom. If the contract is executed on another person's account, its invalidation may also be demanded by the person on whose account the contract was executed or by the mandatary.

§ 2. The above right expires one month after the day the entitled party learns of the existence of the reason for invalidation though no later than one year after the contract execution date.

**Art. 71. Invitation to execute a contract.** Announcements, advertisements, price lists and other information addressed to the public or to individual persons are not, in case of doubt, deemed an offer but an invitation to

execute a contract.

**Art. 72. Contract after negotiations.**

§ 1. If the parties hold negotiations in order to execute a specific contract, the contract is executed when the parties reach an agreement on all the provisions which were the subject of the negotiations.

§ 2. A party which enters into or conducts negotiations in breach of good custom, in particular without intending to execute a contract, is obliged to remedy any damage which the other party suffers by the fact that it was counting on the contract being executed.

**Art. 72<sup>1</sup>. Protection of confidential information.**

§ 1. If, during negotiations, a party makes information available with a stipulation of confidentiality, the other party cannot disclose or submit the same to other persons or use the same for its own purposes unless the parties agree otherwise.

§ 2. In the case of non-performance or improper performance of the obligations referred to in § 1, the entitled party may demand that the other party remedy any damage or hand over any benefits which it has obtained.

### Dział III. Form of Legal Acts.

**Art. 73. To be valid; to achieve certain effects.**

§ 1. If the law stipulates that a legal act be made in writing, an act made without observing the stipulated form is invalid only if the law provides for a nullity clause.

§ 2. If the law stipulates that a legal act be made in another specific form, an act made without observing this form is invalid. This, however, does not apply to cases in which the observance of a specific form is stipulated only in order to produce the specified effects of a legal act.

**Art. 74. For evidence purposes.**

§ 1. The stipulation of written form without a nullity clause leads, if the stipulated form is not observed, in litigation to witness evidence or evidence in the form of declarations of the parties concerning the performance of the act being inadmissible. This provision does not apply to cases in which written form is stipulated only in order to produce the specified effects of a legal act.

§ 2. However, despite the written form prescribed for evidence purposes not being observed, witness evidence or evidence in the form of declarations of the parties is admissible if both parties consent thereto, if a consumer so demands in a dispute with an entrepreneur or if the fact that the legal act has been performed is substantiated in writing.

§ 3. The provisions on written form stipulated for evidence purposes do not apply to legal acts in relations between entrepreneurs.

**Art. 75 (repealed)**

**Art. 75<sup>1</sup>. With respect to enterprises.**

§ 1. The transfer or lease of an enterprise or the establishment of a usufruct thereon should be made in writing with notarized signatures.

§ 2. The transfer of an enterprise belonging to a person entered in a register should be entered in that register.

§ 3. The provision of § 2 applies accordingly to the lease of an enterprise or the establishment of a usufruct thereon.

§ 4. The above provisions do not prejudice the provisions on the form of legal acts concerning real estate.

**Art. 76. Stipulated in contract.** If the parties stipulate in a contract that a specified legal act between them should be made in a specific form, that act takes effect only if that form is observed. If, however, the parties stipulate that the act should be made in writing without specifying the consequences of not observing that form, it is assumed, in case of doubt, that it is stipulated solely for evidence purposes.

**Art. 77. Amendments to written contract.**

§ 1. A contract may be supplemented or amended only in the form stipulated by the law or agreed by the parties for its execution.

§ 2. If a contract is executed in writing, its termination with the consent of both parties, and also its rescission or termination by one party, should be stated in writing.

§ 3. If a contract is executed in another specific form, termination with the consent of both parties must be made in the same form that the law or the parties provided for its execution; however, rescission or termination by one party should be stated in writing.

**Art. 77<sup>1</sup>. Binding effect of written confirmation.** If a contract executed between entrepreneurs without observing written form is immediately confirmed by one party in a letter addressed to the other party, and such letter contains amendments or supplements to the contract which do not materially change its content, the parties are bound by a contract of the wording stipulated in the confirmation letter unless the other party immediately objects to it in writing.

**Art. 78. Written form.**

§ 1. In order to observe written form for a legal act, it is sufficient to set a handwritten signature to a document containing a declaration of intent. In order to execute a contract, it is sufficient to exchange documents containing declarations of intent, each of which is signed by one of the parties, or documents, each of which contains a declaration of intent of one party and is signed by this party.

§ 2. A declaration of intent made electronically and bearing a secure electronic signature verified by a valid qualified certificate is equivalent to a declaration of intent made in writing.

**Art. 79. Inability to write.** A person who cannot write but who can read may make a declaration of intent in writing either by setting his fingerprint in ink on the document and by the side of the fingerprint another person writes his first and last name and sets his signature, or by another person setting his signature instead of the person making the declaration and this signature being certified by a notary or mayor or president of a city (*wójt*), head of province (*starosta*) or Marshall of a voivodship with a note that it was done on the request of a person who cannot

write but who can read.

**Art. 80** (*repealed*)

**Art. 81. Authenticated date.**

§ 1. If the law makes the validity or specific effects of a legal act conditional on the official authentication of a date, such authentication is also effective with respect to persons who did not participate in performing the legal act (authenticated date).

§ 2. A legal act also has an authenticated date in the following cases:

1) if the performance of a legal act is confirmed in an official document - from the official document date;  
2) if an official note is made on a document relating to a legal act by a state authority, a local government unit or by a notary - from the note date.

§ 3. In the event of the death of one of the persons who signed the document, the date on which the person signed the document is deemed authenticated from the date of the person's death.

#### **Dział IV. Defects in Declaration of Intent.**

**Art. 82. Lack of consciousness or freedom.** A declaration of intent made by a person who, for any reason, is in a state which precludes the conscious or free making of a decision and declaring of intent is invalid. This applies in particular to mental illness, mental retardation or other, even temporary, mental disorder.

**Art. 83. Ostensible nature.**

§ 1. An ostensible declaration of intent made to another party with its consent is invalid. If such a declaration is made to conceal another legal act, the validity of the declaration is judged by the nature of that legal act.

§ 2. The ostensible nature of a declaration of intent does not influence the effectiveness of a legal act against payment performed on the basis of an ostensible declaration if, as a result of the legal act, a third party acquires a right or is released from an obligation unless it has acted in bad faith.

**Art. 84. Error.**

§ 1. In the case of an error in the substance of a legal act, the legal effects of this declaration of intent may be avoided. If, however, the declaration of intent is made to another person, its legal effects may be avoided only if the error was caused by that person, even if it was not his fault, or if that person was aware of the error or could easily have noticed it; this restriction does not apply to a free-of-charge legal act.

§ 2. An error can only be relied on if it justifies the supposition that, if the person making the declaration of intent had not acted under the influence of the error and had judged the case reasonably, he would not have made such a declaration (material error).

**Art. 85. Conveying person.** Distortion of a declaration of intent by the person who is used to convey it has the same effects as an error when the declaration of intent is made.

**Art. 86. Deceit.**

§ 1. If an error is caused by the other party with the intent to deceive, the legal effects of a declaration of intent made under the influence of the error may also be avoided if the error is not material or if it does not relate to the substance of a legal act.

§ 2. The deceit of a third party is tantamount to the deceit of the party if the latter was aware of the deceit and did not inform the other party about it or if the legal act was free of charge.

**Art. 87. Threat.** Any person who makes a declaration of intent under the influence of an unlawful threat made by the other party or a third party may avoid the legal effects of his declaration if it follows from the circumstances that he had reason to fear that he or another person was in serious danger with regard to person or property.

**Art. 88. Avoidance of effects of declaration.**

§ 1. The legal effects of a declaration of intent made to another person under the influence of an error or threat are avoided by a declaration being made to that person in writing.

§ 2. The avoidance right expires: in the case of an error one year after its discovery, and in the case of a threat, one year after the state of fear ceases.

#### **Dział V. Condition.**

**Art. 89. Concept.** Subject to the exceptions provided for in the law or arising from the nature of a legal act, the arising or ceasing of effects of a legal act may be made conditional on a future and uncertain event (condition).

**Art. 90. Effectiveness of an act.** The fulfillment of the condition has no retroactive effect unless otherwise stipulated.

**Art. 91. Protection of a conditionally entitled person.** A conditionally entitled person may carry out any actions which are aimed at safeguarding his right.

**Art. 92. Disposition contrary to a condition.**

§ 1. If a legal act comprising the disposition of a right is performed on a condition, any subsequent dispositions of that right lose effect once the condition is fulfilled insofar as they prevent or limit the effect of the condition being fulfilled.

§ 2. If, however, on the basis of such disposition, a third party acquires a right or is released from an obligation, the provisions on the protection of persons who perform a legal act in good faith with a person not entitled to dispose of that right apply accordingly.

**Art. 93. Fiction of effectiveness.**

§ 1. If a party which is interested in the non-fulfillment of a condition impedes the fulfillment of the condition in violation of the principles of community life, the effects will be such as if the condition had been fulfilled.

§ 2. If a party which is interested in the fulfillment of a condition leads to the condition being fulfilled in violation of the principles of community life, the effects will be such as if the condition had not been fulfilled.

**Art. 94. Unlawful condition.** An impossible condition or a condition which is contrary to the law or to the principles of community life makes a legal act invalid if it is a condition precedent; it is deemed not having been made if it is a condition subsequent.

## Dział VI. Representation.

### Rozdział I. General Provisions.

**Art. 95. Concept.**

§ 1. Subject to the exceptions provided for in the law or arising from the nature of a legal act, a legal act may be performed through a representative.

§ 2. A legal act performed through a representative within the limits of his authorization produces direct effects for the person represented.

**Art. 96. Basis of authorization.** The authorization to act on behalf of another person may be based either on the law (statutory representation) or on a declaration made by the person represented (power of attorney).

**Art. 97. Presumption.** A person acting on the premises of an enterprise whose purpose is to serve the public is deemed, in case of doubt, authorized to perform the legal acts that are usually performed with persons using the enterprise's services.

### Rozdział II. Power of Attorney.

**Art. 98. Types of powers of attorney.** A general power of attorney confers authorization for all acts of ordinary management. Acts which are beyond the scope of ordinary management require a power of attorney specifying their type unless the law requires a power of attorney for a particular act.

**Art. 99. Form.**

§ 1. If a specific form is required for a legal act to be valid, the power of attorney to perform that act should be given in the same form.

§ 2. A general power of attorney should be made in writing; otherwise it will be invalid.

**Art. 100. Capacity of attorney-in-fact.** The circumstance of an attorney-in-fact being limited in his capacity for legal acts does not affect the validity of an act performed by him on the principal's behalf.

**Art. 101. Revocation; death.**

§ 1. A power of attorney may be revoked at any time unless the principal waived his right to revoke the power of attorney for reasons justified by the substance of the legal relationship which is the basis for the power of attorney.

§ 2. The authorization expires upon the principal's or attorney's death unless the power of attorney provides otherwise for reasons justified by the substance of the legal relationship which is the basis for the power of attorney.

**Art. 102. Return of document.** After the authorization expires, the attorney-in-fact is obliged to return the power of attorney document to the principal. He may demand a certified copy of that document; expiry of the authorization should be indicated on the copy.

**Art. 103. Contracts by alleged attorney-in-fact.**

§ 1. If a person executing a contract as an attorney-in-fact has no authorization or exceeds its scope, the validity of the contract depends on it being ratified by the person on behalf of whom it was executed.

§ 2. The other party may set the person on behalf of whom the contract was executed an appropriate period in which to ratify the contract; he is released when that period passes to no effect.

§ 3. In the absence of ratification, a person who executes a contract on another person's behalf is obliged to return anything he has received from the other party in performance of the contract and to remedy any damage which the other party has suffered due to the fact that it executed a contract without knowing that there was no authorization or that its scope had been exceeded.

**Art. 104. Unilateral act of alleged attorney-in-fact.** A unilateral legal act performed on another person's behalf without authorization or by exceeding its scope is invalid. If, however, a person to whom a declaration of intent is made on another person's behalf agrees to the act being performed without authorization, the provisions on executing a contract without authorization apply accordingly.

**Art. 105. Original authorization.** If, after expiry of his authorization, an attorney-in-fact performs a legal act on the principal's behalf within the scope of the original authorization, the legal act is valid unless the other party knew or could easily have learned about the expiry of the authorization.

**Art. 106. Attorneys-in-fact in substitution.** An attorney-in-fact may appoint other attorneys-in-fact for the principal only if such authorization follows from the wording of the power of attorney, the law or the legal relationship which is the basis for the power of attorney.

**Art. 107. Equal authorization.** If the principal appoints several attorneys-in-fact with the same scope of authorization, each of them may act individually unless the power of attorney provides otherwise. This provision

applies accordingly to attorneys-in-fact whom the attorney-in-fact himself appoints for the principal.

**Art. 108. Ban on self-dealing.** An attorney-in-fact cannot be the other party to a legal act performed on the principal's behalf unless the power of attorney provides otherwise or, owing to the nature of the legal act, any possibility of the principal's interest being violated is excluded. This provision applies accordingly if the attorney-in-fact represents both parties.

**Art. 109. Authorization to receive a declaration.** The provisions of this section apply accordingly if a declaration of intent is to be made to a representative.

### **Rozdział III. Commercial Proxy.**

#### **Art. 109<sup>1</sup>. Concept of commercial proxy.**

§ 1. A commercial proxy is a power of attorney granted by an entrepreneur that is subject to the obligation to be entered in the commercial register; such power of attorney includes the authorization to act in and out of court in respect of running an enterprise.

§ 2. A commercial proxy cannot be limited with effect towards third parties unless a specific regulation provides otherwise.

#### **Art. 109<sup>2</sup>. Obligatory written form.**

§ 1. A commercial proxy should be granted in writing; otherwise it will be invalid. The provision of Article 99 § 1 does not apply.

§ 2. A holder of a commercial proxy may be an individual with full capacity for legal acts.

**Art. 109<sup>3</sup>. Special power of attorney.** The disposal of an enterprise, the performance of a legal act under which an enterprise is handed over for temporary use, and the disposal and encumbrance of real estate require a power of attorney for a particular act.

#### **Art. 109<sup>4</sup>. Joint commercial proxy.**

§ 1. A commercial proxy may be granted to several persons jointly (a joint commercial proxy) or individually.

§ 2. Declarations or letters to an entrepreneur may be made and delivered to one of the persons who have been granted a joint commercial proxy.

**Art. 109<sup>5</sup>. Branch commercial proxy.** A commercial proxy may be limited to matters entered in the register of the enterprise's branch (branch commercial proxy).

**Art. 109<sup>6</sup>. No transfer.** A commercial proxy cannot be transferred. The holder of a commercial proxy may appoint an attorney-in-fact for a particular act or a certain type of acts.

#### **Art. 109<sup>7</sup>. Revocation, expiry of commercial proxy.**

§ 1. A commercial proxy may be revoked at any time.

§ 2. A commercial proxy expires if the entrepreneur is deleted from the register and also if bankruptcy is announced, liquidation is opened or the entrepreneur is transformed.

§ 3. A commercial proxy expires upon the death of its holder.

§ 4. Neither the death of the entrepreneur nor the loss by him of his capacity for legal acts extinguishes the commercial proxy.

#### **Art. 109<sup>8</sup>. Obligation to notify register.**

§ 1. An entrepreneur should notify the commercial register of the granting and expiry of a commercial proxy.

§ 2. The notification of granting a commercial proxy should specify its type, and in the case of a joint commercial proxy, also the manner in which it is exercised.

**Art. 109<sup>9</sup>. Signature in accordance with specimen signature.** A holder of a commercial proxy sets his signature in accordance with the specimen signature in the registry files, along with a note indicating the commercial proxy unless it follows from the document that he is acting as holder of a commercial proxy.

### **Tytuł V. Period (Time Limit).**

**Art. 110. Calculation method.** If the law, a court decision or a decision of another public authority or a legal act indicates a period without specifying the method of calculating it, the following provisions apply.

#### **Art. 111. Period in days.**

§ 1. A period set in days finishes at the end of the last day.

§ 2. If the beginning of a period expressed in days is marked by a certain event, the day on which the event occurs is not included when the period is calculated.

**Art. 112. Longer periods.** A period expressed in weeks, months or years finishes at the end of the day which corresponds in name or date to the first day of the period, and if there is no such day in the last month, on the last day of that month. When calculating the age of a natural person, however, the period ends at the beginning of the last day.

#### **Art. 113. Months.**

§ 1. If a period is set as the beginning, middle or end of the month, this will mean the first, the fifteenth or the last day of the month.

§ 2. A period of half a month is equal to fifteen days.

**Art. 114. Calculation of month, year.** If a period is set in months or years, and continuity of the period is not required, a month is counted as thirty days and a year is counted as three hundred sixty five days.

**Art. 115. Statutory holidays.** If the end of the period for performing an act falls on a day which is a statutory holiday, the period ends on the following day.

**Art. 116. Application of provisions on condition.**

§ 1. If the effects of a legal act are to start in a given term, the provisions on conditions precedent apply accordingly.

§ 2. If the effects of a legal act are to cease in a given period, the provisions on conditions subsequent apply accordingly.

## **Tytuł VI. Limitations of Claims.**

**Art. 117. Concept.**

§ 1. Subject to the exceptions provided for in the law, property claims become barred by the statute of limitations.

§ 2. After the limitations period has run, the person against whom a claim is made may avoid satisfying it unless he waives his right to use the statute of limitations as a defense. Waiving the right to use the statute of limitations as a defense before the limitations period has run is, however, invalid.

§ 3. *(deleted)*

**Art. 118. Periods.** Unless a specific regulation provides otherwise, the limitations period is ten years and for claims concerning periodical performances and claims connected with conducting business activity - three years.

**Art. 119. No changes.** Limitations periods cannot be shortened or extended by a legal act.

**Art. 120. Commencement.**

§ 1. A limitations period starts running on the day on which a claim becomes due and payable. If the claim becoming due and payable depends on the entitled person carrying out a specific act, the limitations period starts running on the day on which the claim would have become due and payable if the entitled person performed the act at the earliest possible time.

§ 2. The limitations period for claims for actions to be ceased starts to run on the day on which the person against whom the claim can be made fails to comply with the claim.

**Art. 121. Suspension.** A limitations period does not start and, if started, is suspended:

- 1) for claims by children against parents - for the duration of the parental authority;
- 2) for claims by persons who do not have full capacity for legal acts against persons exercising guardianship or curatorship - for the time during which the guardianship or curatorship is exercised;
- 3) for claims made by one spouse against the other - for the duration of the marriage;
- 4) for any claims if, due to force majeure, the entitled person cannot bring them before a court or other authority set up to hear cases of a given type - for the duration of the obstacle.

**Art. 122. Withholding.**

§ 1. The limitations period for claims made by a person who does not have full capacity for legal acts cannot have run before the lapse of two years from a statutory representative being appointed for that person or from the reason for his appointment ceasing to exist.

§ 2. If the limitations period is shorter than two years, it begins to run from the day the statutory representative is appointed or from the day the reason for the appointment ceases to exist.

§ 3. The above provisions apply accordingly to a limitations period running against a person with respect to whom there are grounds for his full incapacitation.

**Art. 123. Interruption.**

§ 1. The running of the limitations period is interrupted:

- 1) by any action before a court or other authority appointed to hear cases or enforce claims of a given type or before an arbitration tribunal taken directly to either assert or establish, or satisfy or secure a claim;
- 2) by recognition of a claim by the person against whom the claim is made;
- 3) by commencement of mediation.

§ 2. *(deleted)*

**Art. 124. After interruption.**

§ 1. After each interruption of the limitations period, the limitations period starts to run anew.

§ 2. However, in the case of any interruption of the limitations period by an act in proceedings before a court or other authority appointed to hear cases or enforce claims of a given type or before an arbitration tribunal or by commencement of mediation, the limitations period does not start to run anew until the proceedings are closed.

**Art. 125. Periods after court decision.**

§ 1. A claim upheld by a final and non-revisable decision of a court or other authority appointed to hear cases of a given type or by an arbitration tribunal award, and a claim upheld by a settlement being made before a court or an arbitration tribunal or a settlement reached before a mediator and approved by the court become barred by the statute of limitations after ten years even if the limitations period for claims of that type is shorter. If a claim upheld in this way concerns a periodical performance, the claim for a periodical performance due in the future is subject to a three-year limitations period.

§ 2. *(deleted)*

## Tytuł I. Ownership.

### Dział I. General Provisions.

Art. 126-139 (*deleted*)

### Dział II. Substance and Exercise of Ownership.

**Art. 140. Ownership.** Within the limits set by the law and the principles of community life, an owner may, to the exclusion of other persons, use a thing in accordance with the social and economic purpose of his right, and may, in particular, collect the profits and other revenues from the said thing. Within the same limits, he may dispose of the thing.

Art. 141 (*deleted*)

**Art. 142. Use without owner's consent.**

§ 1. An owner cannot object to the use and even damage or destruction of a thing by another person if it is necessary to avert danger directly threatening the personal interests of that person or a third party. He may, however, demand that any resulting damage be remedied.

§ 2. The above provision also applies in the case of danger threatening property rights unless the threatened damage is clearly and disproportionately smaller than the loss which the owner could suffer as a result of the thing being used, damaged or destroyed.

**Art. 143. Ownership of land.** Within the limits set by the social and economic purpose of land, the ownership of land extends to the space over and under its surface. This provision does not prejudice regulations on rights to waters.

**Art. 144. Immissions.** In exercising his right, a real estate owner should refrain from actions which could disrupt the use of neighboring real estate beyond a normal scope, arising from the social and economic purpose of the real estate and local relations.

**Art. 145. Easement by necessity.**

§ 1. If real estate does not have suitable access to a public road or to farm buildings belonging to it, the owner may demand that the owners of adjacent land establish, against payment, an easement by necessity (right of way).

§ 2. A right of way is established with account taken of the needs of the landlocked real estate and with the least burden to the land through which the way is to run. If the need to establish a right of way results from the sale of land or another legal act, and the interested parties do not reach an agreement, the court will, provided that it is possible, order the way to be established on the land which was the subject of that legal act.

§ 3. The establishment of a right of way should take into account social and economic interests.

**Art. 146. Way in favor of possessor.** The provisions of the preceding article apply accordingly to an owner-like possessor of real estate; however, a possessor may only demand that an easement in gross be established.

**Art. 147. Earthworks.** An owner cannot carry out earth works in such a manner that they threatens neighboring real estate with the loss of support.

**Art. 148. Fruit.** Fruit fallen from a tree or a shrub onto neighboring land constitutes its profits. This provision does not apply if the neighboring land is designated for public use.

**Art. 149. Removal of branches, fruit.** A land owner may access neighboring land in order to remove branches or fruit hanging from his trees. The owner of the neighboring land may, however, demand that any resulting damage be remedied.

**Art. 150. Removal of roots.** A land owner may cut and keep roots growing over from neighboring land. The same applies to branches and fruit hanging over from neighboring land; however, in such a case, the owner should first set an appropriate period for the neighbor to remove them.

**Art. 151. Boundaries during construction.** If, during the construction of a building or other facility, the boundaries of neighboring land are inadvertently crossed, the owner of this land cannot demand that the previous state be restored unless he had, without unreasonable default, objected to the boundary being crossed or he is threatened by incommensurably great damage. He may demand either appropriate remuneration in exchange for establishing a suitable easement appurtenant or the purchase of the occupied part of the land, and also the part thereof which, as a result of the construction, has lost its economic value for him.

**Art. 152. Delimitation.** Owners of neighboring lands are obliged to act together in delimiting their lands and in maintaining permanent boundary markers; they each bear half of the costs of delimitation and of placing and maintaining the permanent boundary markers.

**Art. 153. Fixing of boundaries.** If land boundaries are disputed and the legal status cannot be determined, the boundaries are established as at the last peaceful possession. If such a peaceful possession cannot be determined either, and delimitation proceedings do not result in an agreement between the parties concerned, the court will *fix* the boundaries taking all the circumstances into consideration; it may at the same time award one of the owners an appropriate additional payment of money.

**Art. 154. Structures on boundaries.**

§ 1. Walls, fences, balks, ditches and other similar structures located on the boundaries of neighboring lands are presumed to serve the common use of the neighbors. The same applies to trees and shrubs on boundaries.

§ 2. Those using the said structures are obliged to jointly bear the structure maintenance costs.

**Dział III. Acquisition and Loss of Ownership.**

**Rozdział I. Transfer of Ownership.**

**Art. 155. Disposition and obligation contracts.**

§ 1. A sale, exchange, donation, real estate alienation or other contract creating an obligation to transfer the ownership of goods in specie transfers the ownership to the acquirer unless a specific regulation provides otherwise or the parties decide otherwise.

§ 2. If fungibles are the subject of a contract creating an obligation to transfer ownership, to transfer the ownership of the fungibles, the transfer of possession is required. The same applies if the subject of the contract creating an obligation to transfer ownership is future things.

**Art. 156. Causability.** If a contract transferring ownership is executed in performance of an obligation arising from a previously executed contract creating an obligation to transfer ownership, from a legacy, unjust enrichment or another event, the validity of the contract transferring the ownership depends on the existence of that obligation.

**Art. 157. Condition, time limit.**

§ 1. The ownership of real estate cannot be transferred on a condition or subject to a time limit.

§ 2. If a contract creating an obligation to transfer the ownership of real estate is executed on a condition or subject to a time limit, an additional agreement between the parties containing their unconditional consent to the immediate transition of ownership is required to transfer the ownership.

**Art. 158. Form.** A contract creating an obligation to transfer the ownership of real estate should be executed in the form of a notarial deed. The same applies to a contract transferring ownership which is executed in order to perform an earlier obligation to transfer the ownership of real estate; the obligation should be specified in the deed.

**Art. 159. Exclusions.** The provisions on the obligation to observe notarial deed form do not apply if land contributed to an agricultural production cooperative is to become co-owned by its current owners.

**Art. 160-161** (*deleted*)

**Art. 162** (*repealed*)

**Art. 163-165** (*deleted*)

**Art. 166. Co-owners' right of first refusal.**

§ 1. If a co-owner of agricultural real estate sells his share or a part of his share in the co-ownership, the remaining co-owners have the right of first refusal, if they run a farm on the co-owned land. This does not, however, apply if a co-owner simultaneously running a farm sells his share in the co-ownership together with the said farm or if the acquirer is another co-owner or a natural person who would inherit the farm from the seller.

§ 2. (*deleted*)

**Art. 167.** (*deleted*).

**Art. 168.** (*deleted*).

**Art. 169. Acquisition from a non-entitled person.**

§ 1. If a person who is not entitled to dispose of a movable disposes of it and hands it over to the acquirer, the latter acquires ownership at the time he takes possession of the thing unless he is acting in bad faith.

§ 2. However, if a thing lost, stolen or otherwise mislaid by the owner is disposed of before three years have passed from the time it was lost, stolen or mislaid, the acquirer may acquire ownership only upon the lapse of the said three years. This restriction does not apply to money or bearer documents or to things acquired at an official public auction or in the course of execution procedure.

**Art. 170. Acquisition of an encumbered thing.** In the case of the transfer of ownership of a movable encumbered with a third party right, this right expires at the time the thing is handed over to the acquirer unless the latter is acting in bad faith. The provision of the second paragraph of the preceding article applies accordingly.

**Art. 171** (*deleted*)

**Rozdział II. Adverse Possession (Usucaption).**

**Art. 172. Real estate.**

§ 1. A possessor of real estate who is not the real estate owner acquires ownership if he possesses the real estate uninterruptedly for twenty years as an owner-like possessor unless he gained possession in bad faith (adverse possession).

§ 2. After the lapse of thirty years, the possessor of real estate acquires ownership even if he gained possession in bad faith.

**Art. 173. Protection of minors.** If the owner of real estate against whom an adverse possession period is running is a minor, the adverse possession cannot end until two years after the owner attains majority.

**Art. 174. Movable.** The possessor of a movable who is not the movable owner acquires ownership if he possesses the movable uninterruptedly for three years as an owner-like possessor unless he possesses it in bad faith.

**Art. 175. Reference.** The provisions on the running of the limitations period for claims apply accordingly to the running of the adverse possession period.

**Art. 176. Predecessor's possession.**

§ 1. If possession is transferred while the adverse possession period is running, the present possessor may add the time of possession by his predecessor to the time of his own possession. If, however, the previous possessor gained possession of the real estate in bad faith, the time of his possession may be added only if, together with the present possessor's time of possession, it amounts to at least thirty years.

§ 2. The above provisions apply accordingly if the present possessor is an heir of the previous possessor.

**Art. 177** (*deleted*)

**Art. 178** (*repealed*)

### Rozdział III. Other Cases of Acquisition and Loss of Ownership.

**Art. 179** (*lost effect*)

**Art. 180. Abandonment.** An owner may relinquish the ownership of a movable thing by abandoning it with such intention.

**Art. 181. Gaining ownership through owner-like possession.** The ownership of an ownerless movable is acquired by the movable being taken in owner-like possession.

**Art. 182. Swarm of bees.**

§ 1. A swarm of bees becomes ownerless if the owner does not find it within three days of the day the bees swarm from the hive. When pursuing the swarm, the owner may enter another person's land but he should remedy any resulting damage.

§ 2. If the swarm of bees comes to rest in another person's unoccupied beehive, the owner may demand that it be returned upon reimbursement of costs.

§ 3. If the swarm of bees comes to rest in another person's occupied beehive, it becomes the property of the person who owns the swarm which is in the beehive. The former owner is not entitled in this case to a claim based on unjust enrichment.

**Art. 183. Finder's obligations.**

§ 1. Anyone who finds a lost thing should immediately notify the entitled person to collect the thing. If the finder does not know who is entitled to collect the thing, or if he does not know the place of residence of the entitled person, he should immediately notify the competent state authority about the finding.

§ 2. The provisions on lost property apply accordingly to things abandoned without the intention to relinquish ownership, and to animals which stray or run away.

**Art. 184. Valuable items.**

§ 1. Money, securities, valuables and things of scientific or artistic value should be immediately handed over by the finder to the competent state authority for safekeeping, and other things found, only at the authority's request.

§ 2. If the finder keeps the thing with him, the provisions on free-of-charge safekeeping apply accordingly.

**Art. 185. Authorization.** A Council of Ministers Regulation will set forth the authorities competent to safe keep things which are found and to search for persons entitled to collect them, the rules on safekeeping those things and the procedure for seeking the persons entitled to collect them.

**Art. 186. Finder's reward.** A finder who has fulfilled his obligations may demand a finder's reward of one-tenth of the value of the thing if he makes a claim at the time the thing is handed over to the person entitled to collect it at the latest.

**Art. 187. Acquisition of ownership.** Money, securities, valuables and things of scientific or artistic value which are not collected by the entitled person within one year of being called on to do so by a competent authority, and, if he cannot be called on, within two years of the day they are found, become State Treasury property. Other things become, after the lapse of the same periods, the finder's property if the finder has fulfilled his obligations; if the things are safe kept by a state authority, the finder may collect them against reimbursement of costs.

**Art. 188. Findings in public places.** The provisions of the preceding articles do not apply if a thing is found in a public building or in another building or premises open to the public or if it is found in a railway car, on a ship or other means of public transport. In such cases, the finder is obliged to hand the thing over to the administrator of the building or premises or to a competent administrator of the means of public transport, who will proceed in accordance with relevant regulations.

**Art. 189. Treasure.** If a thing of considerable economic, scientific or artistic value is found in such circumstances that a search for its owner would clearly be futile, the finder is obliged to hand the thing over to the competent state authority. A thing found becomes State Treasury property and the finder is entitled to appropriate recompense.

**Art. 190. Acquisition of natural profits.** A person entitled to collect the natural profits of a thing acquires their ownership by separating them from the thing.

**Art. 191. Attachment to real estate.** The ownership of real estate extends to cover a movable which is attached to the real estate in such a manner that it has become a component part thereof.

**Art. 192. Processing.**

§ 1. Anyone who produces a new movable with another person's materials becomes its owner if the value of the workmanship is higher than the value of the materials.

§ 2. If a thing is processed in bad faith or if the value of the materials is higher than the value of the workmanship, the thing produced becomes the property of the owner of the materials.

**Art. 193. Joining, mixing.**

§ 1. If movables are joined or mixed in such a manner that it would be extremely difficult or costly to restore them to their previous condition, their current owners become co-owners of the whole. Shares in the co-ownership are set as a proportion of the value of the things joined or mixed.

§ 2. However, if one of the joined things has a value considerably greater than the others, the things of lesser value become its component parts.

**Art. 194. Settlements.** The provisions on processing, joining and mixing do not prejudice the provisions on the obligation to remedy any damage or the provisions on unjust enrichment.

#### **Dział IV. Co-Ownership.**

**Art. 195. Concept.** One thing may be indivisibly owned by several persons (co-ownership).

**Art. 196. Types.**

§ 1. Co-ownership is either fractional or joint.

§ 2. Joint co-ownership is regulated by the provisions on the relations from which it stems. The provisions of this section apply to fractional co-ownership.

**Art. 197. Shares.** Co-owners' shares are presumed to be equal.

**Art. 198. Disposition of a share.** Each co-owner may dispose of his share without the other co-owners' consent.

**Art. 199. Exceeding ordinary management.** The disposition of a co-owned thing and other acts which exceed the scope of ordinary management require the consent of all co-owners. In the absence of such consent, the co-owners whose shares are equal to at least one half may demand that the court decide taking into account the purpose of the intended act and the interest of all the co-owners.

**Art. 200. Cooperation.** Each co-owner is obliged to cooperate in the management of a co-owned thing.

**Art. 201. Ordinary management.** The consent of the majority of the co-owners is required for ordinary management of a joint thing. In the absence of such consent, each of the co-owners may demand court authorization to perform an act.

**Art. 202. Court decision.** If the majority of the co-owners decide to perform an act in gross contradiction to the rules of proper management of a co-owned thing, each of the other co-owners may demand that a court decide.

**Art. 203. Appointing an administrator.** Each co-owner may apply to the court to appoint an administrator if the majority of the co-owners cannot reach agreement on material issues concerning ordinary management, or if the majority of the co-owners violate the principles of proper management or act to the detriment of the minority.

**Art. 204. Calculating majority.** The majority of co-owners is calculated according to the size of their shares.

**Art. 205. Remuneration.** A co-owner exercising management of a co-owned thing may demand from the remaining co-owners remuneration corresponding to the justified input of his labor.

**Art. 206. Joint possession.** Each co-owner is entitled to jointly possess a co-owned thing and to use it to an extent compatible with the joint possession and use of the thing by the remaining co-owners.

**Art. 207. Profits and expenses.** Profits and other revenues from a co-owned thing accrue to the co-owners in proportion to the size of their shares; the co-owners bear the expenses and charges connected with the co-owned thing in the same proportion.

**Art. 208. Account of the management.** Each co-owner not exercising management of the co-owned thing may demand an account of the management at appropriate dates.

**Art. 209. Preservation actions.** Each co-owner may perform any actions and pursue any claims aimed at preserving the joint right.

**Art. 210. Cancellation of co-ownership.** Each co-owner may demand that the co-ownership be cancelled. This right may be precluded through a legal act for no longer than five years. However, in the last year before the end of the stipulated term, it may be extended for another five years; such extension may be renewed.

**Art. 211. Division.** Each co-owner may demand that the co-ownership be cancelled by division of the co-owned thing unless such division is contrary to the law or to the social and economic purpose of the thing or entails a material alteration of the thing or a considerable reduction in its value.

**Art. 212. Cancellation by the court.**

§ 1. If co-ownership is cancelled pursuant to a court decision, the value of the individual shares may be compensated by additional cash payments. In the case of land division, the court may encumber individual parts with the necessary easements appurtenant.

§ 2. A thing which cannot be divided may be awarded, according to the circumstances, to one of the co-owners with an obligation to pay off the other co-owners, or sold pursuant to the Code of Civil Proceedings.

§ 3. If additional payments or pay-offs have been awarded, the court sets the date and the manner of payment, the amount and date for payment of interest, and if needed, how they will be secured. If the additional payments or pay-offs are to be made in installments, their joint payment term cannot exceed ten years. In special cases, the court may, at the debtor's request, defer the payment date of installments which are due and payable.

**Art. 213. Agricultural farm.** If the cancellation of co-ownership of an agricultural farm by division among the co-owners is contrary to the principles of proper agricultural management, the court awards the farm to the co-owner to whom all the co-owners consent.

**Art. 214. Expansion.**

§ 1. In the absence of consent of all the co-owners, the court will award the agricultural farm to the co-owner who runs it or who works on it permanently unless it is in the social and economic interest to choose another co-owner.  
§ 2. If the conditions referred to in the preceding paragraph are fulfilled by several co-owners or if none of the co-owners fulfill them, the court will award the agricultural farm to the co-owner who gives the best guarantee to run it properly.

§ 3. On the request of all the co-owners, the court will order the agricultural farm to be sold pursuant to the Code of Civil Proceedings.

§ 4. The court will also order the agricultural farm to be sold if none of the co-owners consent to the agricultural farm being awarded to them.

**Art. 215. Reference.** The provisions of the two preceding articles apply accordingly if the agricultural farm may be divided but the number of parts thus obtained is lower than the number of the co-owners.

**Art. 216. Pay-offs.**

§ 1. The amount of the pay-offs due to co-owners of an agricultural farm is set with their unanimous agreement.

§ 2. In the absence of such an agreement, pay-offs due to co-owners may be reduced. When determining reduction, the following factors are taken into consideration:

- 1) the type, size and condition of the agricultural farm whose co-ownership is to be cancelled;
- 2) the personal and financial situation of the co-owner obliged to make the pay-offs and of the co-owner entitled to receive them.

§ 3. The pay-off reduction pursuant to the preceding paragraph does not exclude the possibility of them being divided into installments, or deferred pursuant to Article 212 § 3.

§ 4. The provisions of § 2 and 3 do not apply to pay-offs to a spouse in the case of cancellation of co-ownership of an agricultural farm which, pursuant to the Family and Guardianship Code, is the joint property of the spouses.

**Art. 217. Recompense.** A co-owner who, as a result of cancellation of co-ownership, receives an agricultural farm, and who transfers against payment agricultural real estate forming part of the farm before the lapse of five years from the time co-ownership is cancelled is obliged to give the other co-owners, to whom pay-offs lower than due were made, proportionally to their shares, benefits obtained from the pay-off reduction unless the purpose of the disposal was to ensure rational running of the farm.

**Art. 218. Further occupancy.**

§ 1. Co-owners who did not receive an agricultural farm or its part but who resided on the farm until the co-ownership was cancelled retain the right to continue residing on the farm, though no longer than five years and if they are minors at the time the co-ownership is cancelled, no longer than five years after attaining majority. The limitation of the term does not apply to co-owners permanently without the capacity to work.

§ 2. The provisions on easements of habitation apply accordingly to rights arising from the preceding paragraph.

**Art. 219 (deleted)**

**Art. 220. No statute of limitations.** A claim for cancellation of co-ownership is not subject to the statute of limitations.

**Art. 221. Acquisition of a share.** Legal acts setting forth the management and the manner of using a co-owned thing or excluding the right to cancel co-ownership are also effective with respect to the acquirer of a share if the acquirer was aware of them or could easily have learned of them. The same applies if the manner of using a thing has been set in a court decision.

## **Dział V. Protection of Ownership.**

**Art. 222. Actio negatoria and rei vindication.**

§ 1. An owner may demand of any person who has actual control of his thing that the thing be handed over to him unless that person has a right to actually control the thing effective against the owner.

§ 2. An owner is entitled to claim restitution of the lawful status and for violations of the law to be ceased, against a person who violates his ownership otherwise than by depriving him of actual control of the thing.

**Art. 223. No statute of limitations.**

§ 1. The claims of an owner referred to in the preceding article are not subject to the statute of limitations if they concern real estate.

§ 2. (deleted)

§ 3. (deleted)

**Art. 224. Supplementary claims.**

§ 1. An owner-like possessor acting in good faith is not obliged to pay a fee for using a thing and is not responsible for its wear and tear, deterioration or loss. He acquires the ownership of the natural profits which were separated from the thing during the time of his possession and retains the accrued civil profits if they became due and payable during that time.

§ 2. However, from the time the owner-like possessor acting in good faith learns that a court action has been brought against him to handover the thing, he is obliged to pay a fee for using the thing and is responsible for its wear and tear, deterioration or loss unless the deterioration or loss occurred through no fault on his part. He is obliged to return the profits accrued from that time which he has not consumed and to pay the value of those which he has used up.

**Art. 225. Expansion.** The obligations of an owner-like possessor acting in bad faith towards the owner are the same as those of an owner-like possessor acting in good faith from the time the latter learns that a court action has been brought against him for hand-over the thing. However, an owner-like possessor acting in bad faith is further obliged to return the value of the profits which he failed to obtain due to bad management, and is responsible for the deterioration and loss of the thing unless the thing would also have deteriorated or been lost

had it been in the possession of the person entitled to it.

**Art. 226. Outlays.**

§ 1. An owner-like possessor acting in good faith may demand that the necessary outlays be reimbursed insofar as they are not covered by the benefits which he gained from the thing. He may demand that other outlays be reimbursed insofar as they increase the value of the thing at the time it is handed over to the owner. If, however, the outlays were made after the owner-like possessor acting in good faith learned that a court action had been brought against him to hand-over the thing, he may demand that only the necessary outlays be reimbursed.

§ 2. An owner-like possessor acting in bad faith may demand that only the necessary outlays be reimbursed and only insofar as the owner would have become unjustly enriched at his expense.

**Art. 227. Things joined.**

§ 1. An owner-like possessor may, while restoring the previous state, take the objects which he joined with the thing even if they have become its component parts.

§ 2. However, if the joining was done by an owner-like possessor acting in bad faith or an owner-like possessor acting in good faith after he had learned that a court action had been brought against him to hand-over the thing, the owner may retain the joined objects, and reimburse the owner-like possessor for their value and labor costs or a sum equal to the increase in the value of the thing.

**Art. 228. Supplementary claims.** The provisions setting forth the rights and obligations of an owner-like possessor acting in good faith from the time he learns that a court action has been brought against him to hand over the thing also apply if the owner-like possessor of a thing which is state property is called on by a competent state authority to hand over the thing.

**Art. 229. Statute of limitations.**

§ 1. The claims of an owner against an owner-like possessor for a fee for using a thing, return of profits or payment of their value, as well as claims for remedying damage due to deterioration of the thing become barred by the statute of limitations one year after the day the thing is returned. The same applies to claims of an owner-like possessor against the owner for reimbursement of outlays on the thing.

§ 2. *(deleted)*

**Art. 230. Supplementary claims; reference.** The provisions on claims of an owner against an owner-like possessor for a fee for using a thing, return of profits or payment of their value and for remedying damage due to deterioration or loss of the thing, as well as provisions on claims of an owner-like possessor for reimbursement of outlays on a thing apply accordingly to the relationship between the owner of the thing and the dependent possessor unless the provisions regulating this relationship provide otherwise.

**Art. 231. Building on third party land.**

§ 1. An owner-like possessor of land acting in good faith who has erected on or below the surface of the land a building or other facility whose value considerably exceeds the value of the plot occupied for that purpose may demand that the owner transfer to him the ownership of the plot so occupied against an appropriate payment.

§ 2. The owner of land on which a building or other facility has been erected of a value considerably exceeding the value of the plot occupied for this purpose may demand that whoever erected the building or other facility acquire from him the ownership of the plot against an appropriate payment.

§ 3. *(deleted)*

## Tytuł II. Perpetual Usufruct.

**Art. 232. Subject and entities.**

§ 1. Land owned by the State Treasury and located within the administrative boundaries of cities and land owned by the State Treasury located outside those boundaries but included in the city's master plan and allocated for performance of the tasks of its economy, as well as land owned by local government units or their associations may be given in perpetual usufruct to natural and legal persons.

§ 2. In cases provided for in specific regulations, other land owned by the State Treasury, local government units or their associations may also be the subject of perpetual usufruct.

**Art. 233. Substance.** Within the limits set by the laws and the principles of community life and by a contract on giving land owned by the State Treasury or by local government units or their associations in perpetual usufruct, the usufructuary may use the land to the exclusion of other persons. Within the same limits, the perpetual usufructuary may dispose of his right.

**Art. 234. Establishment.** The provisions on real estate ownership transfer apply accordingly to giving land owned by the State Treasury, local government units or their associations in perpetual usufruct.

**Art. 235. Ownership of buildings and facilities.**

§ 1. Buildings and other facilities erected on land owned by the State Treasury, local government units or their associations by a perpetual usufructuary become his property. The same applies to buildings and other facilities which the perpetual usufructuary acquired under relevant regulations at the time the contract for giving land in perpetual usufruct was executed.

§ 2. The perpetual usufructuary's ownership of buildings and facilities on land used is a right related to perpetual usufruct.

**Art. 236. Period.**

§ 1. Land owned by State Treasury or local government units or their associations is given in perpetual usufruct for ninety nine years. In exceptional cases, when the economic purpose of the perpetual usufruct does not require the land to be given for ninety nine years, the land may be given for a shorter period, though for at least forty years.

§ 2. In the last five years before the lapse of the period stipulated in the contract, the perpetual usufructuary may demand its extension for a further period of forty to ninety nine years; however, the perpetual usufructuary may submit such a demand earlier if the depreciation period of the investments planned on the land held in usufruct is

considerably longer than the time remaining to the end of the period stipulated in the contract. Extension may be refused only due to an important public interest.

§ 3. A contract extending a perpetual usufruct should be executed in the form a notarial deed.

**Art. 237. Transfer.** The provisions on real estate ownership transfer apply accordingly to the transfer of perpetual usufruct.

**Art. 238. Fee.** The perpetual usufructuary pays an annual fee throughout the duration of his right.

**Art. 239. Content of the contract.**

§ 1. The manner in which a perpetual usufructuary uses land owned by the State Treasury or local government units or their associations should be specified in the contract.

§ 2. If land is given in perpetual usufruct for the purpose of buildings or other facilities being erected thereon, the contract should specify:

- 1) work commencement and completion dates;
- 2) the type of buildings or facilities and the obligation to maintain them in a proper condition;
- 3) rebuilding terms and conditions and dates if the buildings or facilities were destroyed or demolished during the perpetual usufruct term;
- 4) the fee due to the perpetual usufructuary for buildings and facilities existing on the land on the day the perpetual usufruct expires.

**Art. 240. Termination.** A contract on giving in perpetual usufruct land owned by the State Treasury or by local government units or their associations may be dissolved before the lapse of the period specified therein if the perpetual usufructuary uses the land in a manner which is obviously contradictory to the purpose specified in the contract, particularly, if, contrary to the contract, the usufructuary has failed to erect the buildings or facilities specified therein.

**Art. 241. Extinction of encumbrances.** On expiry of the perpetual usufruct, the encumbrances established thereon are also extinguished.

**Art. 242 (deleted)**

**Art. 243. Statute of limitations.** A claim against a perpetual usufructuary for remedying damage arising from improper use of land owned by the State Treasury or by local government units or their associations, as well as a claim of the perpetual usufructuary for payment for the buildings and facilities existing on the day the land is returned becomes barred by statute of limitations three years after that date.

### Tytuł III. Limited Real Right.

#### Dział I. General Provisions.

**Art. 244. List.**

§ 1. Limited real rights are: usufructs, easements (servitudes), pledges, cooperative ownership rights to premises and mortgages.

§ 2. Cooperative ownership rights to premises and mortgages are regulated by separate provisions.

**Art. 245. Establishment.**

§ 1. Subject to the exceptions provided for by the law, the provisions on ownership transfer apply accordingly to the establishment of a limited real right.

§ 2. However, the provisions on inadmissibility of a condition or period do not apply to the establishment of a limited real right on real estate. Notarial deed form is required only for the declaration of the owner establishing the right.

**Art. 245<sup>1</sup>. Transfer.** The transfer of a limited real right to real estate requires a contract between the entitled person and the acquirer, and, if the right is disclosed in the land and mortgage register, an entry in this register unless a specific regulation provides otherwise.

**Art. 246. Waiver.**

§ 1. If an entitled person waives his limited real right, the right is extinguished. A declaration on the waiver should be made to the owner of the thing encumbered.

§ 2. However, if the law does not provide otherwise, and the right is disclosed in the land and mortgage register, in order for it to be extinguished it has to be deleted from the land and mortgage register.

**Art. 247. Transfer to owner.** A limited real right is extinguished if it is transferred to the owner of the thing encumbered or if the person holding such a right acquires the ownership of the thing encumbered.

**Art. 248. Amendment.**

§ 1. In order to change the substance of a limited real right, a contract is required between the entitled person and the owner of the thing encumbered, and if the right is disclosed in the land and mortgage register, an entry in this register.

§ 2. If a change in the substance of the right affects the rights of a third party, such a change requires consent of that person. A declaration of the third party should be made to one of the parties.

**Art. 249. Priority.**

§ 1. If several limited real rights encumber the same thing, the right which was established at a later date cannot be exercised to the detriment of the right which was established earlier (priority).

§ 2. The above provision does not prejudice the provisions which establish priority differently.

**Art. 250. Change of priority.**

§ 1. The priority of limited real rights may be changed. The change does not prejudice the rights which have lower priority than the right which yields priority and higher than the right which takes priority over the right which yields priority.

§ 2. In order to change priority of limited real rights, a contract is required between the person whose right is to yield priority and the person whose right is to have priority over the right yielding priority. If at least one of those rights is disclosed in the land and mortgage register, an entry in the land and mortgage register is also required.

§ 3. A change of priority becomes ineffective at the time the right yielding priority expires.

**Art. 251. Protection.** The provisions on protection of ownership apply accordingly to protection of limited real rights.

## Dział II. Usufruct.

### Rozdział I. General Provisions.

**Art. 252. Subject and substance.** A thing may be encumbered with a right to use and to collect profits (usufruct).

**Art. 253. Exclusion of certain profits.**

§ 1. The scope of the usufruct may be limited by designated profits being excluded from the thing.

§ 2. Exercising a usufruct of real estate may be limited to a designated part of the real estate.

**Art. 254. No transfer.** A usufruct is non-transferable.

**Art. 255. No exercise.** A usufruct expires if not exercised for ten years.

**Art. 256. Manner of exercise.** A usufructuary should exercise his right in accordance with the requirements of proper management.

**Art. 257. Set of production means.**

§ 1. If the usufruct extends to a specific set of production means, the usufructuary may, within the limits of proper management, replace particular elements with other elements. Elements so included become the property of the owner of the set of production means used.

§ 2. If the set of production means used is to be returned according to its value estimation, the usufructuary acquires the ownership of its individual elements at the time they are handed over; once the usufruct expires he is obliged to return a set of the same type and value unless stipulated otherwise.

**Art. 258. Burdens.** In mutual relations between a usufructuary and an owner, the usufructuary bears burdens which, according to the requirements of proper management, should be covered from the profits of the thing.

**Art. 259. Owner's outlays.** An owner has no obligation to make outlays on a thing encumbered with a usufruct. If he has made such outlays, he may demand that the usufructuary return them according to the provisions on managing another person's affairs without a mandate.

**Art. 260. Usufructuary's outlays.**

§ 1. A usufructuary is obliged to carry out repairs and other outlays related to ordinary use of a thing. He should immediately inform the owner of the need to carry out other repairs and outlays and permit the latter to perform the required work.

§ 2. If the usufructuary makes outlays which he is not obliged to make, the provisions on managing another person's affairs without a mandate apply accordingly.

**Art. 261. Third party claims.** If a third party brings claims against a usufructuary concerning the ownership of a thing, the usufructuary should immediately inform the owner of that fact.

**Art. 262. Status after expiry.** When the usufruct expires, the usufructuary is obliged to return the thing to the owner in the condition it should be in according to the provisions on exercise of usufruct.

**Art. 263. Statute of limitations.** An owner's claims against a usufructuary for remedy of any damage arising from deterioration of a thing or for reimbursement of outlays on the thing, as well as the usufructuary's claim against the owner for reimbursement of outlays on the thing become barred by the statute of limitations one year after the thing is returned.

**Art. 264. Irregular usufruct.** If the usufruct covers money or other fungibles, the usufructuary becomes their owner at the time these things are handed over to him. When the usufruct expires, he is obliged to return them according to the provisions on loan repayment (irregular usufruct).

**Art. 265. Usufruct of rights.**

§ 1. Rights may also be the object of a usufruct.

§ 2. The provisions on usufruct of things apply accordingly to usufruct of rights.

§ 3. The provisions on the transfer of a right apply accordingly to the establishment of a usufruct on that right.

### Rozdział II. Usufruct by Natural Persons.

**Art. 266. Expiry dates.** A usufruct established in favor of an individual expires at the latest on his death.

**Art. 267. Substance.**

§ 1. A usufructuary is obliged to preserve the substance of a thing and its current purpose.

§ 2. However, a usufructuary of land may construct and operate new facilities used to extract minerals subject to the provisions of mining and geological law.

§ 3. Before starting work, a usufructuary should notify the owner of his intention in due time. If the planned facilities change the purpose of the land or violate the requirements of proper management, the owner may demand that they be abandoned or that claims for remedy of damage be secured.

**Art. 268. New facilities.** A usufructuary may install new facilities on the premises within the same limits as a lessee.

**Art. 269. Security; administrator.**

§ 1. An owner may, for good cause, demand security from the usufructuary setting an appropriate period to this end. After the period passes to no effect, the owner may ask the court to appoint an administrator.

§ 2. A usufructuary may demand that administration be cancelled if he gives proper security.

**Art. 270. Security in the case of irregular usufruct.** An owner may refuse to hand over objects held in irregular usufruct until he receives proper security.

**Art. 270<sup>1</sup>. Time-sharing.**

§ 1. Save for Articles 254-255 and Article 266, the provisions of Chapters I and II of this section apply to a usufruct involving the use of a building or a dwelling unit on the terms set forth in the law on protecting acquirers of the right to use a building or dwelling unit during a designated time in each year and on amending the Civil Code, the Petty Offense Code and the Law on Land and Mortgage Registers and Mortgages.

§ 2. The usufruct referred to in § 1 expires fifty years after being established at the latest.

### **Rozdział III. Usufruct by Agricultural Production Cooperatives.**

**Art. 271. State Treasury land.** A usufruct on land owned by the State Treasury may be established in favor of an agricultural production cooperative as a right limited in time or unlimited in time. In any case such usufruct is extinguished at the time the cooperative is liquidated.

**Art. 272. Ownership of structures.**

§ 1. If developed State Treasury land is given in usufruct to an agricultural production cooperative, the buildings and other facilities may be given either in usufruct or on an ownership basis.

§ 2. Buildings and other facilities erected by an agricultural production cooperative on State Treasury land held by it in usufruct constitutes the cooperative's property unless a decision on giving the land over stipulates that they are to become State Treasury property.

§ 3. Separate ownership of buildings and other facilities provided for in the preceding paragraphs is a right related to land usufruct.

**Art. 273. Structures after usufruct expiry.** If a usufruct of State Treasury land by an agricultural production cooperative expires, buildings and other facilities permanently attached to the land and owned by the cooperative become the property of the State Treasury. The cooperative may demand payment of the value of those buildings and facilities at the time the usufruct expires unless the same were erected contrary to the social and economic purpose of the land.

**Art. 274. Plants.** The provisions on ownership of buildings and other facilities on State Treasury land used by an agricultural production cooperative apply accordingly to trees and other plants.

**Art. 275. Change in purpose and substance.** An agricultural production cooperative may change the purpose of State Treasury land given in usufruct or alter its substance unless the decision on giving the land over stipulates otherwise.

**Art. 276** *(deleted)*

**Art. 277. Land contributions.**

§ 1. If the statutes of an agricultural production cooperative or a contract with a cooperative member do not provide otherwise, a cooperative acquires the usufruct of land contributed by its members at the moment land contributions are taken over.

§ 2. The provisions on the obligation to observe the form of a notarial deed when establishing a usufruct on real estate do not apply to contributions of land.

**Art. 278. Change in purpose and substance.** The statutes of an agricultural production cooperative may provide that if so required for the proper performance of the cooperative's tasks, the cooperative may change the purpose of land contributions and alter their substance or exercise either of these rights.

**Art. 279. Buildings and plants.**

§ 1. Buildings and other facilities erected by an agricultural production cooperative on contributed land become its property. The same applies to trees and other plants planted or sown by the cooperative.

§ 2. If a usufruct of land expires, the ownership of the plot on which buildings or facilities owned by the cooperative are located may be taken over by the cooperative against payment of the value at the time the usufruct expires. Trees and plants planted or sown by the cooperative become the property of the owner of the land.

**Articles 280-282**

*(deleted)*

### **Rozdział IV. Other Cases of Usufruct.**

**Art. 283. (deleted).**

**Art. 284. Reference.** The provisions of chapter I and accordingly chapter II of this section apply to other cases of usufruct by legal persons unless the usufruct is regulated otherwise in separate regulations.

### **Dział III. Easements Servitudes).**

#### **Rozdział I. Easement Appurtenant (Predial Servitude).**

**Art. 285. Substance; purpose.**

§ 1. Real estate may be encumbered in favor of the owner of other real estate (dominant estate) with a right under which the owner of the dominant estate may use the servient estate for a specified purpose, or the owner of the servient estate becomes limited in taking certain actions with respect to it, or under which the owner of the servient real estate is not allowed to exercise certain rights which he holds with respect to the dominant estate on the basis of provisions on the substance and exercise of ownership (easement appurtenant).

§ 2. The sole purpose of an easement appurtenant is to increase the usefulness of the dominant estate or its designated part.

**Art. 286. In favor of agricultural production cooperative.** An easement appurtenant may be established in favor of an agricultural production cooperative regardless of whether the cooperative owns the land.

**Art. 287. Scope and exercise.** The scope of an easement appurtenant and the manner in which it is exercised is set, in the absence of other information, in accordance with the principles of community life with account taken of the local custom.

**Art. 288. Expansion.** An easement appurtenant should be exercised in such a manner as to cause as little inconvenience as possible in the use of the servient estate.

**Art. 289. Facilities maintenance.**

§ 1. In the absence of an agreement to the contrary, the obligation to maintain the facilities needed to exercise an easement appurtenant rests on the owner of the dominant estate.

§ 2. If the obligation to maintain such facilities was imposed on the owner of the servient estate, the owner is also personally responsible for performing that obligation. The personal liability of co-owners is joint and several.

**Art. 290. Real estate division.**

§ 1. If the dominant estate is divided, the easement remains in effect in favor of each part created by the division; however, if the easement increases the usefulness of only one or several of them, the owner of the servient estate may demand that the remaining parts be released from the easement.

§ 2. If the servient estate is divided, the easement remains in effect with respect to the parts created by the division; however, if the exercise of the easement is limited to one or several of them, the owners of the remaining parts may demand that the parts be released from the easement.

§ 3. If, as a result of the division of the dominant estate or the servient estate, the manner in which the easement is exercised must be changed, that manner, in the absence of an agreement between the parties, will be established by the court.

**Art. 291. Change in exercise.** If, after an easement appurtenant is established, an important economic need arises, the owner of the servient estate may demand, against payment, that the substance of the easement or the manner in which it is exercised be changed unless the change demanded would cause incommensurate harm to the dominant estate.

**Art. 292. Adverse possession.** An easement appurtenant may be acquired by adverse possession only if it consists in the use of a permanent and visible facility. The provisions on acquiring real estate ownership by adverse possession apply accordingly.

**Art. 293. No exercise.**

§ 1. An easement appurtenant expires if not used for ten years.

§ 2. If the easement appurtenant consists in the obligation to refrain from doing something, the provision above applies only if a status inconsistent with the easement has existed on the servient estate for ten years.

**Art. 294. Cancellation against payment.** The owner of the servient estate may demand that the easement appurtenant be cancelled against payment if, as a result of a change in circumstances, the easement has become particularly burdensome for him, and it is not essential for the proper use of the dominant estate.

**Art. 295. Cancellation without payment.** If the easement appurtenant has lost its significance for the dominant estate, the owner of the servient estate may demand that the easement be cancelled without payment.

#### **Rozdział II. Easement in Gross (Personal Servitude).**

**Art. 296. Substance.** Real estate may be encumbered in favor of a designated natural person with a right which corresponds to easement appurtenant (easement in gross).

**Art. 297. Reference.** The provisions on easements appurtenant apply accordingly to easements in gross subject to the provisions of this chapter.

**Art. 298. Scope and exercise.** The scope of an easement in gross and the manner in which it is exercised is set, in the absence of other information, in accordance with the personal needs of the beneficiary with account taken

of the principles of community life and local custom.

**Art. 299. Expiry dates.** An easement in gross expires with the death of the beneficiary at the latest.

**Art. 300. Personal nature.** Easements in gross are non-transferrable. Nor can the right to exercise them be transferred.

**Art. 301. Right of habitation.**

§ 1. A person having the right of habitation may house his spouse and minor children in the dwelling unit. He may house other persons only if they are dependant on him or if they are needed to run his household. Children housed as minors may remain in the dwelling unit also after attaining majority.

§ 2. It may be agreed that on the beneficiary's death the right of habitation passes to his children, parents and spouse.

**Art. 302. Expansion.**

§ 1. The beneficiary of a right of habitation may use the rooms and facilities intended for the common use of the occupants of the building.

§ 2. The provisions on usufruct by natural persons apply accordingly to mutual relationships between the beneficiary of a right of habitation and the owner of the servient estate.

**Art. 303. Exchange for annuity.** If a beneficiary of a right of habitation commits a gross violation while exercising his right, the owner of the servient estate may demand that the right of habitation be exchanged for an annuity.

**Art. 304. No adverse possession.** An easement in gross cannot be acquired by adverse possession.

**Art. 305. Contribution of real estate to cooperative.** If real estate encumbered with an easement in gross is contributed to an agricultural production cooperative, the cooperative may, for good cause, demand that the manner in which the easement is exercised be changed or that the easement be exchanged for an annuity.

### Rozdział III. Transmission Easement.

**Art. 305<sup>1</sup>. Substance of a right.** Real estate may be encumbered with a right in favor of an entrepreneur who intends to construct or which owns the facilities referred to in Article 49 § 1 under which the entrepreneur may use the servient estate within a designated scope, in accordance with the purpose of the facilities (transmission easement).

**Art. 305<sup>2</sup>. Contract establishing transmission easement.**

§ 1. If the real estate owner refuses to execute a contract establishing a transmission easement and the easement is required for the proper operation of the facilities referred to in Article 49 § 1, the entrepreneur may demand that an easement be established against appropriate remuneration.

§ 2. If an entrepreneur refuses to execute a contract establishing a transmission easement, and the transmission easement is required for the proper operation of the facilities referred to in Article 49 § 1, the real estate owner may demand appropriate remuneration in exchange for establishment of the transmission easement.

**Art. 305<sup>3</sup>. Transfer of right, expiry.**

§ 1. Transmission easement is transferred to the acquirer of an enterprise or the acquirer of the equipment referred to in Article 49 § 1.

§ 2. A transmission easement expires at the end of liquidation of the enterprise at the latest.

§ 3. Once a transmission easement has expired, the entrepreneur is obliged to remove any of the facilities referred to in Article 49 § 1 which impede the use of the real estate. If removal is extremely difficult or costly, the entrepreneur is obliged to remedy any resulting damage.

**Art. 305<sup>4</sup>. Reference.** The provisions on easements appurtenant apply accordingly to transmission easements.

### Dział IV. Pledge.

#### Rozdział I. Pledge on Movables.

**Art. 306. Subject and substance.**

§ 1. In order to secure a given claim, a movable may be encumbered with a right under which the creditor may seek satisfaction from a thing regardless of whose property it has become and with priority over the personal creditors of the owner of the thing, save for those who under the law hold special priority.

§ 2. A pledge may also be established for the purpose of securing a future or contingent claim.

**Art. 307. Establishment.**

§ 1. In order to establish a pledge, a contract between the owner and the creditor is required and, subject to the exceptions provided for by the law, the hand-over of the thing to the creditor or a third party to which the parties agreed.

§ 2. If the thing is actually held by the creditor, the contract is sufficient to establish pledge.

§ 3. (*enters into force on 20 February 2011*)

**Art. 308. Registered pledge.** A claim may also be secured by a registered pledge which is regulated by separate provisions.

**Art. 309. Pledge by unauthorized person.** The provisions on acquiring ownership of a movable from a person who is not authorized to dispose of the thing apply accordingly to establishing a pledge.

**Art. 310. Priority.** If, at the time a pledge is established, the thing is already encumbered with another real right, the pledge established subsequently takes priority over the right created earlier unless the pledgee has acted in bad faith.

**Art. 311. Disposition of a thing.** A stipulation whereby the pledgor commits to the pledgee not to dispose of or encumber a thing before the pledge expires is invalid.

**Art. 312. Satisfaction.** The pledgee is satisfied from an encumbered thing in accordance with the provisions on court execution procedure.

**Art. 313. Forfeiture contract.** If the pledged objects are things having a fixed price set by the order of a competent state authority, it may be agreed that, in the event of a default in payment of the debt, the things will become the property of the pledgee in an appropriate proportion in lieu of payment at the price on the day the secured claim becomes due and payable.

**Art. 314. Scope of security.** A pledge also secures claims for interest for the last three years before the thing is sold in execution or bankruptcy proceedings, awarded costs of proceedings in an amount of up to one-tenth of the capital and other claims for accessory performances, especially a claim for compensation for non-performance or improper performance of an obligation and for reimbursement of outlays on a thing.

**Art. 315. Pledgor's defenses.** A pledgor who is not a debtor may, irrespective of the defenses it has personally against the pledgee, raise defenses which the debtor has and also defenses which the debtor has waived after creation of the pledge.

**Art. 316. Limitation on inheritance liability.** A pledgee may claim satisfaction from a pledged thing regardless of any limitation on the debtor's liability under inheritance law.

**Art. 317. Satisfaction in the case of statute of limitations.** The passing of a limitations period for a claim secured by a pledge does not prejudice the pledgee's right to obtain satisfaction from the pledged thing. This provision does not apply to claims for interest or other accessory performances.

**Art. 318. Pledgee's obligations.** The pledgee to whom a thing is handed over should ensure that it is preserved in accordance with the provisions on safekeeping for remuneration. After the pledge expires, he should return the thing to the pledgor.

**Art. 319. Profits.** If a pledged thing brings profits, the pledgee should, in the absence of an agreement to the contrary, collect them and credit them towards the receivable and any related claims. After the pledge expires, he is obliged to present accounts to the pledgor.

**Art. 320. Outlays.** If a pledgee has made outlays on a thing which he was not obliged to make, the provisions on management of another person's affairs without a mandate apply accordingly.

**Art. 321. Thing endangered.**

§ 1. If a pledged thing is exposed to loss or damage, the pledgor may demand either that the thing be placed in court deposit, or that it be returned with the simultaneous establishment of other security for the claim or that it be sold.

§ 2. In the event of the sale of the thing, the pledge is transferred to the price obtained, which should be placed in court deposit.

**Art. 322. Statute of limitations.**

§ 1. A pledgor's claim against the pledgee to remedy any damage arising from deterioration of a thing, and a pledgee's claim against the pledgor to reimburse outlays on the thing become barred by the statute of limitations one year after the date the thing is returned.

§ 2. *(deleted)*

**Art. 323. Effects of transfer.**

§ 1. The transfer of a claim secured by a pledge entails the transfer of the pledge. If the claim is transferred without the pledge, the pledge is extinguished.

§ 2. A pledge cannot be transferred without the claim which it secures.

**Art. 324. Rights of the debt acquirer.** The acquirer of a claim secured by a pledge may demand that the transferor hand over the encumbered thing with the pledgor's consent. In the absence of such consent, the acquirer may demand that the thing be placed in court deposit.

**Art. 325. Return of the thing.**

§ 1. If a pledgee returns the thing to the pledgor, the pledge is extinguished regardless of any stipulations to the contrary.

§ 2. A pledge is not extinguished despite the pledged thing being acquired by the pledgee if the claim secured by the pledge is encumbered by a third party right or is attached in favor of a third party.

**Art. 326. Statutory pledge.** The provisions of this chapter apply accordingly to pledges created under the law.

## **Rozdział II. Pledge on Rights.**

**Art. 327. Scope.** Rights, if transferable, may be the object of a pledge.

**Art. 328. Reference.** The provisions on pledge on movables apply accordingly to pledge on rights, subject to the provisions of this chapter.

**Art. 329. Establishment.**

§ 1. The provisions on transferring a right apply accordingly to establishing a pledge on that right. However, a contract on pledge should be executed in writing with an authenticated date even if the contract on transferring the right does not require such form.

§ 2. If a pledge on a claim is not created by hand-over of the document or by endorsement, a written notification of the debtor by the pledgor is necessary in order for the pledge to be created.

**Art. 330. Preservation actions.** A pledgee may perform all actions and pursue all claims which are intended to preserve the pledged right.

**Art. 331. Termination of pledged claim.**

§ 1. If the maturity of a pledged claim depends on notice by the creditor, the pledgor may serve the notice without the pledgee's consent. If the claim secured by the pledge is already due and payable, the pledgee may serve the notice with respect to the pledged claim up to the amount of the secured claim.

§ 2. If the maturity of a pledged claim depends on notice by the debtor, the notice should also be served with regard to the pledgee.

**Art. 332. Pledge on the object of a performance.** If a performance is made, a pledge on a claim is transferred to the object of the performance.

**Art. 333. Receipt of performance.** The pledgor of the claim and the pledgee are jointly entitled to receive the performance. Each of them may demand that the performance be made to both of them jointly or that the object of the performance be placed in court deposit.

**Art. 334. Early performance.** If the debtor of a pledged claim makes the performance before the secured claim becomes due and payable, both the pledgor and the pledgee may demand that the object of the performance be placed in court deposit.

**Art. 335. Satisfaction of secured monetary claim.** If a monetary claim secured by a pledge is already due and payable, the pledgee may demand, in lieu of payment, that the pledgor transfer to it the pledged claim, if it is monetary, up to the amount of the claim secured by the pledge. The pledgee may execute its part of the claim with priority over the part due to the pledgor.

#### Tytuł IV. Possession.

**Art. 336. Owner-like possession and dependent possession.** The possessor of a thing is a person who actually controls the thing like the owner (owner-like possessor), or a person who actually controls it as a usufructuary, pledgee, tenant, lessee or holder of other right giving him a certain degree of control over another person's thing (dependent possessor).

**Art. 337. Simultaneousness.** An owner-like possessor does not lose possession by giving the thing over to another person as a dependent possessor.

**Art. 338. Control.** Anyone who has actual control of a thing on behalf of another person is the actual holder of the thing.

**Art. 339. Presumed owner-like possession.** Anyone who has actual control of a thing is presumed to be its ownerlike possessor.

**Art. 340. Presumed continuity.** Possession is presumed to be continuous. The inability to possess due to a temporary obstacle does not interrupt possession.

**Art. 341. Presumed compliance with the law.** Possession is presumed to be compliant with the legal status. This presumption also applies to possession by the previous possessor.

**Art. 342. No breach.** Possession cannot be willfully breached even if the possessor acted in bad faith.

**Art. 343. Self-defense; self-help.**

§ 1. A possessor may use self-defense to repel a willful breach of his possession.

§ 2. A possessor of real estate may immediately, after a willful breach of his possession, restore the previous status by his own actions; however, when doing so, he cannot use violence against other persons. The possessor of a movable, if threatened by the danger of irreparable damage, may immediately, after having been willfully deprived of possession, use the necessary self-help in order to restore the previous status.

§ 3. The provisions of the preceding paragraphs apply accordingly to an actual holder.

**Art. 343<sup>1</sup>. Controlling premises.** The provisions on protection of possession apply accordingly to protection of control of premises.

**Art. 344. Claim for protection.**

§ 1. A possessor can claim restoration of the previous state and cessation of breach against a person who willfully breached his possession and against a person for whose benefit the breach took place. This claim is not conditional on the possessor's good faith or the compliance of his possession with the legal status unless a final and non-revisable decision of a court or other state authority appointed to hear cases of a given type states that the state of possession which resulted from the breach was lawful.

§ 2. A claim expires if it is not pursued within one year of breach.

**Art. 345. Effect of restoration.** Restored possession is deemed uninterrupted.

**Art. 346. Protection among co-possessors.** A claim for protection of possession cannot be made in relations among co-possessors of the same thing if the scope of co-possession cannot be established.

**Art. 347. Suspension of construction.**

§ 1. The possessor of real estate may claim suspension of construction if the construction could breach his possession or threaten to cause him damage.

§ 2. A claim may be pursued before construction is started; it expires if it is not pursued within one month of the construction being started.

**Art. 348. Transfer by hand-over.** Transfer of possession takes place by hand-over of a thing. The handover of documents, which enable disposition of the thing, and hand-over of means which give actual control of the thing,

is tantamount to handover of the thing.

**Art. 349. Retaining control.** Owner-like possession may also be transferred where the existing ownerlike possessor retains the thing in his control as a dependent possessor or as an actual holder on the basis of a legal relationship established by the parties.

**Art. 350. By contract and by notice.** If a thing is held in dependent possession or is actually held by a third party, the owner-like possession is transferred by a contract between the parties and by a notice to the dependent possessor or the actual holder.

**Art. 351. By contract.** The owner-like possession is transferred to a dependent possessor or to an actual holder by means of a contract between the parties.

**Art. 352. Possession of easement.**

§ 1. Anyone who actually uses another person's real estate in a way corresponding to easement is the possessor of the easement.

§ 2. The provisions on possession of things apply accordingly to possession of an easement.

## Ksi ga Three. OBLIGATIONS.

### Tytuł I. General Provisions.

**Art. 353. Concept.**

§ 1. An obligation exists where a creditor may demand performance from a debtor and the debtor should make the performance.

§ 2. Performance may consist in acting or refraining from acting.

**Art. 353<sup>1</sup>. Freedom of contract.** Parties executing a contract may arrange their legal relationship at their discretion so long as the content or purpose of the contract is not contrary to the nature of the relationship, the law or the principles of community life.

**Art. 354. Performance manner.**

§ 1. A debtor should perform his obligation in accordance with its substance and in a manner complying with its social and economic purpose and the principles of community life, and if there is established custom in this respect - also in a manner complying with this custom.

§ 2. The creditor should cooperate in the same manner in the performance of an obligation.

**Art. 355. Due care.**

§ 1. A debtor is obliged to use the care commonly required in relations of a given type (due care).

§ 2. The due care of a debtor in his business activity is specified with consideration taken of the professional nature of this business.

**Art. 356. Performer.**

§ 1. A creditor may demand personal performance by the debtor only if the same follows from the substance of the legal act, the law or the nature of the performance.

§ 2. If a monetary claim is due and payable, the creditor cannot refuse to accept performance from a third party even if the latter acts without the debtor's knowledge.

**Art. 357. Quality of things.** If a debtor is obliged to provide fungibles, and the quality of the things is not indicated by relevant regulations or by the legal act and does not follow from the circumstances, the debtor should provide things of average quality.

**Art. 357<sup>1</sup>. Extraordinary change in circumstances.** If, due to an extraordinary change in circumstances, a performance entails excessive difficulties or exposes one of the parties to a serious loss which the parties did not foresee when executing the contract, the court may, having considered the parties' interests, in accordance with the principles of community life, designate the manner of performing the obligation, the value of the performance or even decide that the contract be dissolved. When dissolving the contract, the court may, as needed, decide how accounts will be settled between the parties, being guided by the principles set forth in the preceding sentence.

**Art. 358. Currency principle.**

§ 1. If the subject of the obligation is a sum of money and is denominated in foreign currency, the debtor may make the performance in Polish currency unless the law, the court decision being the source of the obligation or a legal act provide for the performance to be made in foreign currency.

§ 2. The foreign currency value is set forth at to the average exchange rate announced by the National Bank of Poland on the date on which the claim becomes due and payable unless the law, a court decision or a legal act provides otherwise. In the event of the debtor's default, the creditor may demand that the performance be made in Polish currency at the average exchange rate announced by the National Bank of Poland on the payment date.

**Art. 358<sup>1</sup>. Nominalism; adjustment.**

§ 1. If the subject of the obligation is, from the moment it arises, a sum of money, performance is made by paying the nominal sum unless special regulations provide otherwise.

§ 2. The parties may stipulate in a contract that the amount of a monetary performance will be fixed according to a measure of value other than money.

§ 3. In the event of a significant change in the purchasing power of money after the obligation arises, the court may, having considered the parties' interests and in accordance with the principles of community life, change the amount of the monetary performance or the manner of making it even if the same were set in a court decision or contract.

§ 4. A party running an enterprise cannot demand a change in the amount of a monetary performance or the manner of making it if the performance is related to running the enterprise.

§ 5. The provisions of § 2 and 3 do not prejudice provisions regulating the levels of prices and other monetary performances.

**Art. 359. Interest.**

§ 1. Interest on a sum of money is due only if it follows from a legal act or the law, a court decision or a decision of another competent authority.

§ 2. If the level of interest is not otherwise specified, statutory interest is due.

§ 2<sup>1</sup>. The maximum level of interest resulting from a legal act cannot be more in one year than four times the payable loan rate of the National Bank of Poland (maximum interest).

§ 2<sup>2</sup>. If the interest resulting from a legal act exceeds the maximum interest, the maximum interest is due.

§ 2<sup>3</sup>. Contractual provisions cannot exclude or limit provisions on maximum interest even if foreign law jurisdiction is chosen. In such case, the provisions of the law apply.

§ 3. The Council of Ministers specifies, by way of a regulation, the level of statutory interest, being guided by the need to ensure payment discipline and efficient money settlements, taking into account market interest rates and National Bank of Poland interest rates.

**Art. 360. Payment date.** In the absence of a stipulation to the contrary regarding interest payment date, interest is paid annually in arrears and if the money payment period is shorter than one year, simultaneously with payment of the money.

**Art. 361. Causal relationship; damage.**

§ 1. A person obliged to pay compensation is liable only for normal consequences of the actions or omissions from which the damage arises.

§ 2. Within the above limits, in the absence of a provision of the law or contract to the contrary, remedy of damage covers the losses which the aggrieved party has suffered, and the benefits which it could have obtained had it not suffered the damage.

**Art. 362. Contribution.** If an aggrieved party has contributed to damage arising or increasing, the obligation to remedy the damage is appropriately reduced according to the circumstances, and especially to the degree of both parties' fault.

**Art. 363. Remedy of damage.**

§ 1. Damage should be remedied, at the aggrieved party's choice, either by the previous condition being restored or a relevant sum of money being paid. If, however, restoration of the previous condition is not possible or it results in excessive difficulties or costs for the obliged person, the aggrieved party's claim is limited to monetary performance.

§ 2. If the damage is to be remedied by payment of money, the amount of the compensation should be set according to prices as at the compensation determination date unless extraordinary circumstances require that prices existing at another time be taken as the basis.

**Art. 364. Security.**

§ 1. Whenever the law provides for a security obligation, the security should be provided by placing money in court deposit.

§ 2. However, for good cause, security may be provided in another form.

**Art. 365. Alternative obligation.**

§ 1. If a debtor is obliged in such a manner that the obligation may be performed by making one of several performances (alternative obligation), the choice of performance lies with the debtor unless it follows from a legal act, the law or the circumstances that the choice lies with the creditor or a third party.

§ 2. The choice is made by a declaration being submitted to the other party. If the debtor is entitled to make the choice, he may make it also by making the performance.

§ 3. If the party entitled to choose the performance does not make the choice, the other party may set an appropriate time limit for it to make the choice. After the time limit passes to no effect, the right to make the choice passes to the other party.

**Art. 365<sup>1</sup>. Termination of continuous obligations.** A continuous obligation unlimited in time expires upon being terminated by debtor or creditor with observance of contractual, statutory or customary notice periods, and, where there are no such periods, immediately after being terminated.

## Tytuł II. Multiple Debtors or Creditors.

### Dział I. Joint and Several Obligations.

**Art. 366. Joint and several debtors.**

§ 1. Several debtors may be obliged in such a manner that the creditor may demand the whole or part of a performance from all the debtors jointly, from several of them, or from each of them individually, and satisfaction of the creditor by any of the debtors releases the other debtors (joint and several liability of debtors).

§ 2. All joint and several debtors are liable until the creditor is completely satisfied.

**Art. 367. Joint and several creditors.**

§ 1. Several creditors may be entitled in such a manner that the debtor may make the whole performance to one of them, and by satisfying any of the creditors, the debt is extinguished with regard to them all (joint and several creditors' claim).

§ 2. A debtor may make a performance, at his choice, to any of the joint and several creditors. However, if court action is brought by one of the creditors, the debtor should make the performance to that creditor.

**Art. 368. Differentiation.** An obligation may be joint and several even if each of the debtors is obliged in a different manner or even if the joint debtor is obliged in a different manner with respect to each of the creditors.

**Art. 369. Basis.** An obligation is joint and several if it follows from the law or a legal act.

**Art. 370. Joint property.** If several persons incur an obligation concerning their joint property, they are jointly and severally liable unless otherwise agreed.

**Art. 371. Protection of co-debtors.** Actions and omissions by one of joint and several debtors cannot operate to the detriment of the co-debtors.

**Art. 372. Running of limitations period.** The interruption or suspension of the running of the limitations period with regard to one of joint and several debtors is not effective towards the co-debtors.

**Art. 373. Release of a debtor.** The release from debt or waiver of joint and several liability by a creditor with regard to one of joint and several debtors is not effective towards the co-debtors.

**Art. 374. Novation; creditor default.**

§ 1. A novation made between a creditor and one of joint and several debtors releases the co-debtors unless the creditor stipulates that he retains his rights against them.

§ 2. A creditor's default against one of joint and several debtors is also effective towards the co-debtors.

**Art. 375. Defenses.**

§ 1. A joint and several debtor may defend himself by raising defenses which he is personally entitled to raise in respect of the creditor, or defenses which are common to all the debtors due to the origin or the substance of the obligation.

§ 2. A judgment passed in favor of one of joint and several debtors releases the co-debtors if it takes into account defenses common to them all.

**Art. 376. Recourse among co-debtors.**

§ 1. If one of joint and several debtors makes the performance, the substance of the legal relationship among the co-debtors decides whether and in what parts such debtor may demand reimbursement from the co-debtors. Unless the substance of the relationship provides otherwise, the debtor who makes the performance may demand reimbursement in equal parts.

§ 2. A part due from an insolvent debtor is divided among the co-debtors.

**Art. 377. Protection of co-creditors.** A debtor's default, and the interruption or suspension of the running of the limitations period with regard to one of joint and several creditors is also effective towards the co-creditors.

**Art. 378. Recourse among co-creditors.** If one of joint and several creditors accepts a performance, the substance of the legal relationship among the co-creditors decides whether and in what parts he is liable towards the co-creditors. Unless the substance of the relationship provides otherwise, a creditor who accepts the performance is liable in equal parts.

## Dział II. Divisible and Indivisible Obligations.

**Art. 379. Concept.**

§ 1. If there are several debtors or several creditors, and the performance is divisible, both the debt and the claim are divided into as many independent parts as there are debtors or creditors. The parts are equal unless circumstances provide otherwise.

§ 2. A performance is divisible if it can be performed partially without a significant change in its object or value.

**Art. 380. Debtors' liability.**

§ 1. Debtors obliged to make an indivisible performance are responsible for making the performance as joint and several debtors.

§ 2. In the absence of an agreement to the contrary, debtors obliged to make a divisible performance are responsible for making the performance jointly and severally if the reciprocal performance of the creditor is indivisible.

§ 3. A debtor who makes an indivisible performance may demand from the other debtors reimbursement of the value of the performance according to the same principles as a joint and several debtor.

**Art. 381. Creditors' rights.**

§ 1. If there are several creditors entitled to an indivisible performance, each of them may demand full performance.

§ 2. However, if even one of the creditors objects, a debtor is obliged to perform to all the creditors jointly or to place the object of the performance in court deposit.

**Art. 382. Protection of creditors.**

§ 1. Release of a debtor from a debt by one of the creditors entitled to an indivisible performance is not effective towards the other creditors.

§ 2. A debtor's default and the interruption or suspension of the running of the limitations period with regard to one of the creditors entitled to an indivisible performance is effective towards the other creditors.

**Art. 383. Recourse among creditors.** If one of the creditors entitled to an indivisible performance accepts the performance, he is liable towards the other creditors according to the same principles as a joint and several creditor.

### Tytuł III. General Provisions on Contractual Obligations.

#### **Art. 384. Binding model, consumer.**

§ 1. A standard contract established by one party, especially general terms and conditions of contracts, a model contract and rules, bind the other party if they were delivered to it upon contract execution.

§ 2. If the use of a standard contract in a given type of relations is customary, it is also binding when the other party could easily have learned of its content. This does not, however, apply to contracts executed with the participation of consumers, save for contracts commonly executed in minor current affairs of everyday life.

§ 3. (*repealed*)

§ 4. If one of the parties uses an electronic standard contract, it should make it available to the other party before the contract is executed in such a manner that the other party could store and reproduce the standard contract in the normal course of business.

§ 5. (*repealed*)

**Art. 384<sup>1</sup>. Continuous obligation.** A standard contract delivered during a continuous contractual relationship is binding on the other party if the requirements set forth in Article 384 are met, and the party concerned has not terminated the contract with notice on the earliest possible termination date.

#### **Art. 385. Contractual discrepancy, interpretation.**

§ 1. In the event of a discrepancy between a contract and the standard contract, the parties are bound by the contract.

§ 2. The wording of a standard contract should be clear and comprehensible. Ambiguous provisions are interpreted to the consumer's benefit. The principle set forth in the preceding sentence does not apply in proceedings for the provisions of a standard contract to be declared unlawful.

#### **Art. 385<sup>1</sup>. Unlawful clauses.**

§ 1. Provisions of a contract executed with a consumer which have not been agreed individually are not binding on the consumer if his rights and obligations are set forth in a way that is contrary to good practice, grossly violating his interests (unlawful contractual provisions). This does not apply to provisions setting forth the main performances of the parties, including price or remuneration, so long as they are worded clearly.

§ 2. If a provision of a contract is not binding on the consumer in accordance with § 1, the parties are bound by the remaining part of the contract.

§ 3. Provisions which are not agreed individually are those provisions of a contract on which the consumer had no actual influence. This refers particularly to contractual provisions taken from a standard contract proposed to a consumer by a contracting party.

§ 4. The burden of proving that a provision has been agreed individually rests on the person who relies on it.

**Art. 385<sup>2</sup>. Contract assessment.** The compliance of a contractual provision with good practice is assessed according to the state of affairs at the time the contract is executed, taking into account its content, execution circumstances, and contracts connected with the contract containing the assessed provision.

**Art. 385<sup>3</sup>. List.** In case of doubt, unlawful contractual provisions are those which especially:

- 1) exclude or limit liability towards the consumer for personal injury;
- 2) exclude or significantly limit liability towards the consumer for nonperformance or improper performance of an obligation;
- 3) exclude or significantly limit a consumer's claim being set off against the other party's claim;
- 4) contain clauses which the consumer did not have the opportunity to become familiar with before the contract was executed;
- 5) allow the consumer's contracting party to transfer the rights and obligations under the contract without the consumer's consent;
- 6) make the execution of a contract conditional on the consumer promising to execute further contracts of a similar type in the future;
- 7) make the execution, content or performance of a contract conditional on execution of another contract that has no direct link to the contract containing the assessed provision;
- 8) make the performance conditional on circumstances which depend solely on the intent of the consumer's contracting party;
- 9) grant the consumer's contracting party rights to make a binding interpretation of the contract;
- 10) entitle the consumer's contracting party to unilaterally amend the contract without good cause as specified in the contract;
- 11) grant only the consumer's contracting party the right to declare the performance compliant with the contract;
- 12) exclude the obligation to reimburse to the consumer payment made for a performance which has not been fully or partly made if the consumer decides not to execute or perform the contract;
- 13) specify the loss of the right to demand the return of a performance made by a consumer earlier than the contracting party's performance if the parties terminate, dissolve or rescind the contract;
- 14) deprive only the consumer of the right to dissolve, rescind or terminate the contract;
- 15) entitle the consumer's contracting party to terminate a contract executed for a non-fixed term without giving good cause and without a relevant notice period;
- 16) impose only on the consumer an obligation to pay an agreed sum in the event of withdrawal from execution or performance of the contract;
- 17) impose an obligation on a consumer who has not performed an obligation or has rescinded a contract to pay excessively high liquidated damages or compensation for loss of contract;
- 18) state that a contract executed for a fixed term is extended if the consumer who was given an excessively short term does not submit a declaration to the contrary;
- 19) specify only the consumer's contracting party the unilateral right to change, without good cause, material features of the performance;
- 20) entitle the consumer's contracting party to set or increase the price or remuneration after the contract is executed without granting the consumer the right to rescind the contract;
- 21) make the liability of the consumer's contracting party conditional on performance of obligations by persons through whom the consumer's contracting party executes the contract or who assist it in performing its obligation,

or make this liability conditional on fulfillment by the consumer of excessively onerous formalities;

**22)** contain the obligation of the consumer to perform an obligation despite non-performance or improper performance of an obligation by his contracting party;

**23)** exclude the jurisdiction of Polish courts or which refer the case to a Polish or foreign arbitration tribunal or another authority, or which require that the case be heard by a court which, according to the law, has no local jurisdiction.

**Art. 385<sup>4</sup>. Conflict of forms.**

§ 1. A contract between entrepreneurs using different standard contracts does not include those provisions of the standard contracts which are contradictory.

§ 2. A contract is not executed if, after having received an offer, a party immediately informs the other party that it does not intend to execute the contract on the terms and conditions set forth in § 1.

*(repealed)* **Article 386**

**Art. 387. Primary impossibility to perform.**

§ 1. A contract for an impossible performance is invalid.

§ 2. A party which, at the time of contract execution, was aware that performance was impossible and did not communicate this to the other party is obliged to remedy any damage the other party suffered by executing the contract while being unaware that performance was impossible.

**Art. 388. Exploitation.**

§ 1. If one of the parties, exploiting a forced situation or the inefficiency or inexperience of the other party, in exchange for its own performance accepts or stipulates for itself or for a third party a performance the value of which at the time the contract is executed grossly exceeds the value of its own performance, the other party may demand that its performance be reduced or that the performance due to it be increased, and if both are extremely difficult, it may demand that the contract be declared invalid.

§ 2. The above rights expire two years after the contract execution date.

**Art. 389. Preliminary contract.**

§ 1. A contract under which one or both of the parties commit to execute a specified contract (preliminary contract) should lay down the key provisions of the final contract.

§ 2. If the period in which the final contract is to be executed is not specified, the contract should be executed within an appropriate period set by the party entitled to demand that the final contract be executed. If both parties are entitled to demand that the final contract be executed and each of them sets a different period, the parties will be bound by the period set by the party who was first to submit an appropriate declaration. If, within one year of the day the preliminary contract is executed, no period is set for executing the final contract, its execution cannot be demanded.

**Art. 390. Effects.**

§ 1. If a party obliged to execute a final contract evades execution, the other party may demand remedy of any damage it suffered by counting on the execution of the final contract. The parties may, in the preliminary contract, specify the scope of compensation differently.

§ 2. If, however, the preliminary contract meets the requirements on which the validity of the final contract depends, especially requirements as to form, the entitled party may demand execution of the final contract.

§ 3. Claims under a preliminary contract become barred by the statute of limitations one year after the day on which the final contract is to be executed. If the court dismisses a demand for execution of the final contract, claims under the preliminary contract become barred by the statute of limitations one year after the day on which the court decision becomes final and non-revisable.

**Art. 391. Contract on third party performance.** If a contract stipulates that a third party will incur a specified obligation or make a specified performance, the person who makes the promise is liable for any damage suffered by the other party by the third party refusing to incur the obligation or not making the performance. It may, however, discharge the obligation to remedy the damage by making the promised performance unless the same is contrary to the contract or the nature of the performance.

**Art. 392. Contract on debtor release.** If a third party commits in a contract with a debtor to release the debtor from the obligation to make a performance, it is liable towards the debtor for the creditor not demanding the performance from him.

**Art. 393. Contract on performance to a third party.**

§ 1. If a contract stipulates that a debtor will make a performance to a third party, the latter, in the absence of a contractual provision to the contrary, may demand the stipulated performance directly from the debtor.

§ 2. The stipulation regarding the performance obligation in favor of a third party cannot be revoked or amended if the third party has represented to any of the parties that it wishes to make use of the stipulation.

§ 3. The debtor may raise defenses based on the contract also against the third party.

**Art. 394. Earnest money.**

§ 1. In the absence of a contractual stipulation or a custom to the contrary, earnest money paid upon the execution of a contract means that, if the contract is not performed by one of the parties, the other party may, without setting an additional period, rescind the contract and retain the earnest money, and if it was the party which paid the earnest money, it may demand twice the amount.

§ 2. If the contract is performed, the earnest money is credited to the performance of the party which paid it, and if it cannot be credited the earnest money is returned.

§ 3. If the contract is dissolved, the earnest money should be returned and the obligation to pay twice the sum of money no longer applies. The same applies if the contract was not performed due to circumstances for which neither party is responsible or for which both parties are responsible.

**Art. 395. Contractual rescission right.**

§ 1. It may be stipulated that one or both parties will have the right to rescind the contract during a specified period. This right is exercised by a declaration being made to the other party.

§ 2. If the right to rescind is exercised, a contract is deemed not to have been executed. Whatever the parties have already provided is returned unchanged unless the change was necessary as part of ordinary management. The other party is entitled to appropriate remuneration for the services provided and for using a thing.

**Art. 396. Compensation for loss of contract.** If it is stipulated that one or both parties may rescind the contract upon payment of a specified sum (compensation for loss of contract), the declaration on rescission is effective only if it is submitted at the same time as payment of the compensation for loss of contract.

#### Tytuł IV

*(deleted)*

**Art. 397-404** *(deleted)*

#### Tytuł V. Unjust Enrichment.

**Art. 405. Concept.** Anyone who without legal grounds has gained a financial benefit at the expense of another person is obliged to hand over the benefit in kind, and if this is not possible, to return its value.

**Art. 406. Surrogates.** The obligation to hand over the benefit includes not only benefits gained directly, but also all that, in the case of transfer, loss or damage, was obtained in exchange for the benefit or as remedy of damage.

**Art. 407. Gratuitous disposition of a benefit.** If a person without legal grounds obtains a financial benefit at the expense of another person and disposes of the benefit to a third party gratuitously, the obligation to hand over the benefit passes to the third party.

**Art. 408. Outlay settlement.**

§ 1. The person obliged to hand over the benefit may demand reimbursement of necessary outlays insofar as they are not covered by the profits he attained from them. He may demand that other outlays be reimbursed insofar as they increase the value of the benefit at the time it is handed over; however, he may remove those outlays and restore the previous condition.

§ 2. Anyone who, when making outlays, knew that he was not entitled to the benefit may demand that the outlays be reimbursed only insofar as they increase the value of the benefit at the time it is handed over.

§ 3. If the person demanding that the benefit be handed over is obliged to reimburse the outlays, a court may order, in lieu of the benefit being handed over in kind, its value to be reimbursed in money, after deduction of the value of the outlays which the demanding person would be obliged to reimburse.

**Art. 409. Extinction of the obligation to return.** The obligation to hand over the benefit or return its value is extinguished if the person who obtained the benefit has used it up or discarded it in such a manner that he is no longer enriched unless, when discarding or using up the benefit, he should have taken into account the obligation to return it.

**Art. 410. Undue performance.**

§ 1. The provisions of the proceeding articles apply especially to an undue performance.

§ 2. A performance is undue if the person who makes it is not under any obligation or is not under any obligation towards the person to whom he makes the performance, or if the basis of the performance has ceased to exist or the intended purpose of the performance is not attained, or if the legal act binding him to make the performance is invalid and does not become valid after the performance is made.

**Art. 411. No return.** The return of a performance cannot be demanded:

- 1) if the person making the performance knew that he was not obliged to make the performance unless the performance was made subject to return or in order to avoid a constraint or in performance of an invalid legal act;
- 2) if the performance satisfies the principles of community life;
- 3) if the performance was made in order to satisfy a claim barred by the statute of limitations;
- 4) if the performance was made before the claim became due and payable.

**Art. 412. Forfeiture of a performance.** A court may decide that a performance be forfeited to the State Treasury if the performance was knowingly made in exchange for an act prohibited by the law or for a base purpose. If the object of the performance was used up or discarded, its value may be forfeited.

**Art. 413. Game and bet.**

§ 1. Anyone who makes a performance arising from a game or a bet cannot demand return unless the game or the bet was prohibited or dishonest.

§ 2. Claims arising from a game or a bet may be brought if the game or the bet was held on the basis of a permit issued by a competent state authority.

**Art. 414. No prejudice of claims.** The provisions of this title do not prejudice the provisions on the obligation to remedy damage.

#### Tytuł VI. Tort.

**Art. 415. Fault.** Anyone who by a fault on his part causes damage to another person is obliged to remedy it.

**Art. 416. Fault of authority.** A legal person is obliged to remedy any damage caused through a fault on the part of its authority.

**Art. 417. State Treasury liability.**

§ 1. The State Treasury or a local government unit or another person exercising public authority by force of law is liable for any damage caused by an unlawful action or omission while exercising public authority.

§ 2. If performance of public authority tasks is contracted under an agreement to a local government unit or another legal person, joint and several liability for any damage caused is borne by the contractor and the local government unit contracting the tasks or the State Treasury.

**Art. 417<sup>1</sup>. Damage arising from a legislative act.**

§ 1. If damage is caused by a legislative act, remedy thereof may be demanded once it has been declared non-compliant with the Constitution, a ratified international treaty or the law in the course of appropriate proceedings.

§ 2. If damage is caused by a final and non-revisable court decision or other final decision, remedy thereof may be demanded once such decision has been declared non-compliant with the law in the course of appropriate proceedings, unless separate regulations provide otherwise. This also applies to cases where a final and non-revisable court decision or other final decision has been issued based on a legislative act that is non-compliant with the Constitution, a ratified international treaty or the law.

§ 3. If damage is caused through failure for a court decision or other decision to be issued and the obligation to issue the same is provided for by a legal regulation, remedy of damage may be demanded once the failure to issue the court decision or other decision is declared non-compliant with the law in the course of appropriate proceedings unless separate regulations provide otherwise.

§ 4. If damage is caused by failure for a legislative act to be issued and the obligation to issue the same is provided for by a legal regulation, the failure to issue the act is declared non-compliant with the law by the court hearing the case for remedy of damage.

**Art. 417<sup>2</sup>. Equitable principle.** If personal injury is caused through the lawful exercise of public authority, the aggrieved party may demand full or partial remedy of and monetary recompense for the harm caused if the circumstances, and especially the aggrieved party's inability to work or his difficult financial situation, indicate that the remedy is required under the equitable principle.

**Art. 418** (*lost effect*)

**Art. 419-420<sup>2</sup>** (*repealed*)

**Art. 421. No application.** The provisions of Articles 417, 417<sup>1</sup> and 417<sup>2</sup> do not apply if the liability for damage caused through the exercise of public authority is regulated by specific provisions.

**Art. 422. Incitement, aiding and abetting, taking advantage.** Liability for damage is borne not only by the direct perpetrator but also by any person who incites or aids another to cause damage and a person who knowingly takes advantage of damage caused to another person.

**Art. 423. Self-defense.** Anyone who acts in self-defense, repelling a direct and unlawful attack on his own or another person's interest, is not liable for any damage caused to the attacker.

**Art. 424. Extreme necessity.** Anyone who destroys or damages another person's thing or kills or wounds an animal belonging to another person in order to avert danger threatening directly from the thing or animal to himself or to other persons is not liable for resulting damage if he did not cause the danger himself and the danger could not have been otherwise prevented and if the interest saved is obviously more important than the interest violated.

**Art. 425. Insanity.**

§ 1. A person who, for any reason, is in a condition which precludes conscious or free decision-making and expression of will is not liable for damage caused in such a condition.

§ 2. However, anyone whose mental functions are distorted due to the use of intoxicating beverages or similar substances is obliged to remedy the damage unless the distortion was not due to a fault on that person's part.

**Art. 426. Age.** A minor under thirteen years of age is not liable for damage caused.

**Art. 427. Fault in supervision.** Anyone who, under the law or a contract, is obliged to supervise a person who cannot be held accountable due to his age, or his mental or physical condition is obliged to remedy any damage caused by this person unless he fulfilled the supervision obligation or unless the damage would also have arisen even with supervision being exercised with due care. This provision also applies to persons who, without a legal or contractual obligation, take permanent care of a person who cannot be held accountable due to his age, or his mental or physical condition.

**Art. 428. No obligors.** If a person causing damage is not liable for the damage due to his age, or his mental or physical condition and there are no persons obliged to supervise him or when remedy of damage cannot be obtained from them, the aggrieved party may demand full or partial remedy of damage directly from the perpetrator if it follows from the circumstances, and especially from a comparison of the financial condition of the aggrieved party and that of the perpetrator, that the principles of community life so require.

**Art. 429. Fault in selection.** Anyone who entrusts an act to another person is liable for any damage caused by the perpetrator when performing the act unless he was not at fault when choosing that person or he entrusted the act to a person, enterprise or establishment which performs such acts within the scope of its professional activity.

**Art. 430. Supervisor.** Anyone who, on his own account, entrusts an act to a person who, while performing the act, is under his management and is obliged to follow his instructions is liable for any damage caused due to a fault on that person's part when performing the act.

**Art. 431. Animals.**

§ 1. Anyone who keeps or uses an animal is obliged to remedy any damage the animal causes irrespective of whether it was under his supervision, or had strayed or run away, unless neither he nor a person for whom he is responsible is at fault.

§ 2. Even if a person who keeps or uses an animal is not responsible for it in accordance with the provisions of the preceding paragraph, the aggrieved party may demand full or partial remedy of damage from him if it follows from the circumstances, and especially from a comparison of the financial condition of the aggrieved party and that of the other person, that the principles of community life so require.

**Art. 432. Self-assistance.**

§ 1. A possessor of land may impound someone else's animal which causes damage on the land if impounding is necessary to secure claims for remedy of damage.

§ 2. The possessor of land obtains a statutory pledge on the impounded animal to secure the remedy of damage due to him and the costs of feeding and keeping the animal.

§ 3. *(deleted)*

**Art. 433. Occupier of premises.** An occupier of premises is liable for any damage caused by ejection, effusion or falling of any object from the premises unless the damage is due to force majeure or solely to a fault on the part of the aggrieved party or a third party for whom the occupier of the premises is not responsible and whose actions he could not have prevented.

**Art. 434. Possessor of a structure.** An owner-like possessor of a structure is liable for any damage caused by the collapse of the structure or the detachment of any part thereof unless the collapse or detachment is not the result of either a failure to maintain the structure in a proper condition or a construction defect.

**Art. 435. Person running an enterprise.**

§ 1. A person who runs on his own account an enterprise or an establishment set in motion by natural forces (steam, gas, electricity, liquid fuels, etc.) is liable for any personal or property damage caused by the operation of the enterprise or the establishment unless the damage is due to force majeure or solely to a fault on the part of the aggrieved party or a third party for whom he is not responsible.

§ 2. The above provision applies accordingly to enterprises or establishments manufacturing or handling explosives.

**Art. 436. Vehicle possessor.**

§ 1. The liability provided for in the preceding article is also borne by an owner-like possessor of a vehicle propelled by natural forces. However, if the owner-like possessor has given his vehicle over for dependent possession, the liability is borne by the dependent possessor.

§ 2. In the event of a collision of vehicles propelled by natural forces the said persons may claim from each other remedy of damage suffered only on general terms. Those persons are also liable only on general terms for any damage caused to persons they transport out of courtesy.

**Art. 437. No exclusion of liability.** The liability referred to in the two preceding articles cannot be excluded or limited in advance.

**Art. 438. Damage to another person's interest.** Anyone who, in order to avert damage threatening another person or in order to avert a common danger, compulsorily or even voluntarily suffers financial damage may demand remedy of the losses suffered in the appropriate proportion from the persons who benefited therefrom.

**Art. 439. Preventing damage.** Anyone who, as a result of another person's behavior, especially due to a lack of proper supervision of the operations of an enterprise or establishment run by that person or of the condition of a building or other facility in his possession, is directly threatened by damage may demand that the person undertake the measures necessary to avert the imminent danger and, if needed, that he give appropriate security.

**Art. 440. Curb on compensation.** In relations between natural persons, the extent of the obligation to remedy any damage may be limited according to the circumstances if, due to the financial condition of the aggrieved party or the person liable for the damage, the principles of community life so require.

**Art. 441. Joint and several liability.**

§ 1. If several persons are liable for damage caused by tort, their liability is joint and several.

§ 2. If damage results from an action or omission of several persons, the one who remedies the damage may demand that the other persons reimburse a relevant part, depending on the circumstances, and especially on the fault of a given person and on the extent to which he contributed to the damage arising.

§ 3. Anyone who remedies damage for which he is liable despite lack of fault has a recourse claim against the perpetrator if the damage was caused due to a fault on the perpetrator's part.

**Art. 442** *(repealed)*

**Art. 442<sup>1</sup>. Statute of limitations.**

§ 1. A claim for remedying damage caused by tort is barred by the statute of limitations three years after the day on which the aggrieved party learns of the damage and of the person obliged to remedy it. However, this period cannot be longer than ten years from the day on which the event causing the damage occurs.

§ 2. If the damage results from a crime or an offense, the claim for remedying the damage is barred by the statute of limitations twenty years after the crime is committed regardless of when the aggrieved party learns of the damage and of the person obliged to remedy it.

§ 3. In the event of personal injury, the limitations period cannot end earlier than three years after the day on which the aggrieved party learns of the damage and of the person obliged to remedy it.

§ 4. The limitations period for claims of a minor for remedy of personal injury cannot end earlier than two years after the minor attains majority.

**Art. 443. Joinder of claims.** The circumstance that an action or omission which causes damage constitutes non-performance or improper performance of an earlier obligation does not preclude a claim for remedy of damage based on tort unless something else follows from the substance of the earlier obligation.

**Art. 444. Personal injury.**

§ 1. In the event of bodily injury or health disorder, remedy of damage includes all resulting costs. On the aggrieved party's demand, the person obliged to remedy the damage should pay in advance the sum necessary for medical costs and if the aggrieved party becomes disabled also the sum needed to train him for another occupation.

§ 2. If the aggrieved party becomes completely or partially incapable of working or if his needs have increased or his future perspectives have diminished, he may demand an appropriate annuity from the person obliged to remedy the damage.

§ 3. If, at the time the judgment is passed, the damage cannot be precisely assessed, a temporary annuity may be awarded to the aggrieved party.

**Art. 445. Monetary recompense.**

§ 1. In the instances referred to in the preceding article, the court may award an appropriate sum to the aggrieved party as monetary recompense for the harm suffered.

§ 2. The above provision also applies in the case of deprivation of freedom and in the case where a person is induced using deceit, violence or abuse of a dependence relationship to submit to an illicit sexual act.

§ 3. A claim for recompense passes to the heirs only if it has been acknowledged in writing or if the court action was brought when the aggrieved party was still alive.

**Art. 446. Death of an aggrieved party.**

§ 1. If, as a result of bodily injury or health disorder, the aggrieved party dies, the person obliged to remedy the damage should reimburse the medical costs and the funeral costs to the person who incurs them.

§ 2. A person towards whom the deceased had a statutory maintenance obligation may demand an annuity from the person obliged to remedy the damage assessed in accordance with the aggrieved party's needs and the earning and financial possibilities the deceased would have had throughout the likely duration of the maintenance obligation. This annuity may be claimed by other persons related to the deceased to whom the latter voluntarily and permanently provided means of subsistence if it follows from the circumstances that the principles of community life so require.

§ 3. The court may also award appropriate compensation to the closest members of the deceased's family if as a result of his death their living standard has deteriorated significantly.

§ 4. The court may also award an appropriate sum to the closest members of the deceased's family as monetary recompense for the harm suffered.

**Art. 446<sup>1</sup>. Prenatal damage.** At birth, a child may demand that damage suffered before birth be remedied.

**Art. 447. Annuity capitalization.** The court may, for good cause and at the aggrieved party's demand, award one-off compensation to the aggrieved party, instead of an annuity or part thereof. This applies especially to the case where the aggrieved party has become disabled, and the one-off compensation will help him take up a new occupation.

**Art. 448. Infringement of personal interests.** In the event of infringement of one's personal interests the court may award to the person whose interests have been infringed an appropriate amount as monetary recompense for the harm suffered or may, at his demand, award an appropriate amount of money to be paid for a social cause chosen by him, irrespective of other means necessary to remove the effects of the infringement. Article 445 § 3 applies.

**Art. 449. No transfer of claims.** The claims provided for in Articles 444-448 cannot be disposed of unless they are already due and payable and have been recognized in writing or awarded in a final and non-revisable court decision.

## Tytuł VI<sup>1</sup>. Liability for Damage Caused by a Hazardous Product.

**Art. 449<sup>1</sup>. Manufacturer's risk.**

§ 1. Anyone who, within the scope of his business activity, manufactures (manufacturer) a hazardous product is liable for damage caused to any person by the product.

§ 2. A product means a movable even if it is attached to another thing. A product also means animals and electricity.

§ 3. A product is hazardous if it does not guarantee the safety that could be expected based on normal use of the product. Circumstances at the time the product is put into circulation, and especially the manner in which the product is presented on the market and the information provided to the consumer regarding product properties, decide whether the product is hazardous. A product cannot be deemed unsafe only because a similar improved product is put into circulation at a later time.

**Art. 449<sup>2</sup>. Damage to property.** A manufacturer is liable for damage to property only if the thing destroyed or damaged is considered a thing which is usually intended for personal use and the aggrieved party primarily used it for this purpose.

**Art. 449<sup>3</sup>. Releasing circumstances.**

§ 1. A manufacturer is not liable for damage caused by a hazardous product if it did not put the product into circulation or if the product was put into circulation outside the scope of its business activity.

§ 2. A manufacturer is not liable if the properties of a hazardous product are revealed after the product is put into circulation unless they are due to an element inherent in the product. Neither is the manufacturer liable if the hazardous properties of the product could not have been foreseen based on scientific and technological conditions at the time the product was put into circulation or if the properties resulted from the application of legal regulations.

**Art. 449<sup>4</sup>. Presumptions.** A hazardous product which causes damage is presumed to have been manufactured and put into circulation within the scope of the manufacturer's business activity.

**Art. 449<sup>5</sup>. Entities liable.**

§ 1. A manufacturer of materials, raw materials or a constituent part of a product bears the same liability as the manufacturer unless the sole cause of the damage was the defective construction of the product or the manufacturer's instructions.

§ 2. Anyone who, by placing his name, trademark or other distinguishing mark, purports to be the manufacturer bears the same liability as the manufacturer. The same liability is borne by anyone who introduces a product of foreign origin to domestic trade within the scope of its business activity (importer).

§ 3. The manufacturer and the persons mentioned in the preceding paragraphs bear joint and several liability.

§ 4. If the manufacturer or the person referred to in § 2 is unknown, liability is borne by the person who disposed of the hazardous product within the scope of its business activity unless he provides the aggrieved party with the name and address of the manufacturer or the person set forth in the first sentence of § 2, and in the case of an

imported product, the name and address of the importer, within one month of being notified of the damage.

§ 5. If the transferor of the product cannot indicate the manufacturer or the persons set forth in §4, he is released from liability by indicating the person from whom he acquired the product.

**Art. 449<sup>6</sup>. Third party tort.** If a third party is also liable for damage caused by a hazardous product, this person is jointly and severally liable with the persons set forth in the preceding articles. The provisions of Article 441 § 2 and 3 apply accordingly.

**Art. 449<sup>7</sup>. Extent of compensation.**

§ 1. Compensation for damage to property does not include damage to the product itself or the benefits which the aggrieved party could have gained in connection with its use.

§ 2. Compensation under Article 449<sup>1</sup> is not due if the damage to property does not exceed the equivalent of EUR 500.

**Art. 449<sup>8</sup>. Claims barred by statute of limitations.** A claim for remedying damage caused by a hazardous product is barred by the statute of limitations three years after the day on which the aggrieved party learns or, having used due care, could have learned of the damage and of the person obliged to remedy the damage. In every case, however, the claim becomes barred by the statute of limitations ten years after the product is put into circulation.

**Art. 449<sup>9</sup>. No exclusions.** Liability for damage caused by a hazardous product cannot be excluded or limited.

**Art. 449<sup>10</sup>. Joinder of claims.** The provisions on liability for damage caused by a hazardous product do not exclude liability for damage on general terms, for damage arising from non-performance or improper performance of an obligation or liability under implied warranty for defects and quality warranty.

**Art. 449<sup>11</sup>. Contractual clauses.** The liability set forth in the provisions of this title cannot be excluded or limited by way of a contract or by choosing a foreign jurisdiction.

## Tytuł VII. Performance of Obligations and Effects of Non-performance.

### Dział I. Performance of Obligations..

**Art. 450. Partial performance.** A creditor cannot refuse to accept a partial performance even if his whole claim is already due and payable unless accepting the partial performance violates his justified interest.

**Art. 451. Crediting of payment.**

§ 1. A debtor who owes several debts of the same kind to one creditor may, when making the performance, indicate which debt he wishes to satisfy. However, the creditor may credit whatever is due under a given debt first of all against overdue incidental charges related to the debt and the overdue principal sum.

§ 2. If a debtor does not indicate which of the several debts he wishes to satisfy, and accepts a receipt on which the creditor has credited the performance against one of those debts, the debtor cannot then demand that the payment be credited against another debt.

§ 3. In the absence of a debtor's or creditor's declaration, a performance made is credited primarily against a due and payable debt and if several debts are due and payable, against the one which is the longest overdue.

**Art. 452. Performance to a person not entitled.** If a performance is made to a person who is not entitled to accept it, and acceptance of the performance is not confirmed by the creditor, the debtor is released to the extent to which the creditor benefited from the performance. This provision applies accordingly if the performance is made to a creditor who is incapable of accepting it.

**Art. 453. Substitute performance.** If a debtor, in order to be released from an obligation, makes, with the creditor's consent, a different performance, the obligation is extinguished. However, if the object of the performance is defective, the debtor is liable under implied warranty in accordance with the provisions on implied sales warranty.

**Art. 454. Place of performance.**

§ 1. If the place of the performance is not specified and does not follow from the nature of the obligation, the performance should be made in the place where, at the time the obligation arises, the debtor resides or has its registered office. However, a monetary performance should be made in the creditor's place of residence or registered office at the moment of performance; if the creditor changes his place of residence or registered office after the obligation has arisen, he will bear the extra remittance cost caused by the change.

§ 2. If an obligation is connected with the debtor's or the creditor's enterprise, the performance is made in the place of the enterprise's registered office.

**Art. 455. Time.** If the time for making the performance is not specified and does not follow from the nature of the obligation, the performance should be made immediately upon the debtor being called on to make the performance.

**Art. 456. Partial performance.** If the parties stipulate in a contract that a performance will be made in parts over a certain time but fail to specify the size of each partial performance or the time in which each of them is to be made, the creditor may, by making a declaration to the debtor in due time, specify both the size of each partial performance and the time in which each of them is to be made, taking into account, however, the debtor's possibilities and the manner of performance.

**Art. 457. Stipulation of time to the debtor's benefit.** The time for a performance specified by a legal act is deemed, in case of doubt, as stipulated to the benefit of the debtor.

**Art. 458. Immediate maturity.** If a debtor becomes insolvent or if, due to circumstances for which he is liable, the security for the claims is considerably reduced, the creditor may demand that the performance be made

regardless of the stipulated period.

**Art. 459. Physical count.**

§ 1. A person obliged to hand over a set of things or assets of an estate or to provide information on the set of things or the assets of the estate should provide the creditor with a list of the things comprising the set or a list of the elements comprising the assets of the estate.

§ 2. If there is reasonable cause to believe that the list provided is not reliable or precise, the creditor may demand that the debtor represent before a court that he drew up the list to the best of his knowledge.

**Art. 460. Management account.**

§ 1. A person obliged to submit a management account should provide the creditor with a written declaration of revenues and expenses together with the required evidence.

§ 2. If there is reasonable cause to believe that the revenue declaration provided is not reliable or precise, the creditor may demand that the debtor represent before a court that he drew up the declaration to the best of his knowledge.

**Art. 461. Retention right.**

§ 1. A person obliged to hand over a thing belonging to another person may retain it until his claims for reimbursement of outlays on the thing and claims for remedy of damage caused by the thing are satisfied or secured (retention right).

§ 2. The above provision does not apply if the obligation to hand over the thing results from tort or when the thing to be returned has been rented, leased or lent for use.

§ 3. *(deleted)*

**Art. 462. Receipt.**

§ 1. A debtor making a performance may demand a receipt from the creditor.

§ 2. A debtor may demand the receipt in a special form if it is in his interest.

§ 3. The costs of the receipt are borne by the debtor unless otherwise agreed.

**Art. 463. Refusal.** If a creditor refuses to give a receipt, the debtor may withhold the performance or place the object of the performance in court deposit.

**Art. 464. Performance to a person holding a receipt.** Performance made to a person holding a receipt issued by a creditor releases the debtor unless it has been stipulated that the performance is to be made to the creditor in person or unless the debtor acted in bad faith.

**Art. 465. Document return.**

§ 1. If there is a document confirming an obligation, the debtor may, when making the performance, demand that the document be returned. If, however, the creditor has an interest in retaining the document, especially when the performance was made only partially, the debtor may demand that the appropriate mention be made on the document.

§ 2. If the document is lost, the debtor may, regardless of the receipt, demand a written declaration from the creditor that the document has been lost.

§ 3. If the creditor refuses to return the document or to make an appropriate mention thereon or to give a written declaration that the document has been lost, the debtor may withhold making the performance or place the object of the performance in court deposit.

**Art. 466. Presumption from receipt.** The presumption that incidental charges have been paid follows from a receipt for payment of the debt. The presumption follows from a receipt for a periodical performance that periodical performances due and payable earlier have also been made.

**Art. 467. Placing in court deposit.** Apart from instances provided for in other regulations, a debtor may place the object of the performance in court deposit if:

- 1) due to circumstances for which he is not liable he does not know who the creditor is or the creditor's place of residence or registered office;
- 2) the creditor does not have full capacity for legal acts or a representative authorized to accept the performance;
- 3) there is a dispute over who the creditor is;
- 4) due to other circumstances concerning the identity of the creditor, the performance cannot be made.

**Art. 468. Notification.**

§ 1. The debtor should immediately notify the creditor that the object of the performance has been placed in court deposit unless the notification encounters obstacles difficult to overcome. The notification should be in writing.

§ 2. If the above obligation is not performed, the debtor is liable for any resulting damage.

**Art. 469. Collection.**

§ 1. Until the creditor demands that the object of the performance be released from the court deposit, the debtor may collect the deposited object.

§ 2. If the debtor collects the object of the performance from the court deposit, the deposit placing is deemed cancelled.

**Art. 470. Effects.** Valid placing in court deposit has the same effects as a performance made and obliges the creditor to reimburse the deposit-placing costs to the debtor.

## **Dział II. Effects of Non-Performance of Obligations.**

**Art. 471. Debtor's liability for damages.** A debtor is obliged to remedy any damage arising from non-performance or improper performance of an obligation unless the non-performance or improper performance is due to circumstances for which the debtor is not liable.

**Art. 472. Lack of due care.** Unless a special provision of the law or a legal act provides otherwise, a debtor is liable for failure to use due care.

**Art. 473. Contract on liability.**

§ 1. A debtor may, in a contract, assume liability for non-performance or improper performance of an obligation due to specified circumstances for which, under the law, he is not liable.

§ 2. A stipulation that a debtor will not be liable for damage which he may cause to a creditor intentionally is invalid.

**Art. 474. Liability for other persons.** A debtor is liable, as for his own actions or omissions, for the actions and omissions of persons with the assistance of whom he performs the obligation, and of the persons to whom he entrusts the performance of the obligation. The above provision also applies where the obligation is performed by the debtor's statutory representative.

**Art. 475. Consequential performance impossibility.**

§ 1. If a performance becomes impossible due to circumstances for which the debtor is not liable, the obligation expires.

§ 2. If the thing which is the object of the performance is disposed of, lost or damaged, the debtor is obliged to hand over all that he received in exchange for the thing or as remedy of damage.

**Art. 476. Debtor's delay; default.** A debtor is in default if he does not make the performance on time and, if the time limit is not specified, if he does not make the performance immediately at the creditor's demand. This does not apply where the delay in making the performance is due to circumstances for which the debtor is not liable.

**Art. 477. Effects of default.**

§ 1. If the debtor is in default, the creditor may demand, independently of the performance, that any damage caused by the default be remedied.

§ 2. If, however, due to the debtor's default, the performance has become meaningless to the creditor either completely or to a major extent, the creditor may refuse to accept the performance and demand remedy of any damage caused by the non-performance.

**Art. 478. Mixed case.** If the object of the performance is goods in specie, a defaulting debtor is liable for the loss of or damage to the object of the performance unless the loss or damage would also have occurred had the performance been made on time.

**Art. 479. Purchase at debtor's cost.** If the object of the performance is a specified quantity of fungibles, a creditor may, in the event of the debtor's default, acquire, at the debtor's cost, the same quantity of fungibles or demand that the debtor pay their value while retaining in both cases a claim for remedy of any damage caused by the default.

**Art. 480. Substitute performance of acts.**

§ 1. If a debtor is in default in performing an obligation to act, the creditor may demand authorization from the court to perform the act at the debtor's cost, while retaining a claim for remedy of damage.

§ 2. If the performance consists in refraining from acting, the creditor may demand authorization from the court to remove, at the debtor's cost all that the debtor has done contrary to the obligation, while retaining a claim for remedy of damage.

§ 3. In emergencies, the creditor may perform an act without the court's authorization, at the debtor's cost, or remove all that the debtor has done contrary to the obligation, at the debtor's cost, while retaining a claim for remedy of damage.

**Art. 481. Delayed monetary performances.**

§ 1. If a debtor is late with a monetary performance, the creditor may demand interest for the period of delay even if he has not suffered any damage and even if the delay was due to circumstances for which the debtor is not liable.

§ 2. If the interest rate for delay is not fixed in advance, statutory interest is due. However, if the claim bears interest at a rate higher than the statutory rate, the creditor may demand interest for the delay at the higher rate.

§ 3. If the debtor is in default, the creditor may also demand that the damage be remedied on general terms.

**Art. 482. Interest on overdue interest.**

§ 1. Interest for delay may be demanded on overdue interest only from the moment a court action is brought for the interest unless, after the arrears arose, the parties agreed to add the overdue interest to the principal debt.

§ 2. The preceding paragraph does not apply to long-term loans extended by lending institutions.

**Art. 483. Liquidated damages.**

§ 1. A contract may stipulate that damage arising from non-performance or improper performance of a non-monetary obligation will be remedied by a specific sum (liquidated damages) being paid.

§ 2. A debtor cannot, without the creditor's consent, be released from the obligation by paying liquidated damages.

**Art. 484. Amount.**

§ 1. In the event of non-performance or improper performance of an obligation, liquidated damages are due to the creditor in the stipulated amount regardless of the value of the damage suffered. A demand for compensation in excess of the stipulated liquidated damages is not admissible unless the parties have decided otherwise.

§ 2. If the greater part of the obligation has been performed, the debtor may demand that the liquidated damages be reduced; the same applies to the case where the liquidated damages are grossly overstated.

**Art. 485. Statutory penalty.** If a special provision states that, in the event of non-performance or improper performance of a non-monetary obligation, the debtor is, even without a contractual stipulation, obliged to pay the creditor a specific amount, the provisions on liquidated damages apply accordingly.

**Art. 486. Creditor's default.**

§ 1. If the creditor is in default, the debtor may demand that any resulting damage be remedied; he may also place the object of the performance in court deposit.

§ 2. A creditor is in default if, without good cause, he either avoids accepting a performance offered or refuses to perform an act without which the performance cannot be made, or represents to the debtor that he will not accept the performance.

### **Dział III. Performance and Effects of Non-Performance of Obligations under Reciprocal Contracts.**

#### **Art. 487. Concept.**

§ 1. The performance and effects of non-performance of obligations under reciprocal contracts are governed by the provisions of the preceding sections of this title unless the provisions of this section provide otherwise.

§ 2. A contract is reciprocal when both parties agree to create an obligation in such a way that the performance of one party corresponds to the performance of the other party.

#### **Art. 488. Simultaneous performance.**

§ 1. Performances which are the object of obligations under reciprocal contracts (reciprocal performances) should be made simultaneously unless it follows from the contract, the law, a decision of a court or other competent authority that one of the parties is obliged to make an earlier performance.

§ 2. If reciprocal performances are to be made simultaneously, each party may withhold the performance until the other party offers the reciprocal performance.

#### **Art. 489. (deleted).**

#### **Art. 490. Withholding performance.**

§ 1. If one of the parties is obliged to make a reciprocal performance earlier, and the performance by the other party is doubtful due to its financial condition, the party obliged to make the earlier performance may withhold the same until the other party offers the reciprocal performance or provides security.

§ 2. A party which, when executing the contract, was aware of the bad financial condition of the other party does not have the above rights.

§ 3. *(deleted)*

#### **Art. 491. Default.**

§ 1. If one of the parties defaults in performance of an obligation under a reciprocal contract, the other party may set an additional period for its performance with the sanction that if the specified period passes to no effect, it will be entitled to rescind the contract. It may also, either without setting an additional period or after the set period passes to no effect, demand that the obligation be performed and that any damage resulting from the default be remedied.

§ 2. If the performances of the two parties are divisible, and one of the parties defaults only in part of the performance, the right to rescind the contract vested in the other party is limited, at its discretion, either to that part, or to the whole remaining part of the performance not made. That party may also rescind the entire contract if partial performance were meaningless to it due to the nature of the obligation or due to the purpose of the contract intended by that party and known to the defaulting party.

**Art. 492. Contractual rescission right.** If the right to rescind a reciprocal contract is stipulated for non-performance of an obligation within a strictly specified period, the entitled party may, if the other party defaults, rescind the contract without setting an additional period. The same applies where performance of an obligation by one of the parties after the period set would be meaningless to the other party due to the nature of the obligation or due to the purpose of the contract intended by it and known to the defaulting party.

#### **Art. 493. Impossibility of one of the performances.**

§ 1. If one of the reciprocal performances becomes impossible due to circumstances for which the obliged party is responsible, the other party may, at its discretion, either demand that any damage caused by the nonperformance of the obligation be remedied or rescind the contract.

§ 2. If a performance of one party is only partially impossible, the other party may rescind the contract if partial performance were meaningless to it due to the nature of the obligation or due to the purpose of the contract intended by that party and known to the party whose performance has become partially impossible.

**Art. 494. Obligations of the rescinding party.** The party rescinding a reciprocal contract is obliged to return to the other party all that it received from the latter under the contract; it may demand that not only all that it provided be returned but also that any damage caused by non-performance of the obligation be remedied.

#### **Art. 495. Non-culpable impossibility.**

§ 1. If one of the reciprocal performances becomes impossible due to circumstances for which neither party is liable, the party which was to make the performance cannot demand the reciprocal performance, and, if it had already received it, it is obliged to return it according to the provisions on unjust enrichment.

§ 2. If the performance of one of the parties becomes only partially impossible, that party loses the right to the appropriate part of the reciprocal performance. However, the other party may rescind the contract if partial performance were meaningless to it due to the nature of the obligation or due to the purpose of the contract intended by that party and known to the party whose performance has become partially impossible.

**Art. 496. Retention right.** If, as a result of the contract being rescinded, the parties are to return reciprocal performances, each of them has a retention right until the other party offers return of the performance received or secures the claim for return.

**Art. 497. Expansion.** The provision of the preceding article applies accordingly to dissolution or invalidity of a reciprocal contract.

### **Tytuł VIII. Set-off, Novation, Release from Debt.**

**Art. 498. Set-off premises.**

§ 1. If two persons are each other's debtor and creditor, each of them may set off his claim against the other party's claim if the object of the two claims is money or fungibles of the same quality and both claims are due and payable and may be pursued in court or before another state authority.

§ 2. As a result of the set-off, both claims are cancelled up to the amount of the lesser claim.

**Art. 499. Manner; effects.** A set-off is made by one party making a declaration to the other party. The declaration has retroactive effect from the moment the set-off became possible.

**Art. 500. Different places of performance.** If the subject of a set-off is claims with different places of performance, the party taking advantage of the set-off possibility is obliged to pay the other party the sum of money needed to cover any related losses.

**Art. 501. Deferral.** Deferral of performance of an obligation by the court or free of charge by the creditor does not preclude set-off.

**Art. 502. Statute of limitations.** A claim barred by the statute of limitations may be set off if, at the time the set-off became possible, the claim was not yet barred by the statute of limitations.

**Art. 503. Crediting payment.** The provisions on crediting payments apply accordingly to set-off.

**Art. 504. Set-off of attached claims.** The attachment of a claim by a third party precludes extinction of the claim by set-off only if the debtor becomes a creditor of its creditor after the attachment or the debtor's claim becomes due and payable thereafter, and after the attached claim becomes due and payable.

**Art. 505. No set-off.** The following cannot be cancelled by set-off:

- 1) claims that cannot be attached;
- 2) claims for the provision of means of subsistence;
- 3) claims resulting from tort;
- 4) claims precluded from set-off under specific regulations.

**Art. 506. Novation.**

§ 1. If, for the purpose of cancelling an obligation, a debtor commits, with the creditor's consent, to make another performance or even the same performance but on different legal grounds, the existing obligation expires (novation).

§ 2. In case of doubt, it is deemed that a change in the substance of an existing obligation does not constitute novation. This applies especially where the creditor receives a promissory note or a cheque from the debtor.

**Art. 507. Security in the case of novation.** If a claim is secured by suretyship or a limited real right given by a third party, the suretyship or the limited real right expires upon novation unless the surety or the third party consents to the security being continued.

**Art. 508. Release from debt.** An obligation is extinguished when the creditor releases the debtor from the debt and the debtor accepts the release.

## Tytuł IX. Change of Creditor or Debtor.

### Dział I. Change of Creditor.

**Art. 509. Assignment.**

§ 1. A creditor can, without the debtor's consent, transfer a claim to a third party (assignment) unless the same is contrary to the law, a contractual stipulation or the nature of the obligation.

§ 2. The assignment of a claim transfers to the assignee all the rights related to the claim, especially a claim for outstanding interest.

**Art. 510. Obliging and disposing effect; causability.**

§ 1. A contract of sale, exchange, donation or other contract creating an obligation to transfer a claim transfers the claim to the assignee unless a specific regulation provides otherwise or the parties decide otherwise.

§ 2. If an assignment contract is executed in performance of an obligation arising from an earlier contract imposing an obligation to assign the claim, from legacy, from unjust enrichment or another event, the validity of the assignment contract depends on the existence of the obligation.

**Art. 511. Form.** If a claim is stated in writing, its assignment should also be stated in writing.

**Art. 512. Payment to assignor.** Until the assignor informs the debtor of the assignment, performance made to the previous creditor is effective towards the assignee unless, at the time the performance was made, the debtor knew of the assignment. This provision applies accordingly to other legal acts between a debtor and a previous creditor.

**Art. 513. Debtor's defenses.**

§ 1. A debtor is entitled to all defenses against the assignee of the claims which it had against the assignor at the time it learned of the assignment.

§ 2. A debtor can set off any claim it may have against the assignor against the assigned claim even though it became due and payable only after the debtor received notice of the assignment. This does not, however, apply where the claim against the assignor became due and payable after the claim which is the subject of the assignment.

**Art. 514. Stipulation of debtor's consent.** If a claim is stated in writing, a contractual stipulation that assignment cannot be made without the debtor's consent is effective towards the assignee only when the document contains a mention of the stipulation unless the assignee knew of the stipulation at the time of assignment.

**Art. 515. Assignor's defenses.** If a debtor who receives written notice of assignment from the assignor makes a performance to the assignee of the claim, the assignor may raise against the debtor the defense of invalidity of the assignment or defenses resulting from its legal basis only if, at the time the performance was made, the defenses were known to the debtor. This provision applies accordingly to other legal acts between a debtor and a claim assignee.

**Art. 516. Assignor's liability.** The assignor of a claim is liable towards the assignee for being entitled to the claim. The assignor is liable for the debtor's solvency at the time of assignment only to the extent that he accepts such liability.

**Art. 517. No assignment.**

§ 1. The provisions on assignment do not apply to claims related to bearer instruments or to instruments transferrable by endorsement.

§ 2. A claim under bearer instrument is assigned by the ownership of the instrument being transferred. For the ownership of the instrument to be transferred, the instrument needs to be handed over.

**Art. 518. Subrogation.**

§ 1. A third party who pays off a creditor acquires the paid-off claim up to the amount of the payment made if:

- 1) he pays another person's debt for which he is liable personally or with certain property items;
- 2) he has a right over which the paid-off claim takes priority of satisfaction;
- 3) he acts with the debtor's consent in order to assume the creditor's rights; the debtor's consent should be given in writing; otherwise it will be invalid;
- 4) specific regulations so provide.

§ 2. In the above instances, a creditor cannot refuse to accept a performance which is already due and payable.

§ 3. If a creditor is paid off by a third party only partially, he has priority of satisfaction with regard to the remaining part over a claim transferred to the third party as a result of partial payment.

## **Dział II. Change of Debtor.**

**Art. 519. Debt take-over.**

§ 1. A third party may take the place of a debtor, who is then released from the debt (debt take-over).

§ 2. A debt may be taken over:

- 1) by way of a contract between the creditor and a third party with the debtor's consent; the debtor's declaration may be made to either party;
- 2) by way of a contract between the debtor and a third party with the creditor's consent; the creditor's declaration may be made to either party; it is ineffective if the creditor did not know that the person assuming the debt was insolvent.

**Art. 520. Time limit for giving consent.** Each party who executes a debt take-over contract may give the person whose consent is required for the take-over to be effective an appropriate time limit to give his consent; the passing of the time limit to no effect is equivalent to refusal of consent.

**Art. 521. Refusal of consent.**

§ 1. If the effectiveness of a debt take-over contract depends on the debtor's consent and the debtor refuses his consent, the contract is deemed not executed.

§ 2. If the effectiveness of a debt take-over contract depends on the creditor's consent and the creditor refuses his consent, the party which, according to the contract, was to take over the debt is liable towards the debtor for the creditor not demanding the performance from the debtor.

**Art. 522. Form.** A debt take-over contract should be executed in writing; otherwise it is invalid. The same applies to the creditor's consent to a debt being taken over.

**Art. 523. Presumption of debt take-over.** If, in a contract on the transfer of real estate ownership, the transferee commits to release the transferor from debts connected with such ownership, it is deemed, in case of doubt, that the parties have executed a contract on the take-over of those debts by the transferee.

**Art. 524. Defenses of the person taking over a debt.**

§ 1. A person taking over a debt may raise all the defenses against the creditor that the former debtor had, save for the defense of set-off against the claims of the former debtor.

§ 2. A person taking over a debt cannot raise against the creditor defenses arising from a legal relationship existing between him and the former debtor which constitutes the legal basis for the debt take-over; this does not, however, apply to defenses which were known to the creditor.

**Art. 525. Security.** If a claim is secured by suretyship or a limited real right established by a third party, the suretyship or limited real right is extinguished at the time the debt is taken over unless the surety or third party consents to the security being continued.

**Art. 526 (repealed)**

## **Tytuł X. Protection of Creditor in the Case of Debtor Insolvency.**

**Art. 527. Premises.**

§ 1. If, as a result of a legal act performed by a debtor to the detriment of creditors, a third party gains a financial benefit, each of the creditors may demand that the said act be declared ineffective with respect to him, if the debtor acted knowingly to the creditors' detriment, and the third party knew or, having used due care, could have learned of it.

§ 2. A debtor's legal act is performed to the creditors' detriment if, as a result of such act, the debtor becomes insolvent or becomes insolvent to a greater degree than he was before performing the act.

§ 3. If, as a result of a debtor's legal act performed to the creditors' detriment, a financial benefit is gained by a person who is in a close relationship with the debtor, it is presumed that such person knew that the debtor had acted knowingly to the creditors' detriment.

§ 4. If, as a result of a debtor's legal act performed to the creditors' detriment, a financial benefit is gained by an entrepreneur having permanent economic relations with the debtor, it is presumed that he knew that the debtor had acted knowingly to the creditors' detriment.

**Art. 528. Free-of-charge act.** If, as a result of a debtor's legal act performed to the creditors' detriment, a third party gains a financial benefit free of charge, the creditor may demand that the act be deemed ineffective even though the person did not know and, having used due care, could not have learned that the debtor had acted knowingly to the creditors' detriment.

**Art. 529. Presumption of detriment.** If, at the time of a donation, a debtor is insolvent, it is presumed that he is acting knowingly to the creditors' detriment. The same applies where a debtor becomes insolvent by making the donation.

**Art. 530. Protection of future creditors.** The provisions of the preceding articles apply accordingly where a debtor acts with the intention to harm future creditors. If, however, a third party gains a financial benefit against payment, the creditor may demand that the act be deemed ineffective only if the third party knew of the debtor's intention.

**Art. 531. Challenge procedure.**

§ 1. A debtor's legal act performed to the creditors' detriment is declared ineffective through a court action brought or a defense against the third party who gained a financial benefit from the act.

§ 2. If the third party disposes of the benefit gained, the creditor may directly sue the person to whom the disposition was made if that person knew of circumstances justifying the debtor's act being declared ineffective or if the disposition was free of charge.

**Art. 532. Claiming satisfaction.** A creditor in respect of whom a debtor's legal act has been declared ineffective may, with priority over third party creditors, claim satisfaction from property items which, as a result of the act being declared ineffective, left or did not enter the debtor's estate.

**Art. 533. Release of third party.** A third party who gains a financial benefit from a legal act performed to the creditors' detriment may be released from satisfying a claim raised by a creditor demanding that the act be declared ineffective if he satisfies the creditor or indicates to him debtor's property sufficient to satisfy the creditor.

**Art. 534. Challenge period.** A demand for a legal act performed to the creditors' detriment to be declared ineffective cannot be made after five years from the date of the act.

## Tytuł XI. Sale.

### Dział I. General Provisions.

**Art. 535. Concept.** By a sale contract, the seller commits to transfer to the buyer the ownership of a thing and to hand over the thing, and the buyer commits to collect the thing and to pay the price to the seller.

**Art. 535<sup>1</sup>. Reference.** The provisions of this section apply to consumer sales insofar as the sale is not regulated by separate provisions.

**Art. 536. Setting a price.**

§ 1. A price may be set by indicating the basis on which it is calculated.

§ 2. If it follows from the circumstances that the parties have in mind the price customary in relations of a given type, it is deemed, in case of doubt, that they mean the price at the time and place in which the thing is to be handed over to the buyer.

**Art. 537. Fixed price.**

§ 1. If, at the time and in the place of execution of the sale contract, a regulation is in force providing that only a strictly defined price (fixed price) may be paid for things of a given kind or type, that price is binding on the parties regardless of the price that they set in the contract.

§ 2. A seller who receives a price higher than a fixed price is obliged to return the difference to the buyer.

§ 3. A buyer who, according to a contract, was to have paid a price lower than a fixed price and has used up the thing or sold it for a price calculated on the basis of the agreed price is obliged to pay the fixed price only if, before using up or selling the thing, he knew the fixed price or, having used due care, could have known it. A buyer who has not used up or sold the thing may rescind the contract.

**Art. 538. Maximum price.** If, at the time and in the place of execution of a sale contract, a regulation is in force providing that a price higher than a specified price (maximum price) cannot be paid for things of a given type or kind, the buyer is not obliged to pay a higher price, and the seller who receives a higher price is obliged to return the difference to the buyer.

**Art. 539. Minimum price.** If, at the time and in the place of execution of a sale contract, a regulation is in force providing that a price lower than a specified price (minimum price) cannot be paid for things of a given type or kind, the seller who receives a lower price may claim payment of the difference.

**Art. 540. Calculated price.**

§ 1. If a competent state authority has established the manner in which the seller is to calculate the price for things of a given type or kind (calculated price), either the provisions on fixed price or the provisions on maximum price apply accordingly depending on the nature of that price.

§ 2. In the event of a dispute over how the calculated price should be calculated, the price will be set by the court.

**Art. 541. Statute of limitations.** A seller's claim for payment of the price difference and a buyer's claim for the return of the price difference resulting from the provisions on fixed price, maximum price, minimum price or calculated price become barred by the statute of limitations one year after the payment date.

**Art. 542 (deleted)**

**Art. 543. Display of things.** A public display of a thing in the place of sale with an indication of its price is deemed a sale offer.

**Art. 544. Hand-over moment.**

§ 1. If a thing sold is to be sent by the seller to a place which is not the place of performance, it is deemed, in case of doubt, that the hand-over takes place at the time the seller, in order to deliver the thing to its destination, entrusts it to a carrier engaged in transporting things of that type.

§ 2. However, the buyer is obliged to pay the price only after the thing arrives at the destination and after he has been given the opportunity to examine the thing.

**Art. 545. Manner of hand-over and collection.**

§ 1. The manner in which a thing sold is handed over and collected should guarantee its inviolability and safety; in particular, the manner in which it is packed and transported should be adequate given the nature of the thing.

§ 2. If a thing sold is sent to its destination using a carrier, the buyer is obliged to examine the consignment at the time and in the manner customary for consignments of that type; if he discovers that the thing has suffered depletion or damage in transport, he is obliged to take all the actions necessary to establish the carrier's liability.

**Art. 546. Explanations; documentation.**

§ 1. The seller is obliged to give the buyer any explanations required about the legal and actual relations concerning the thing sold and to hand over any documents in his possession concerning the thing. If the substance of a document also concerns other things, the seller is obliged to hand over a certified extract from the document.

§ 2. If required to properly use the thing in accordance with its purpose, the seller should attach a user's manual to the thing.

**Art. 547. Costs.**

§ 1. If neither the contract nor regulations setting the price state who is to bear the costs of handing over and collecting a thing, the seller will bear the costs of hand-over, especially the costs of measuring or weighing, packaging, insuring during transport, and shipping the thing, and the buyer will bear the costs of collecting the thing.

§ 2. If a thing is to be sent to a place which is not the place of performance, insurance and shipping costs will be borne by the buyer.

§ 3. Costs not listed in the preceding paragraphs will be borne by both parties equally.

**Art. 548. Transfer of benefits and burdens.**

§ 1. The benefits and burdens connected with a thing sold and the risk of accidental loss of or damage to a thing are transferred to the buyer at the time the thing is handed over.

§ 2. If the parties stipulate another moment for the transfer of benefits and burdens, it is deemed, in case of doubt, that the risk of accidental loss of or damage to a thing is transferred to the buyer at that time.

**Art. 549. Default in specification.** If the buyer has stipulated that he will specify the shape, dimensions or other properties of a thing or the date and place of hand-over, and defaults in specifying the same, the seller may either:

- 1) exercise the rights vested in a creditor in the event of a debtor's default in making a reciprocal performance; or
- 2) specify the same himself and notify the buyer thereof, setting him an appropriate period to specify the same differently; if the time limit passes to no effect, the specification made by the seller will become binding on the buyer.

**Art. 550. Exclusive sale.** If the sale contract stipulates exclusivity for the buyer either in such a way that the seller will not supply things of a given type to other persons or in such a way that the buyer will be the sole reseller of the things purchased in a designated area, the seller cannot, to the extent the exclusivity was stipulated, either directly or indirectly execute sale contracts which could violate the buyer's exclusivity.

**Art. 551. Default in collection.**

§ 1. If the buyer defaults in collecting a thing sold, the seller may place the thing in safekeeping at the cost and risk of the buyer.

§ 2. The seller may also sell a thing on the buyer's account. He should, however, first set the buyer an additional period to collect the thing unless a period cannot be set or the thing is exposed to the risk of spoiling or, for other reasons, damage could ensue. The seller is obliged to notify the buyer of the sale immediately.

**Art. 552. Default in price payment.** If the buyer defaults in paying the price for the part of things sold that has been supplied or if, due to his financial condition, it is doubtful that the price for the part of the things that is to be supplied later will be paid on time, the seller may refrain from supplying further parts of the things sold and set the buyer an appropriate period to secure payment, and after this period passes to no effect, he may rescind the contract.

**Art. 553 (deleted)**

**Art. 554. Statute of limitations.** Claims based on sale made within the scope of operations of the seller's enterprise, similar claims of craftsmen, and claims of persons running agricultural farms based on sale of agricultural or forest produce become barred by the statute of limitations after two years.

**Art. 555. Sale of energy, rights.** The provisions on the sale of things apply accordingly to the sale of energy and rights.

**Art. 555<sup>1</sup> (deleted)**

## Dział II. Implied Warranty for Defects.

### **Art. 556. Defects of things.**

§ 1. A seller is liable towards the buyer if a thing sold has a defect reducing its value or usefulness given the aim specified in the contract or arising from circumstances or from the purpose of the thing if the thing does not have the properties of which the seller has assured the buyer or if the thing was handed over to the buyer in an incomplete condition (implied warranty for physical defects).

§ 2. The seller is liable towards the buyer if the thing sold is owned by a third party or if it is encumbered with a third party right; in the event of the sale of rights, the seller is also liable for the existence of the rights (implied warranty for legal defects).

### **Art. 557. Disclaimer.**

§ 1. The seller is released from liability under implied warranty for defects if the buyer knew of the defect at the time the contract was executed.

§ 2. If the object of the sale is fungibles or things which are to be created in the future, the seller is released from liability under implied warranty for defects if the buyer knew of the defect at the time the thing was handed over.

### **Art. 558. Modification of liability.**

§ 1. The parties may broaden, limit or exclude liability under implied warranty for defects. However, in consumer contracts, limitation or exclusion of liability under implied warranty for defects is admissible only in the instances set forth in specific regulations.

§ 2. Exclusion or limitation of liability under implied warranty for defects is ineffective if the seller has deceitfully concealed a defect from the buyer.

**Art. 559. Moment at which a defect arises.** The seller is not liable under implied warranty for physical defects which arise after the risk is transferred to the buyer unless the defects result from an element inherent in the thing sold.

### **Art. 560. Rescission; price reduction.**

§ 1. If a thing sold has defects, the buyer may rescind the contract or demand a price reduction. The buyer cannot, however, rescind the contract if the seller immediately exchanges the defective thing for a thing free of defects or immediately removes the defects. This limitation does not apply if the thing has already been exchanged by the seller or repaired unless the defects are insignificant.

§ 2. If the buyer rescinds a contract due to a defect in the thing sold, the parties should return to each other any performances received, in accordance with the provisions on rescission of a reciprocal contract.

§ 3. If the buyer demands a price reduction due to a defect in the thing sold, the reduction should be in the proportion in which the value of a defect-free thing is to the thing's value calculated with account taken of the existing defects.

§ 4. If the seller makes an exchange, it also should cover the costs of the exchange borne by the buyer.

### **Art. 561. Exchange; defect removal.**

§ 1. If the object of the sale is fungibles, the buyer may demand that the same quantity of defect-free things be supplied to replace the defective things and that any damage arising from the delay be remedied.

§ 2. If the object of the sale is goods in specie, and the seller is the manufacturer of the thing, the buyer may demand that the defect be removed and to this end set the seller an appropriate period with the sanction that, when the period passes to no effect, he will rescind the contract. The seller may refuse to remove the defect if it entails excessive costs.

§ 3. The above provisions do not preclude the right to rescind the contract or to demand a price reduction.

**Art. 562. Things delivered in parts.** If a sale contract stipulates that things sold are to be supplied in parts and the seller does not, despite the buyer's demand, supply the same quantity of defect-free things to replace the defective things, the buyer may also rescind the contract with regard to the part of the things that is to be supplied later.

### **Art. 563. Complaint periods.**

§ 1. The buyer loses the rights under implied warranty for physical defects if he does not notify the seller of the defect within one month of its discovery and, when inspection of a thing is customary in the given relations, if he does not inform the seller of the defect within one month of the time when, having used due care, he could have discovered it. The Minister of Domestic Trade<sup>2)</sup> may, by way of a regulation, set shorter periods for notifying defects in foodstuffs.

§ 2. However, in the case of sale between persons carrying out business activity, rights under implied warranty for defects are lost if the buyer does not inspect the thing at the time and in the manner customary for things of that type and does not notify the seller immediately of the defect discovered and, when the defect comes to light only later, if he does not notify the seller immediately on discovery.

§ 3. To observe periods for notification of defects in a thing sold, it is sufficient to send a registered letter before the period ends.

**Art. 564. Defects concealed deceitfully.** In the instances provided for in the preceding article, rights under implied warranty for physical defects are not lost despite the buyer failing to observe the time limits for inspecting the thing and notifying the seller of the defects if the seller has deceitfully concealed the defect or has assured the buyer that there are no defects.

**Art. 565. Limited rescission right.** If, among things sold, only some are defective and can be separated from the defect-free things without damage to either party, the buyer's right to rescind the contract is limited to the defective things.

### **Art. 566. Damage.**

§ 1. If, due to a physical defect in a thing sold, the buyer rescinds the contract or demands a price reduction, he may demand that any damage suffered as a result of the defect be remedied unless the damage is due to

circumstances for which the seller is not liable. In the latter case, the buyer may demand only remedy of the damage which it suffered by executing the contract without knowing that the defect existed; in particular he may demand reimbursement of the contract execution costs, the costs of collecting, transporting, storing and insuring the thing and reimbursement of outlays made to the extent to which he did not derive any benefits from those outlays.

§ 2. The above provisions apply accordingly if the buyer demands that defect-free things be supplied to replace the defective things or that the defects be removed by the seller.

**Art. 567. Obligations of the beneficiary of implied warranty for defects.**

§ 1. If, due to a physical defect in a thing sent from another town, the buyer rescinds the contract or demands that a defect-free thing be supplied to replace the defective thing, he cannot send the thing back without first contacting the seller and he is obliged to arrange for it to be stored at the seller's cost until the seller, during the normal course of action, can dispose of the thing as he deems appropriate.

§ 2. If there is a risk of the thing deteriorating, the buyer is entitled, and when the seller's interest so requires, obliged to sell the thing using due care. This right is also vested in the buyer if the seller defaults in giving instructions or if the storage of the thing entails considerable costs or is extremely difficult; in those instances the buyer may also send the thing back to the seller at the latter's cost and risk.

§ 3. The buyer should, as far as possible, notify the seller of the intent to sell the thing; in any event, he should send a notification immediately after the sale.

**Art. 568. Periods under implied warranty for physical defects.**

§ 1. Rights under implied warranty for physical defects expire after one year, and for defects in a building, after three years from the day on which the thing is handed over to the buyer.

§ 2. The lapse of the above periods does not preclude the exercise of rights under implied warranty for defects if the seller has concealed the defect deceitfully.

§ 3. A defense under implied warranty for defects may also be raised after the above periods pass if the buyer notifies the seller of the defect before the periods pass.

**Art. 569 (deleted)**

**Art. 570. Sale of animals.** The provisions on implied warranty for physical defects with the amendments referred to in the following two articles apply to the sale of the animals listed in the Minister of Agriculture<sup>3)</sup> regulation issued in agreement with the Minister of Justice and the Minister of Food Industry<sup>4)</sup> and Purchase of Agricultural Produce.

**Art. 571. Expansion.**

§ 1. The seller of an animal is liable only for major defects and only if they come to light before the end of a specified period. Major defects and disclosure periods, as well as periods for notifying the seller of a major defect, are set forth in the Minister of Agriculture regulation issued in agreement with the competent ministers.

§ 2. The seller is liable for defects which are not deemed major only if a contract so stipulates.

§ 3. If, during the period specified in the regulation, a major defect comes to light, it is presumed that it existed at the time the animal was handed over.

**Art. 572. Expansion.**

§ 1. The Minister of Agriculture regulation issued in agreement with the competent ministers may set forth that rights under implied warranty for defects expire if the buyer does not, within the period set forth in the regulation, notify a competent state authority of the illness of the animal or does not have the sick animal examined at an appropriate medical and veterinary station.

§ 2. Rights under implied warranty for major defects expire three months from the end of the implied warranty period provided for in the Minister of Agriculture regulation issued in agreement with the competent ministers.

**Art. 572<sup>1</sup>. Legal defects.** A buyer may claim his rights under implied warranty for legal defects even though a third party has not raised claims against him regarding the thing sold.

**Art. 573. Third party claims.** A buyer against whom a third party brings claims concerning a thing sold is obliged immediately to notify the seller thereof and to call on the seller to participate in the case. If he fails to do so, and the third party obtains a court decision favorable to it, the seller is released from liability under implied warranty for legal defects insofar as his participation in the proceedings was needed to demonstrate that the third party claim was fully or partially groundless.

**Art. 574. Damage.** If, due to a legal defect in a thing sold, the buyer rescinds the contract or demands a price reduction, he may demand remedy of any damage suffered as a result of the defect unless the damage follows from circumstances for which the seller is not liable. In the latter case, the buyer may demand only remedy of damage which he suffered by executing the contract without knowing that the defect existed; in particular he may demand reimbursement of the contract execution costs, the costs of collecting, transporting, storing and insuring the thing and the reimbursement of outlays made to the extent to which he did not derive any benefits from those outlays and has not been reimbursed by a third party. He may also demand reimbursement of litigation costs.

**Art. 575. Price return.** If, due to a legal defect in a thing sold, the buyer is forced to hand over the thing to a third party, a contractual exclusion of liability under implied warranty for defects does not release the seller from the obligation to return the price received unless the buyer knew that the seller's rights were disputable or that he acquired the thing at his own risk.

**Art. 575<sup>1</sup>. Disclaimer.** If the buyer avoids the complete or partial loss of a thing acquired or the effects of the thing being encumbered in favor of a third party by paying a sum of money or making another performance, the seller can be released from liability under implied warranty for defects by reimbursing the buyer for the sum paid or the value of the performance made together with interest and costs.

**Art. 576. Periods for implied warranty for legal defects.**

§ 1. Rights under implied warranty for legal defects in a thing sold expire one year after the buyer learns of the defect. If the buyer learns of a legal defect only as a result of a court action brought by a third party, this period starts running on the day on which the court decision issued in the dispute with the third party becomes final and

non-revisable.

§ 2. The lapse of the above period does not preclude exercise of rights under implied warranty for defects if the seller has concealed the defect deceitfully.

§ 3. A defense based on implied warranty for defects may also be raised after the above period passes if the buyer notifies the seller of the defect before the period passes.

### Dział III. Quality Warranty.

#### Art. 577. Concept.

§ 1. If a buyer receives a warranty card from the seller for the quality of a thing sold, it is deemed, in case of doubt, that the issuer of the document (the warrantor) is obliged to remove a physical defect in the thing or to supply a defect-free thing if defects are disclosed during the period stated in the warranty.

§ 2. If the warranty does not stipulate another period, the period is one year from the day on which the thing is handed over to the buyer.

**Art. 578. Scope of liability.** Unless the warranty stipulates otherwise, liability under warranty covers only defects caused by elements inherent in the thing sold.

**Art. 579. Warranty and implied warranty for defects.** The buyer may exercise his rights under implied warranty for physical defects in a thing irrespective of his rights under a warranty.

#### Art. 580. Obligations of the parties.

§ 1. Anyone who exercises his rights under a warranty should deliver the thing at the warrantor's cost to the place specified in the warranty or to the place in which the thing was handed over when the warranty was given unless it follows from the circumstances that the defect should be removed in the place where the thing was at the time the defect was disclosed.

§ 2. The warrantor is obliged to perform the obligations under the warranty in an appropriate time and to deliver the thing to the beneficiary under the warranty, at his own cost, to the place set forth in the preceding paragraph.

§ 3. The risk of accidental loss of or damage to a thing from the time the thing is handed over to the warrantor until it is collected by the beneficiary under the warranty is borne by the warrantor.

#### Art. 581. Running of the period.

§ 1. If, in performance of his obligations, the warrantor delivers a defect-free thing to the beneficiary under the warranty to replace a defective thing or carries out significant repairs to the thing covered by the warranty, the warranty period starts running anew from the moment the defect-free thing is delivered or the repaired thing is returned. If the warrantor replaces part of the thing, the above provision applies accordingly to the replaced part.

§ 2. In other instances, the warranty period is extended by the time during which, as a result of a defect in a thing covered by a warranty, the beneficiary under the warranty cannot use it.

#### Art. 582. (deleted).

### Dział IV. Specific Types of Sale.

#### Rozdział I. Sale by installments.

##### Art. 583. Concept.

§ 1. Sale by installments is the sale of a movable thing within the scope of operations of an enterprise to a natural person for a price payable in specified installments if, according to the contract, the thing is to be handed over to the buyer before the full price is paid.

§ 2. Promissory notes issued by the buyer to cover or secure the purchase price do not preclude the application of the provisions of this chapter.

##### Art. 584. Implied warranty.

§ 1. The seller's liability under implied warranty for defects in a thing sold by installments may be excluded or limited by a contract only in the instances provided for by specific provisions.

§ 2. A contract cannot hinder the buyer exercising his rights under implied warranty for defects.

**Art. 585. Early payment.** The buyer may pay the installments before the payment date. In the event of an early payment, the buyer may deduct the amount corresponding to the interest rate applicable to a given type of loan at the National Bank of Poland.

##### Art. 586. Default.

§ 1. The stipulation that a price not paid becomes immediately payable if the payment dates of particular installments are not kept is effective only if it was made in writing at the time the contract was executed, and the buyer defaults in payment of at least two installments and the total sum of overdue installments is more than one-fifth of the agreed price.

§ 2. The seller may rescind the contract on the ground of the price not being paid only if the buyer defaults in payment of at least two installments and the total sum of overdue installments is more than one-fifth of the agreed price. In such case, the seller should give the buyer an appropriate additional period to pay the overdue amounts with the sanction that, if the designated period passes to no effect, he will be entitled to rescind the contract.

§ 3. Contractual provisions which are less favorable to the buyer are invalid. The provisions of this article apply instead.

**Art. 587. Exclusion of business entities.** The provisions of this chapter do not apply to sale by installments if the buyer acquires the thing within the scope of operations of his enterprise.

**Art. 588. Bankloan.**

§ 1. The provisions of this chapter apply accordingly in instances when a movable thing is sold to a natural person using a loan extended for this purpose by a bank if the loan is to be repaid by installments and the thing is handed over to the buyer before the bank loan is fully repaid.

§ 2. To secure the claims of the bank which extends the loan, the bank has a statutory pledge on the thing sold for so long as the thing is held by the buyer.

§ 3. Liability under implied warranty for defects in a thing is borne solely by the seller.

**Rozdział II. Retention of Title (Stipulation of Ownership of a Thing Sold). Sale on Approval.**

**Art. 589. Effect of retention of title.** If a seller retains the ownership of a movable sold until the price is paid, it is deemed, in case of doubt, that the ownership of the thing is transferred on a condition precedent.

**Art. 590. Form.**

§ 1. If the thing is handed over to the buyer, the retention of title should be stated in writing. It is effective towards the buyer's creditors if the letter has an authenticated date.

§ 2. *(deleted)*

**Art. 591. Payment for deterioration of a thing.** In the event of retention of title, the seller may, when collecting a thing, demand appropriate payment for the thing having been used up or damaged.

**Art. 592. Effect of stipulation of sale on approval.**

§ 1. Sale on approval or subject to the thing being examined by the buyer is deemed, in case of doubt, executed on the condition precedent that the buyer deems the object of the sale good. If the approval or examination period is not stipulated in the contract, the seller may set the buyer an appropriate period.

§ 2. If the buyer collects the thing and does not submit a declaration before the end of the period agreed by the parties or set by the seller, it is deemed that he considers the object of the sale to be good.

**Rozdział III. Buy-back Right.****Art. 593. Period; performance; form.**

§ 1. A buy-back right may be stipulated for a period of not more than five years; a longer period will be shortened to five years.

§ 2. A buy-back right is exercised by the seller submitting a declaration to the buyer. If the sale contract needs to be made in a specific form, the declaration on exercising the buy-back right should be made in the same form.

**Art. 594. Effects of exercise.**

§ 1. Upon the exercise of a buy-back right, the buyer is obliged to transfer back to the seller the ownership of a thing acquired against return of the price and the selling costs and reimbursement of outlays; however, the buyer is entitled to reimbursement of outlays which were not necessary only to the extent to which the value of the thing has increased.

§ 2. If the buy-back price set forth in the sale contract exceeds the price and the selling costs, the seller may demand that the buy-back price be reduced to the value of the thing at the time the buy-back right is exercised, though not lower than the sum calculated in accordance with the above paragraph.

**Art. 595. No transfer; indivisibility.**

§ 1. A buy-back right is non-transferable and indivisible.

§ 2. If several persons are entitled to the buy-back and some of them do not exercise this right, the remaining persons may exercise it fully.

**Rozdział IV. Right of First Refusal.**

**Art. 596. Concept.** If the law or a legal act stipulates the priority right for one of the parties to buy a designated thing in the event of the other party selling the thing to a third party (right of first refusal), in the absence of specific provisions, the provisions of this chapter apply.

**Art. 597. Exercise.**

§ 1. A thing which is the subject of a right of first refusal may be sold to a third party only on the condition that the holder of the right of first refusal does not exercise his right.

§ 2. The right of first refusal is exercised by a declaration being made to the obliged person. If the execution of a sale contract for a thing which is the subject of the right of first refusal requires a specific form, a declaration on exercising the right of first refusal should be made in the same form.

**Art. 598. Notice; exercise period.**

§ 1. A person obliged under the right of first refusal should immediately notify the person entitled of the content of the sale contract executed with a third party.

§ 2. The right of first refusal to real estate may be exercised within one month, and to other things, within one week of receipt of a sale notification unless other periods are stipulated.

**Art. 599. Effects of violation.**

§ 1. If a person obliged under a right of first refusal sells the thing to a third party unconditionally or if he does not notify the entitled person of the sale or announces to him material provisions of the sale contract that are untrue, he is liable for any resulting damage.

§ 2. If, however, the right of first refusal is vested under the law in the State Treasury or a local government unit, a co-owner or a lessee, a sale performed unconditionally will be invalid.

**Art. 600. Effects of exercise.**

§ 1. By exercising a right of first refusal, the obliged person and the entitled person execute a sale contract of the same content as the contract executed by the obliged person with the third party unless a specific regulation provides otherwise. However, the provisions of the contract with the third party aimed at preventing the right of first refusal are ineffective towards the entitled person.

§ 2. If the sale contract with the third party provides for additional performances which the person holding the right of first refusal would be unable to make, he may exercise his right by paying the value of those performances. However, if the right of first refusal is vested in the State Treasury or a local government unit under the law, the additional performance is deemed not stipulated.

**Art. 601. Security for payment.** If, according to a sale contract executed with a third party, the price is to be paid at a later date, the person holding the right of first refusal may take advantage of this date only if he secures payment of the price. This provision does not apply if the entitled person is a state organizational unit.

**Art. 602. No transfer; indivisibility.**

§ 1. A right of first refusal is non-transferrable. It is indivisible unless specific regulations allow for partial exercise of this right.

§ 2. If there are several entitled persons and some of them do not exercise the right of first refusal, the remaining persons may exercise it fully.

### Tytuł XII. Exchange.

**Art. 603. Concept.** By a contract of exchange, each party commits to transfer to the other party the ownership of a thing in exchange for committing to transfer the ownership of another thing.

**Art. 604. Reference.** The provisions on sale apply accordingly to exchange.

### Tytuł XIII. Supply.

**Art. 605. Concept.** By a supply contract, the supplier commits to manufacture fungibles and to deliver them in parts or periodically, and the recipient commits to collect those things and to pay the price.

**Art. 605<sup>1</sup>. Reference.** If a supply contract is executed within the scope of operations of the supplier's enterprise and the recipient is a natural person who acquires things for a purpose unrelated to his business or professional activity, the contract is governed by the provisions on consumer sales.

**Art. 606. Form.** A supply contract should be stated in writing.

**Art. 607. Inappropriate raw materials of recipient.** If the raw materials or materials needed to manufacture the object of the supply provided by the recipient are not suitable for the proper manufacture of the object of the supply, the supplier is obliged to notify the recipient thereof immediately.

**Art. 608. Recipient's inspection.**

§ 1. If the contract stipulates that the things ordered are to be manufactured from raw materials of a specific kind or origin, the supplier should notify the recipient that they have been prepared for manufacture and is obliged to allow the recipient to check their quality.

§ 2. If a contract stipulates that the things ordered are to be manufactured in a specific manner, the supplier is obliged to allow the recipient to check the production process.

**Art. 609. Implied warranty for defects.** The supplier is also liable under implied warranty for physical defects in things supplied if the thing was manufactured in the manner specified by the recipient or in accordance with the technological documentation provided by the recipient unless the supplier, despite having used due care, was unable to discover that the production process or the technological documentation was defective, or unless the recipient, despite being warned by the supplier about the defectiveness, had insisted on the production process he had provided or the technological documentation.

**Art. 610. Delayed production start.** If the supplier is late starting production of the object of the supply or its particular parts to the extent that it is unlikely he will be able to deliver them at the agreed time, the recipient may, without setting an additional period, rescind the contract even before the period for delivery of the object passes.

**Art. 611. Defective manufacture process.** If, during the manufacture of the object of the supply, it turns out that the supplier is manufacturing the object in a defective way or contrary to the contract, the recipient may call on the supplier to change the manufacturing manner by giving him an appropriate period for this purpose, and after the period passes to no effect, he may rescind the contract.

**Art. 612. Reference.** In matters which are not regulated by the provisions of this title, the provisions on sale apply accordingly to the rights and obligations of the supplier and the recipient.

### Tytuł XIV. Contract Farming.

**Art. 613. Concept.**

§ 1. By a contract farming contract, a farmer commits to produce and supply to the contracting party a specified quantity of agricultural produce of a given type, and the contracting party commits to collect the produce at an agreed time, pay the agreed price and make a specified additional performance if the contract or specific regulations provide for the obligation to make such performance.

§ 2. The quantity of agricultural produce may also be specified in the contract according to the area from which the produce is to be gathered.

§ 3. The provisions on sale at fixed, maximum, minimum and calculated prices apply accordingly.

§ 4. A farmer also means a group or association of farmers.

**Art. 614. Joint running of an agricultural farm.** If the object of the contract farming is to be produced on an agricultural farm run by several persons jointly, the liability of those persons towards the contracting party is joint and several.

**Art. 615. Additional performances.** Additional performances by a contracting party may include especially:

1) ensuring that the farmer has the possibility to acquire specified production means and to obtain financial assistance;

2) agrotechnical and zootechnical assistance;

3) money bonuses;

4) fringe bonuses.

**Art. 616. Form.** A contract farming contract should be executed in writing.

**Art. 617. Contracting party's inspection.** The contracting party is entitled to supervise and inspect the farmer's performance of the contract farming contract.

**Art. 618. Place of farmer's performance.** The farmer's performance should be made in the place of production of the contracted produce unless the contract provides otherwise.

**Art. 619** (*deleted*)

**Art. 620. Partial performance.** If the object of the contract farming is divisible, the contracting party cannot refuse to accept a partial performance unless it has been stipulated otherwise.

**Art. 621. Implied warranty.** The provisions on implied warranty for defects in sales apply accordingly to implied warranty for physical and legal defects in the object of the contract farming and production means provided to the farmer by the contracting party, with the difference that the contracting party has the right to rescind the contract due to physical defects in the object of the contract farming only if the defects are significant.

**Art. 622. Inability to supply the produce.**

§ 1. If, due to circumstances for which neither party is liable, the farmer cannot supply the object of the contract farming, he is obliged only to return the advance payments and bank loans received.

§ 2. The parties may stipulate in a contract terms and conditions for the return of advance payments and bank loans that are more favorable for the farmer.

**Art. 623. Notice.** If a contract farming contract imposes an obligation on the farmer to report within a fixed period his inability to supply the object of the contract farming due to circumstances for which the farmer is not liable, failure to comply with this obligation due to a fault on the farmer's part excludes his right to rely on those circumstances. This does not, however, apply when the contracting party knew of the above circumstances or if they were common knowledge.

**Art. 624. Statute of limitations.**

§ 1. Mutual claims of the farmer and the contracting party become barred by the statute of limitations two years after the performance is made by the farmer and, if the farmer's performance has not been made, from the day on which it should have been made.

§ 2. If the farmer's performance was made in parts, the limitations period starts running from the day on which the last partial performance was made.

**Art. 625. Change in possessor of an agricultural farm.** If, after a contract farming contract is executed, the farmer's farm passes into another person's possession, the rights and obligations under the contract pass to the new possessor. This does not, however, apply when the transfer of possession is due to acquisition of the farm against payment, and the acquirer did not know and, despite having used due care, could not have learned about the contract farming contract.

**Art. 626. Contribution of a farm to a cooperative.**

§ 1. If, after a contract farming contract is executed, the farmer contributes the farm in kind to an agricultural production cooperative, the cooperative steps into the farmer's rights and obligations unless the condition of the contributed farm prevents it from doing so.

§ 2. If the condition of the farmer's farm at the time he joins the cooperative does not allow the cooperative to perform the contract farming contract, the contract expires, and the farmer is obliged to return the advance payments and bank loans received; he is obliged to return other benefits arising from the contract only to the extent to which he has not used them up to perform the contract.

§ 3. If, after joining the cooperative, the farmer individually harvests the contracted crop, he bears exclusive liability for performing the contract farming contract.

**Art. 627. Concept.** By a specific work contract, the person accepting the order commits to perform a specific work and the orderer commits to pay the remuneration.

**Art. 627<sup>1</sup>. Reference.** The provisions on consumer sales apply accordingly to a contract executed between a person accepting the order within the scope of operations of his enterprise, and a natural person who orders the specific work, being a movable thing, for a purpose unrelated to its business or professional activity.

**Art. 628. Determining the remuneration.**

§ 1. The remuneration for the specific work may be fixed by indicating the basis on which it is calculated. If the parties have not specified the remuneration and have not indicated the calculation basis, it is deemed, in case of doubt, that the parties had in mind normal remuneration for a specific work of that type. If the remuneration cannot be fixed in this way either, the remuneration due will correspond to reasonable work input and other outlays made by the person accepting the order.

§ 2. The provisions on sale at fixed, maximum, minimum and calculated prices apply accordingly.

**Art. 629. Cost-estimate-based remuneration.** If the parties have set the remuneration on the basis of a specification of the planned works and projected costs (cost-estimate-based remuneration), and in the process of performing the specific work, an order issued by a competent state authority changes the prices or rates formerly applicable to cost estimates, each party may demand that the agreed remuneration be changed appropriately. This, however, does not apply to amounts paid for materials or labor prior to the change in the prices or rates.

**Art. 630. Increase in remuneration.**

§ 1. If, in the process of performing the specific work, it becomes necessary to carry out works which were not envisaged in the specification of the planned works constituting the basis for calculating the cost-estimate-based remuneration, and the specification was drawn up by the orderer, the person accepting the order may demand that the agreed remuneration be increased appropriately. If the specification of the planned works was drawn up by the person accepting the order, he may demand an increase in the remuneration only if, despite having used due care, he could not have foreseen the need for the additional works.

§ 2. The person accepting the order cannot demand remuneration increase if he performed additional works without obtaining the orderer's consent.

**Art. 631. Rescission by orderer.** If, in the instances provided for in the two preceding articles, it becomes necessary to considerably increase the cost-estimate-based remuneration, the orderer may rescind the contract; however, he should do so immediately and pay the person accepting the order an appropriate part of the agreed remuneration.

**Art. 632. Flat-rate remuneration.**

§ 1. If the parties agreed on flat-rate remuneration, the person accepting the order cannot demand an increase in the remuneration even if the extent or cost of the works could not have been foreseen at the time the contract was executed.

§ 2. If, however, due to a change in circumstances which could not have been foreseen, the performance of a specific work exposes the person accepting the order to a serious loss, the court may increase the flat-rate remuneration or dissolve the contract.

**Art. 633. Orderer's materials.** If the materials for performing a specific work are supplied by the orderer, the person that accepted the order should use them in an appropriate manner, submit an account and return any part unused.

**Art. 634. Notifying obstacles.** If the material delivered by the orderer is not suitable for the proper performance of the specific work or if other circumstances occur which may hinder the proper performance, the person that accepted the order should immediately notify the orderer thereof.

**Art. 635. Delay in work.** If the person that accepted the order is late starting or finishing the specific work to the extent that it is unlikely he will be able to finish it at the agreed time, the orderer may, without setting an additional period, rescind the contract even before the period for completing the specific work passes.

**Art. 636. Defective performance.**

§ 1. If the person that accepted the order performs the specific work in a defective manner or contrary to the contract, the orderer may call on him to change the manner of performance and may set an appropriate period for this purpose. After the period so set passes to no effect, the orderer may rescind the contract or entrust the correction or further performance of the specific work to another person at the cost and risk of the person that accepted the order.

§ 2. If the orderer supplies the material himself, he may, in the event the contract is rescinded or the specific work is entrusted to another person, demand that the material be returned and that the started work be handed over.

**Art. 637. Implied warranty for defects.**

§ 1. If a specific work has defects, the orderer may demand that they be removed by giving the person that accepted the order an additional period for this purpose with the stipulation that, after the period passes to no effect, he will not accept the rectification. The person that accepted the order may refuse to rectify the specific work if it entails excessive costs.

§ 2. If the defects cannot be removed or if it follows from the circumstances that the person that accepted the order will not be able to remove them on time, the orderer may rescind the contract if the defects are major; if the defects are minor, the orderer may demand an appropriate reduction in the remuneration. The same applies where the person that accepted the order does not remove the defects during a period set by the orderer.

**Art. 638. Reference.** Unless the preceding articles provide otherwise, the provisions on implied warranty for defects in sales apply accordingly to implied warranty for defects in a specific work.

**Art. 639. Payment despite non-performance.** The orderer cannot refuse to pay the remuneration despite the specific work not having been performed if the person that accepted the order was ready to perform it but was prevented from doing so for reasons attributable to the orderer. In this case, however, the orderer may deduct all that the person that accepted the order has saved by not performing the specific order.

**Art. 640. No cooperation.** If the performance of a specific work requires the orderer's co-operation and the orderer does not cooperate, the person that accepted the order may set the orderer an appropriate period with the sanction that, after the period passes to no effect, he will be entitled to rescind the contract.

**Art. 641. Material supplied.**

§ 1. The risk of accidental loss of or damage to material for the performance of a specific work is borne by the person who supplies the material.

§ 2. If a specific work is destroyed or damaged as a result of defective material supplied by the orderer or as a result of the specific work being performed in accordance with the orderer's instructions, the person that accepted the order may demand the agreed remuneration or a appropriate part thereof for the work performed if he had warned the orderer of the risk of destruction of or damage to the specific work beforehand.

**Art. 642. Payment period.**

§ 1. In the absence of an agreement to the contrary, the remuneration is payable to the person that accepted the order at the time the specific work is handed over.

§ 2. If the specific work is to be handed over in parts and the remuneration was calculated for each part separately, the remuneration is payable at the time each of the partial performances is made.

**Art. 643. Obligation to accept a specific work.** The orderer is obliged to accept a specific work which the person that accepted the order hands over to him as committed.

**Art. 644. Rescission.** Until the specific work is completed, the orderer may at any time rescind the contract by paying the agreed remuneration. In this case, however, the orderer may deduct all that the person that accepted the order has saved by not performing the specific work.

**Art. 645. Death of the person that accepted the order.**

§ 1. A specific work contract the performance of which depends on the personal attributes of the person that accepted the order is dissolved as a result of his death or incapacity to work.

§ 2. If the material was the property of the person that accepted the order and the specific work partly performed is of value to the orderer due to the intended purpose of the contract, the person that accepted the order or his heir may demand that the orderer accept the material in an „as is” condition against payment of its value and the appropriate part of the remuneration.

**Art. 646. Statute of limitations.** Claims arising from a specific work contract become barred by the statute of limitations two years after the specific work is handed over, and if the specific work has not been handed over, after the day on which it was to have been handed over under the contract.

## **Tytuł XVI. Construction Works Contract.**

**Art. 647. Concept.** By a construction works contract, the contractor commits to hand over the facility provided for in the contract performed in accordance with the design and technical know-how, and the investor commits to carry out the actions required by the relevant regulations to prepare the works, especially to hand over the construction site and to deliver the design and to accept the facility and pay the agreed remuneration.

**Art. 647<sup>1</sup>. Contract with subcontractor.**

§ 1. In the construction works contract referred to in Article 647 executed between the investor and the contractor (general contractor), the parties set forth the scope of the works which the contractor will perform personally or through subcontractors.

§ 2. The execution by the contractor of a construction works contract with a subcontractor requires the investor's consent. If, within 14 days of receiving from the contractor a contract with a subcontractor or a draft contract, together with part of the documentation concerning performance of the works set forth in the contract or in the draft, the investor does not submit objections or stipulations in writing, he is deemed to have consented to the execution of the contract.

§ 3. The execution of a contract by the subcontractor with a further subcontractor requires the consent of both the investor and the contractor. The provision of the second sentence of § 2 applies accordingly.

§ 4. The contracts referred to in § 2 and 3 should be executed in writing; otherwise they will be invalid.

§ 5. The person executing the contract with the subcontractor and the investor and the contractor bear joint and several liability for payment of remuneration for the construction works performed by the subcontractor.

§ 6. Any provisions of the contracts referred to in this article to the contrary are invalid.

**Art. 648. Form.**

§ 1. A construction works contract should be stated in writing.

§ 2. The documentation required by the relevant regulations constitutes a component part of the contract.

§ 3. *(deleted)*

**Art. 649. Scope of works.** In case of doubt, it is deemed that the contractor has undertaken to perform all the works covered by the design constituting a component part of the contract.

**Art. 649<sup>1</sup>. Payment Guarantee.**

§ 1. A guarantee of payment for construction works, hereinafter referred to as the „payment guarantee”, is given by the investor to the contractor (general contractor) to secure timely payment of the agreed remuneration for performing the construction works.

§ 2. The payment guarantee is a bank or insurance guarantee or a bank letter of credit or bank suretyship given on the investor's instructions.

§ 3. The parties bear in equal parts documented costs of securing receivables.

**Art. 649<sup>2</sup>. Investor's Ineffective Rescission of Contract.**

§ 1. The contractor's (general contractor's) right to demand a payment guarantee from the investor cannot, through a legal act, be exclude or limited.

§ 2. The investor's rescission of a contract due to the contractor's (general contractor's) demand to provide a payment guarantee is invalid.

**Art. 649<sup>3</sup>. Guarantee Amount.**

§ 1. A construction works contractor (general contractor) may at any time demand a payment guarantee from the investor up to the value of a potential claim for the remuneration arising from the contract and from additional works or works required to perform the contract, approved by the investor in writing.

§ 2. A payment guarantee given does not constitute an obstacle to a demand for a payment guarantee up to the total amount set out in §1.

**Art. 649<sup>4</sup>. Failure to Provide Guarantee Demanded, Consequences.**

§ 1. If a contractor (general contractor) does not receive the payment guarantee demanded in the period specified by the contractor (general contractor), not shorter than 45 days, he is entitled to rescind the contract due to a fault on the investor's part, effective as of the rescission date.

§ 2. Absence of the payment guarantee demanded constitutes an obstacle to performance of the construction works for reasons attributable to the investor.

§ 3. An investor cannot refuse to pay remuneration despite non-performance of the construction works if the contractor (general contractor) was ready to perform the works but encountered an obstacle due to reasons attributable to the investor. However, in such a case, the investor may deduct what the contractor (general contractor) saved by not performing the construction works.

**Art. 649<sup>5</sup>. Application of Provisions.** The provisions of Articles 649<sup>1</sup>-649<sup>4</sup> apply to contracts executed between a contractor (general contractor) and further contractors (subcontractors).

**Art. 650 (deleted)**

**Art. 651. Notification of obstacles.** If the documentation, the construction site, the machines or the equipment supplied by the investor are not suitable for proper performance of the works or if other circumstances occur which may hinder the proper performance of the works, the contractor should immediately notify the investor thereof.

**Art. 652. Damage on the construction site.** If the contractor takes over the construction site from the investor based on an acceptance certificate, he is liable on general terms for any damage caused on the site until the facility is handed over.

**Art. 653 (deleted)**

**Art. 654. Partial acceptance.** In the absence of a provision in the contract to the contrary, the investor is obliged to accept, at the contractor's demand, works performed partially, as completed, against payment of an appropriate part of the remuneration.

**Art. 655. Risk of destruction of a facility.** If a facility is destroyed or damaged as a result of defective materials, machines or equipment supplied by the investor or as a result of work being performed in accordance with the investor's instructions, the contractor may demand the agreed remuneration or an appropriate part thereof if he had warned the investor of the risk of destruction of or damage to the facility beforehand or if, despite having used due care, he could not have determined that the materials, machines or equipment supplied by the investor were defective.

**Art. 656. Reference.**

§ 1. The provisions on specific work contracts apply accordingly to the effects of any delay by the contractor in starting the works or completing the facility or performance of the works by the contractor in a defective way or contrary to the contract, to implied warranty for defects in the constructed facility, and to the investor's rights to rescind the contract before the facility is completed.

§ 2. (deleted)

**Art. 657. Rescission.** The right of the contractor or the investor to rescind the contract may be limited or excluded by specific regulations.

**Art. 658. Appropriate application.** The provisions of this title apply accordingly to a contract to renovate a building or a structure.

## Tytuł XVII. Tenancy and Lease.

### Dział I. Tenancy.

#### Rozdział I. General Provisions.

**Art. 659. Concept; rent.**

§ 1. By a tenancy contract, a landlord commits to hand over a thing for a tenant's use for a fixed or non-fixed term, and the tenant commits to pay the landlord an agreed rent.

§ 2. Rent may be specified in money or in performances of another type.

**Art. 660. Form.** A real estate or premises tenancy contract for longer than one year should be executed in writing. If this form is not observed, the contract is deemed executed for a non-fixed term.

**Art. 661. Extension of tenancy.**

§ 1. A tenancy contract executed for longer than ten years is, after this period passes, deemed executed for a non-fixed term.

§ 2. A tenancy contract executed between entrepreneurs for longer than thirty years is, after this period passes, deemed executed for a non-fixed term.

**Art. 662. Condition and maintenance of property.**

§ 1. The landlord should hand over the thing to the tenant in a condition fit for the agreed use and maintain it in this condition throughout the tenancy period.

§ 2. Minor outlays connected with normal use of the thing are borne by the tenant.

§ 3. If a rented thing is destroyed due to circumstances for which the landlord is not liable, the landlord is not obliged to restore it to its former condition.

**Art. 663. Necessary repairs.** If, during the tenancy period, the thing requires repairs which encumber the landlord and without which the thing is not fit for the agreed use, the tenant may set the landlord an appropriate period to carry out the repairs. After the given period passes to no effect, the tenant may carry out the repairs needed at the landlord's cost.

**Art. 664. Implied warranty for defects.**

§ 1. If a rented thing has defects which limit its suitability for the agreed use, the tenant may demand an appropriate reduction in rent for the duration of the defects.

§ 2. If, at the time of hand-over to the tenant, the thing has defects which preclude the thing being used as provided for in the contract, or if the defects arise later and the landlord does not, despite receiving a notice, remove them in an appropriate time, or if the defects cannot be removed, the tenant may terminate the tenancy without notice.

§ 3. A tenant cannot claim a rent reduction for defects in the rented thing or terminate the tenancy immediately if he was aware of the defects at the time the contract was executed.

**Art. 665. Third party claims.** If a third party brings claims against the tenant concerning a rented thing, the tenant should immediately notify the landlord thereof.

**Art. 666. Manner of using a thing.**

§ 1. During the tenancy period, the tenant should use the rented thing in the manner set forth in the contract, and if the contract does not set forth the manner of use - in a manner corresponding to the properties and the purpose of the thing.

§ 2. If, during the tenancy period, repairs become necessary which encumber the landlord, the tenant should immediately notify the landlord thereof.

**Art. 667. Changes and improper use.**

§ 1. Without the landlord's consent, the tenant cannot make changes to the rented thing contrary to the contract or the purpose of the thing.

§ 2. If the tenant uses the thing contrary to the contract or the purpose of the thing and, despite a warning, does not cease using it in this way or if he neglects the thing to such an extent that the thing is at risk of being lost or damaged, the landlord may terminate the contract without notice.

**Art. 668. Subletting; free of charge use.**

§ 1. The tenant may hand over the whole rented thing or part thereof to a third party for free of charge use or sublet it if the contract does not prohibit it. If the thing is handed over to a third party, both the tenant and the third party are liable towards the landlord for using the rented thing in accordance with the obligations arising from the tenancy contract.

§ 2. The relationship arising from a contract for free of charge use or subletting executed by the tenant is dissolved at the end of the tenancy at the latest.

**Art. 669. Payment date.**

§ 1. The tenant is obliged to pay rent at an agreed time.

§ 2. If the rent payment period is not fixed in the contract, the rent should be paid in advance, and namely: if the tenancy is not to be longer than one month - for the whole tenancy period, and if the tenancy is to be longer than one month or if the contract is executed for a non-fixed term - monthly, by the tenth day of the month.

**Art. 670. Pledge right.**

§ 1. To secure the rent and additional performances in which the tenant defaults for not longer than one year, the landlord has a statutory pledge on the tenant's movables brought into the rented object unless the things cannot be the subject of attachment.

§ 2. *(deleted)*

**Art. 671. Extinction.**

§ 1. The landlord's statutory pledge is extinguished when the pledged things are removed from the rented object.

§ 2. The landlord may object to pledged things being removed and retain them at its own risk until the overdue rent is paid or secured.

§ 3. If pledged things are removed under an order issued by a state authority, the landlord retains the statutory pledge if, within three days, he reports it to the authority that ordered the removal.

**Art. 672. Rent payment default.** If the tenant defaults in paying rent for longer than two full payment periods, the landlord may terminate the tenancy without notice.

**Art. 673. Notice periods.**

§ 1. If the tenancy period is not fixed, both the landlord and the tenant may terminate the tenancy observing contractual notice periods, and in their absence, statutory notice periods.

§ 2. Statutory notice periods for tenancy termination are as follows: if rent is payable at intervals longer than one month, the tenancy may be terminated with three months' notice no later than at the end of a calendar quarter; if rent is payable on a monthly basis - with one month's notice at the end of a calendar month; if rent is payable at shorter intervals - with three days' notice; if rent is daily- with one day's notice. If the tenancy period is fixed, both the landlord and the tenant may terminate the tenancy in the instances specified in the contract.

§ 3. If the tenancy period is fixed, both the landlord and the tenant may terminate the tenancy in the instances specified in the contract.

**Art. 674. Tacit extension.** If, after the period designated in the contract or in the termination notice, the tenant continues to use the thing with the landlord's consent, it is deemed, in case of doubt, that the tenancy has been extended for a non-fixed term.

**Art. 675. Return of the thing.**

§ 1. When the tenancy ends, the tenant is obliged to return the thing in a non-deteriorated condition; however, he is not liable for normal wear and tear.

§ 2. It is presumed that a thing is handed over to the tenant in a good condition and fit for the agreed use.

**Art. 676. Improvements.** If the tenant improves a rented thing, the landlord may, in the absence of a contract to the contrary, at its discretion, either retain the improvements against payment of a sum corresponding to their value at the time of return or demand that the previous condition be restored.

**Art. 677. Statute of limitations.** The landlord's claims against the tenant for remedy of damage due to impairment or deterioration of the thing, as well as the tenant's claims against the landlord for reimbursement of outlays on a thing or for the return of overpaid rent become barred by the statute of limitations one year after the thing is returned.

**Art. 678. Disposal of the tenancy object.**

§ 1. If a rented thing is disposed of during the tenancy period, the acquirer becomes a party to the tenancy in place of the transferor; it may, however, terminate the tenancy observing statutory notice periods.

§ 2. The above right to terminate the tenancy is not vested in the acquirer if the tenancy contract was executed for a fixed term in writing with an authenticated date and the thing was handed over to the tenant.

**Art. 679. Termination by acquirer.**

§ 1. If, as a result of the tenancy being terminated by the acquirer of the rented thing, the tenant is forced to return the thing earlier than he would have been obliged to under the tenancy contract, he may demand that the transferor remedy the damage.

§ 2. The tenant should immediately notify the transferor of early termination by the acquirer; otherwise, the transferor will be entitled to any defenses against the tenant which the tenant has not raised and which, if raised, would render the acquirer's termination notice ineffective.

## Rozdział II. Tenancy of Premises.

**Art. 680. Relevant provisions.** The provisions of the preceding chapter apply to tenancy of premises, subject to the following provisions.

**Art. 680<sup>1</sup>. Spouses.**

§ 1. Spouses are deemed tenants of premises, regardless of the property regime between them if the premises tenancy relationship aimed at fulfilling the housing needs of their family arose during their marriage. If there exists a separate property regime or a separate property regime with equalization of assets, the provisions on matrimonial property regime apply accordingly to joint tenancy.

§ 2. Cessation of a matrimonial property regime during a marriage does not lead to cessation of the joint tenancy of premises aimed at fulfilling the housing needs of the family. By applying accordingly the provisions on establishing a separate property regime in a court judgment, the court may, for good cause, at the demand of one of the spouses cancel the joint tenancy of premises.

**Art. 681. Minor outlays.** Minor outlays which encumber the premises' tenant include especially minor floor, door and window repairs, painting of walls, floors and the inner side of entrance doors, as well as minor repairs to installations and technical equipment ensuring lighting, heating, and water supply and discharge.

**Art. 682. Defects hazardous to health.** If defects in rented premises are such that they pose a danger to the health of the tenant, the members of his household or persons employed by him, the tenant may terminate the tenancy without notice, even if he knew of the defects at the time the contract was executed.

**Art. 683. House rules.** The premises' tenant should abide by the house rules if they are not contradictory to his rights under the contract; he should also take into account the needs of other residents and neighbors.

**Art. 684. Installation of equipment by tenant.** The tenant may install electrical lighting, gas, telephone, radio and similar facilities in the rented premises unless the manner in which they are installed is contradictory to applicable provisions or pose a danger to the safety of the real estate. If the landlord's cooperation is required in order to install the equipment, the tenant may demand such cooperation against reimbursement of related costs.

**Art. 685. Tenant's improper conduct.** If the premises' tenant grossly or persistently violates the house rules or, by his inappropriate behavior, renders the use of other premises in the building burdensome, the landlord may terminate the tenancy without notice.

**Art. 685<sup>1</sup>. Termination of rent.** The landlord may increase the rent by terminating the current rent with at least one month's notice, at the end of a calendar month.

**Art. 686. Extension of a pledge object.** The statutory pledge of the landlord of residential premises also extends to movables of the tenant's family members residing with him which are brought into the premises.

**Art. 687. Rent payment default.** If the premises' tenant defaults in rent payment for at least two full payment periods and the landlord intends to terminate the tenancy without notice, he should warn the tenant in writing by giving him an additional one-month period to pay the overdue rent.

**Art. 688. Notice periods.** If the term of the premises' tenancy is not fixed and rent is payable monthly, the tenancy may be terminated no later than with three months' notice at the end of a calendar month.

**Art. 688<sup>1</sup>. Liability for rent payment.**

§ 1. Liability for payment of rent and other charges due is borne jointly and severally by the tenant and adults permanently residing with him.

§ 2. The liability of the persons referred to in § 1 is limited to rent and other charges due for the period during which they permanently reside there.

**Art. 688<sup>2</sup>. Subletting, free-of-charge use.** The tenant cannot hand over the premises or any part thereof for free-of-charge use or sublet it, without the landlord's consent. The landlord's consent is not required for a person towards whom the tenant has a maintenance obligation.

**Art. 689** (*deleted*)

**Art. 690. Absolute right of tenant.** The provisions on the protection of ownership apply accordingly to the protection of a tenant's rights to use premises.

**Art. 691. Accession of close persons.**

§ 1. If the tenant of residential premises dies, the tenant's spouse who is not a co-tenant, the tenant's and the spouse's children, other persons towards whom the tenant had a maintenance obligation and any other person with whom the tenant was cohabitating becomes a party to the tenancy.

§ 2. The persons listed in § 1 step into the residential premises tenancy relationship if they permanently resided in the premises with the tenant until his death.

§ 3. In the absence of the persons specified in § 1, the residential premises tenancy relationship expires.

§ 4. Persons who step into to a residential premises tenancy relationship pursuant to § 1 may terminate the relationship observing statutory notice periods even though the tenancy contract was executed for a fixed term. If the tenancy is terminated by some of those persons, the tenancy relationship expires with respect to the persons who terminated it.

§ 5. The provisions of § 1-4 do not apply in the case of death of one of the co-tenants of residential premises.

**Art. 692. Limitation of acquirer's right.** The provisions on termination of tenancy by the acquirer of a rented thing do not apply to tenancy of residential premises unless the tenant has not yet occupied the premises.

## Dział II. Lease.

**Art. 693. Concept; rent.**

§ 1. By a lease contract, the lessor commits to hand over a thing for the lessee's use and collection of profits for a fixed or a non-fixed term, and the lessee commits to pay the lessor the agreed rent.

§ 2. Rent may be stipulated in money or in performances of another type. It may also be specified as a fraction of the profits.

**Art. 694. Reference to tenancy.** The provisions on tenancy apply accordingly to lease, subject to the following provisions.

**Art. 695. Time; right of first refusal.**

§ 1. A lease contract executed for longer than thirty years is deemed, after this period passes, executed for a non-fixed term.

§ 2. (*repealed*)

**Art. 696. Lease exercise.** The lessee should exercise his right in accordance with the requirements of proper management and cannot change the purpose of the leased object without the lessor's consent.

**Art. 697. Necessary repairs.** The lessee is obliged to carry out any repairs needed to keep the leased object in a non-deteriorated condition.

**Art. 698. Sublease; free-of charge-use.**

§ 1. The lessee cannot hand over the leased object for free-of-charge use or sublease it to a third party without the lessor's consent.

§ 2. If the above obligation is violated, the lessor may terminate the lease without notice.

**Art. 699. Rent payment period.** If the rent payment period is not specified in the contract, rent is payable in arrears on the date customarily accepted, and in the absence of such custom, semiannually in arrears.

**Art. 700. Rent reduction.** If, due to circumstances for which the lessee is not liable and which do not concern it, ordinary revenues from the leased object are considerably decreased, the lessee may demand a reduction in the rent due for the given business period.

**Art. 701. Pledge right.** Movable covered by the lessor's statutory pledge include things used for running a farm or an enterprise if they are within the area of the leased object.

**Art. 702. Extension.** If the contract stipulates that, apart from rent, the lessee is obliged to pay taxes and other charges related to ownership or possession of the leased object, as well as its insurance costs, the lessor's statutory pledge also secures the lessor's claim against the lessee for reimbursement of the sums he has paid in connection therewith.

**Art. 703. Rent payment default.** If the lessee defaults in payment of rent for at least two full payment periods and, in the case of rent paid annually, he defaults in payment for over three months, the lessor may terminate the lease without notice. However, the lessor should warn the lessee by giving him an additional three-month period to pay the overdue rent.

**Art. 704. Termination.** In the absence of a contract to the contrary, the lease of agricultural land may be terminated with one year's notice at the end of the lease year, and any other lease contract with six months' notice before the end of the lease year.

**Art. 706. Return of the leased object.** After the lease ends, the lessee is obliged, in the absence of a contract to the contrary, to return the leased object in the condition in which it should be according to the provisions on exercise of lease.

**Art. 706. Sown seeds remaining.** If, at the end of the lease, the lessee of agricultural land leaves it sown in accordance with his obligation, he may demand reimbursement of outlays made on the seeds sown to the extent that, contrary to the requirements of proper management, he did not receive appropriate sowing seeds at the start of the lease.

**Art. 707. Rent limitation.** If the lease ends before the end of the lease year, the lessee is obliged to pay rent in the same proportion as the profits which he gathered or could have gathered in that year bear to the profits for the whole year.

**Art. 708. Rent-free usufruct.** The provisions of this section apply accordingly where a person taking agricultural real estate for use and collecting profits is not obliged to pay rent but only to incur the taxes and other charges related to ownership or possession of land.

**Art. 709. Lease of rights.** The provisions on lease of things apply accordingly to lease of rights.

## **Tytuł XVII<sup>1</sup>. Leasing Contract.**

**Art. 709<sup>1</sup>. Concept.** By a leasing contract, the financing party commits, within the scope of operations of its enterprise, to acquire a thing from a specified transferor on the terms and conditions set forth in that contract and to give the thing over to the user for use or for use and collection of profits for a specified period, and the user commits to pay the financing party in agreed installments monetary remuneration equal to at least the price or the remuneration at which the financing party acquired the thing.

**Art. 709<sup>2</sup>. Written form.** A leasing contract should be executed in writing; otherwise it will be invalid.

**Art. 709<sup>3</sup>. Delayed collection.** If a thing is not handed over to the user in the agreed period due to circumstances for which he is liable, the agreed installment payment dates remain unchanged.

**Art. 709<sup>4</sup>. Financing party's obligations.**

§ 1. The financing party should hand over the thing to the user in the condition it was in at the time it was handed over to the financing party by the transferor.

§ 2. The financing party is not liable towards the user for the suitability of the thing for the agreed use.

§ 3. The financing party is obliged to hand over to the user, together with the thing, a copy of the contract with the transferor or copies of other documents in his possession concerning the contract, especially a copy of a warranty card for the quality of the thing which it received from the transferor or manufacturer.

**Art. 709<sup>5</sup>. Loss of a thing.**

§ 1. If, after the thing is handed over to the user, it is lost due to circumstances for which the financing party is not liable, the leasing contract expires.

§ 2. The user should immediately notify the financing party that the thing has been lost.

§ 3. If a leasing contract expires for the reasons set forth in § 1, the financing party may demand that the user immediately pay all the installments provided for in the contract which have not been paid, reduced by the benefits which the financing party has obtained as a result of them being paid before the agreed date and expiry of the leasing contract and from insurance of the thing, and remedy of damage.

**Art. 709<sup>6</sup>. Insurance costs.** If a leasing contract stipulates that the user is obliged to incur the costs of insuring the thing against loss during the leasing period, in the absence of a contractual provision to the contrary these costs include a premium for insurance on generally accepted terms and conditions.

**Art. 709<sup>7</sup>. User's obligations.**

§ 1. The user is obliged to maintain the thing in a proper condition, especially to carry out the maintenance and repairs needed to keep the thing in a non-deteriorated condition, with account taken of normal wear and tear, and to bear the burdens related to ownership or possession of the thing.

§ 2. If the leasing contract does not stipulate that maintenance and repairs of a thing are to be carried out by a person having specified qualifications, the user should immediately notify the financing party of the need to carry out a significant repair on the thing.

§ 3. The user is obliged to allow the financing party to examine the thing within the scope specified in § 1 and 2.

**Art. 709<sup>8</sup>. Implied warranty for defects.**

§ 1. The financing party is not liable towards the user for defects in a thing unless the defects arise from circumstances for which the financing party is liable. Contractual provisions less favorable for the user are invalid.

§ 2. Upon the execution of a contract by the financing party with the transferor, the financing party's rights towards the transferor based on defects in the thing are transferred to the user under the law, save for the financing party's right to rescind the contract with the transferor.

§ 3. The exercise by the user of the rights set forth in § 2 does not affect his obligations under the leasing contract unless the financing party rescinds the contract with the transferor due to defects in the thing.

§ 4. The user may demand that the financing party rescind the contract with the transferor due to defects in the thing if the financing party's rescission right arises from legal regulations or the contract with the transferor. Unless the user so demands, the financing party cannot rescind the contract with the transferor due to defects in the thing.

§ 5. If the financing party rescinds the contract with the transferor due to defects in the thing, the leasing contract expires. The financing party may demand that the user immediately pay all the installments provided for in the contract which have not been paid, reduced by the benefits which the financing party has obtained as a result of them being paid before the agreed date and expiry of the leasing contract and of the contract with the transferor.

**Art. 709<sup>9</sup>. Use of a thing.** The user should use the thing and collect the profits therefrom in the manner set forth in the leasing contract, and if not set forth in the contract, in a manner corresponding to the properties and purpose of the thing.

**Art. 709<sup>10</sup>. Changes.** Without the financing party's consent, the user cannot make changes to the thing unless the changes arise from the purpose of the thing.

**Art. 709<sup>11</sup>. Termination.** If, despite a written warning from the financing party, the user violates the obligations set forth in Article 709<sup>7</sup> § 1 or Article 709<sup>9</sup> or does not remove changes in the thing made in violation of Article 709<sup>10</sup>, the financing party may terminate the leasing contract with immediate effect unless the parties agreed on a notice period.

**Art. 709<sup>12</sup>. Handing over to a third party.**

§ 1. Without the financing party's consent, the user cannot give the thing over for use to a third party.

§ 2. In the event of violation of the obligation set forth in § 1, the financing party may terminate the leasing contract with immediate effect unless the parties agreed on a notice period.

**Art. 709<sup>13</sup>. Default.**

§ 1. The user is obliged to pay the installments on the agreed dates.

§ 2. If the user defaults in payment of at least one installment, the financing party should give the user in writing an appropriate additional period for paying the arrears with the sanction that, if the given period passes to no effect, he may terminate the leasing contract with immediate effect unless the parties agreed on a notice period. Contractual provisions less favorable for the user are invalid.

**Art. 709<sup>14</sup>. Disposal of a thing.**

§ 1. If the financing party disposes of the thing, the acquirer steps into the leasing relationship in lieu of the financing party.

§ 2. The financing party should immediately notify the user of the disposal of the thing.

**Art. 709<sup>15</sup>. Pay-off installments.** If the financing party terminates the leasing contract due to circumstances for which the user is liable, the financing party may demand that the user immediately pay all the installments which are provided for in the contract which have not been paid, reduced by the benefits which the financing party has obtained as a result of them being paid before the agreed date and termination of the leasing contract.

**Art. 709<sup>16</sup>. Ownership transfer.** If the financing party commits, without an additional performance, to transfer the ownership of the thing to the user after the leasing period specified in the contract passes, the user may demand that the ownership of the thing be transferred within one month of the end of that period unless the parties agreed on another period.

**Art. 709<sup>17</sup>. Reference to tenancy and sale.** The provisions on tenancy apply accordingly to the financing party's liability for defects in a thing arising from circumstances for which the financing party is liable, the rights and obligations of the parties if a third party raises claims against the user with regard to the thing, the user's and a third party's liability towards the financing party if the user gives the thing over to that person for use, security for the leasing installments and the additional performances of the user, the return of the thing by the user after the leasing ends and improvements made to the thing by the user, and the provisions on sale by installments apply to payment by the user of installments before the payment date.

**Art. 709<sup>18</sup>. Direct leasing.** The provisions of this title apply accordingly to a contract under which one party commits to give a thing owned by that party over to another party for use or for use and collection of profits, and the other party commits to pay the owner of the thing, in agreed installments, monetary remuneration equal to at least the value of the thing at the time the contract is executed.

### Tytuł XVIII. Lending for Use.

**Art. 710. Concept.** By a lending for use contract, the lender commits to permit the borrower, for a fixed or a non-fixed term, to use a thing free of charge for the stated purpose.

**Art. 711. Defects in a thing.** If a thing lent for use has defects, the lender is obliged to remedy any damage that he has caused to the borrower by not notifying the borrower of the defects while being aware of them. The above provision does not apply if the borrower could have easily noticed the defect.

**Art. 712. Manner of use.**

§ 1. If the contract does not specify the manner of using the thing, the borrower may use the thing in a manner corresponding to its properties and purpose.

§ 2. Without the lender's consent, the borrower cannot lend the lent thing to a third party for use.

**Art. 713. Maintenance costs.** The borrower bears the ordinary costs of maintaining a thing lent. If he incurs other expenses or outlays on the thing, the provisions on management of another person's affairs without a mandate apply accordingly.

**Art. 714. Accidental loss.** The borrower is liable for accidental loss of or damage to a thing if he uses it contrary to the contract or its properties or its purpose or if he entrusts it to another person without being so authorized by the contract or forced by circumstances and the thing would not have been lost or damaged had he used it properly or he kept it himself.

**Art. 715. End.** If a lending for use contract is executed for a non-fixed term, the lending for use ends if the borrower has made use of the thing in accordance with the contract or if the time during which he could have made use of it has passed.

**Art. 716. Premature end.** If the borrower uses a thing contrary to the contract or the properties or the purpose of the thing, if he entrusts the thing to another person without being authorized to do so by the contract or forced by the circumstances, or if the lender needs the thing for reasons unforeseen at the time the contract was executed, the lender may demand that the thing be returned even though the contract was executed for a fixed term.

**Art. 717. Joint and several liability of borrowers.** If several persons take a thing jointly for use, their liability is joint and several.

**Art. 718. Return of a thing.**

§ 1. After the lending for use ends, the borrower is obliged to return the thing to the lender in a non-deteriorated condition; however, the borrower is not liable for normal wear and tear.

§ 2. If the borrower has entrusted the thing to another person, the above obligation also rests on that person.

**Art. 719. Statute of limitations.** The lender's claims against the borrower for remedy of damage to or deterioration of a thing, as well as the borrower's claims against the lender for reimbursement of outlays on the thing and for remedy of any damage suffered as a result of defects in the thing, become barred by the statute of limitations one year after the thing is returned.

### Tytuł XIX. Loan.

**Art. 720. Concept; form.**

§ 1. By a loan contract, the lender commits to transfer to the borrower the ownership of a specific amount of money or quantity of fungibles, and the borrower commits to return the same amount of money or the same quantity of fungibles of the same quality.

§ 2. A loan contract of a value of more than five hundred zloties should be stated in writing.

**Art. 721. Rescission; hand-over refusal.** The lender may rescind the contract and refuse to hand over the object of the loan if the return of the loan is doubtful due to the bad financial condition of the other party. This right is not vested in the lender if, at the time the contract was executed, he knew or could have easily learned of the bad financial condition of the other party.

**Art. 722. Statute of limitations.** The borrower's claim for the object of the loan to be handed over becomes barred by the statute of limitations six months after the object was to have been handed over.

**Art. 723. Return date.** If the loan return date is not specified, the debtor is obliged to return the loan within six weeks of the loan being terminated by the lender.

**Art. 724. Defects in things.** If things received by the borrower have defects, the lender is obliged to remedy any damage that he has caused to the borrower by not informing the borrower of the defects while being aware of them. The above provision does not apply if the borrower could have easily noticed the defect.

### Tytuł XX. Bank Account Contract.

**Art. 725. Concept.** By a bank account contract, a bank commits to a bank account holder, for a fixed or a non-fixed term, to keep his cash and, if the contract so provides, to carry out, on his instructions, money settlements.

**Art. 726. Money dispositions.** A bank may temporarily deal in cash available on a bank account subject to the obligation to return the whole or part of the amount on each demand unless the contract makes the obligation to return the same conditional on a termination notice.

**Art. 727. Refusal to carry out an order.** A bank may refuse to carry out a bank account holder's order only in the instances provided for in specific regulations.

**Art. 728. Account statement.**

§ 1. In the event of a contract executed for a non-fixed term, the bank is obliged to inform the account holder, in the manner set forth in the contract, of each change on the bank account.

§ 2. The bank is obliged to send at least once a month free of charge to the account holder an account statement showing the changes on the account and showing the balance unless the account holder has consented in writing to being notified in another manner of changes on the account and the account balance.

§ 3. A bank account holder is obliged to report to the bank any inaccuracy in the changes on the account or the balance within fourteen days of receiving the account statement.

**Art. 729. Named account.** The holder of a named bank account is obliged to notify the bank of each change in his place of residence or registered office.

**Art. 730. Termination.** A bank account contract executed for a non-fixed term may be dissolved at any time through notice by either party, though the bank may terminate the contract only for good cause.

**Art. 731. Statute of limitations.** Claims arising from a bank account relationship become barred by the statute of limitations after two years. This does not apply to claims for reimbursement of savings deposits.

**Art. 732. Savings and loan cooperative societies.** The provisions of this title also apply accordingly to accounts kept by savings and loan cooperative societies.

**Art. 733. Money settlements.** The provisions of this title do not prejudice the provisions on money settlements.

### Tytuł XXI. Mandate.

**Art. 734. Concept.**

§ 1. By a mandate contract, the mandatary commits to perform a specified legal act for the mandator.

§ 2. In the absence of a contract to the contrary, a mandate includes an authorization to perform acts on the mandator's behalf. This provision does not prejudice the provisions on the form of a power of attorney.

**Art. 735. Remuneration.**

§ 1. If it does not follow from either the contract or the circumstances that the mandatary has committed to perform the mandate contract without remuneration, remuneration is due for performing the mandate.

§ 2. If there is no applicable tariff and the parties have not agreed on the amount of the remuneration, remuneration corresponding to the work performed is due.

**Art. 736. Professional performance of mandates.** Anyone who is professionally engaged in performing acts for others should, if he is unwilling to accept a mandate, immediately notify the mandator of that fact. The same obligation rests on a person who has declared his readiness to carry out a given type of act to the mandator.

**Art. 737. Performance manner.** The mandatary may, without the mandator's prior consent, desist from performing the mandate in the manner indicated by the mandator if there is no possibility to obtain his consent, and there is good cause to presume that the mandator would consent to the change if he knew of the circumstances.

**Art. 738. Substitute; liability.**

§ 1. The mandatary may delegate the performance of a mandate to a third party only if this follows from a contract or custom or if he is forced to do so by the circumstances. In such a case, he is obliged to inform the mandator immediately of who the substitute is and his place of residence and, having done so, he is liable only for not using due care in choosing the substitute.

§ 2. The substitute is liable for performing the mandate towards the mandator as well. If the mandatary is liable for the actions of his substitute as for his own actions, their liability is joint and several.

**Art. 739. Expansion; accidental damage.** If the mandatary delegates performance of the mandate to another person without being authorized to do so, and the thing belonging to the mandator is lost or damaged during performance of the mandate, the mandatary is also liable for accidental loss or damage unless either would also have occurred if he had performed the mandate himself.

**Art. 740. Mandatary's obligations.** The mandatary should give the mandator the required information about the running of the matter and, once the mandate is performed or upon early dissolution of the contract, submit a report to the mandator. He should hand over to the mandator all that he obtained for him, even though on his own behalf, during performance of the mandate.

**Art. 741. Use of the mandator's things.** The mandatary cannot use the mandator's things and money in his own interests. He should pay the mandator statutory interest on any amounts retained above the amount needed to perform the mandate.

**Art. 742. Mandatary's expenses and obligations.** The mandator should reimburse the mandatary for expenses which the mandatary has incurred in order to duly perform the mandate together with statutory interest; he should also release the mandatary from all obligations which the mandatary has incurred for the above purpose on his own behalf.

**Art. 743. Advance payments.** If the performance of a mandate requires expenses, the mandator should, at the mandatary's demand, pay him an appropriate advance.

**Art. 744. Remuneration payment period.** In the event of a mandate against payment, remuneration is due to the mandatary only after the mandate is performed unless the contract or specific regulations provide otherwise.

**Art. 745. Joint mandate.** If several persons order or accept a mandate jointly, their liability towards the other party is joint and several.

**Art. 746. Termination.**

§ 1. The mandator may terminate the mandate at any time. He should, however, reimburse the mandatary for any expenses which the latter has incurred in order to duly perform the mandate; in the case of a mandate against payment, he is obliged to pay the mandatary part of the remuneration corresponding to the actions taken by the mandatary to that date and, if the termination was without good cause, he should also remedy any damage.

§ 2. The mandatary may terminate the mandate at any time. However, if the mandate is against payment and the termination was without good cause, the mandatary is liable for any damage caused.

§ 3. The right to terminate a mandate for good cause cannot be waived in advance.

**Art. 747. Mandator's death.** In the absence of a contract to the contrary, a mandate does not expire either on the mandator's death or if he loses the capacity for legal acts. If, however, in accordance with the contract, the mandate has expired, the mandatary should, if damage could arise from the interruption of the acts entrusted to him, continue the acts until the heir or statutory representative of the mandator is able to direct otherwise.

**Art. 748. Mandatary's death.** In the absence of a contract to the contrary, a mandate expires either on the mandatary's death or if he loses full capacity for legal acts.

**Art. 749. Activities after expiry of mandate.** If a mandate expires, it is nonetheless deemed to exist to the mandatary's benefit until such time as he learns of its expiry.

**Art. 750. Service contracts.** The provisions on mandate apply accordingly to service contracts which are not regulated by other provisions.

**Art. 751. Statute of limitations.** A limitations period of two years applies to:

1) claims for remuneration for acts performed and for reimbursement of expenses by persons who permanently or within the scope of the operations of their enterprise perform acts of a given type; the same applies to claims related to advance payments made to those persons;

2) claims based on maintenance, care, upbringing or education, by persons who professionally perform such acts or persons running institutions for this purpose.

## **Tytuł XXII. Management of another Person's Affairs without a Mandate (Negotiorum Gestio).**

**Art. 752. Principles.** Anyone who manages another person's affairs without a mandate should act to the benefit of that person and in accordance with his likely intention, and in managing the affairs he is obliged to use due care.

### **Art. 753. Expansion.**

§ 1. A person managing another person's affairs without a mandate should, as far as possible, notify the person whose affairs he is managing, and according to the circumstances, either await his instructions or continue to manage his affairs until the person is able to take charge of them himself.

§ 2. A person managing another person's affairs without a mandate should render an account of his actions and hand over all that he has obtained for the person whose affairs he is managing. If he has acted in accordance with his duties, he may demand that reasonable expenses and outlays be reimbursed together with statutory interest and release from any obligations which he assumed in managing the affairs.

**Art. 754. Actions contrary to the substituted person's intention.** Anyone who manages another person's affairs contrary to the person's intention of which he is aware cannot demand reimbursement of expenses incurred and is liable for damage unless the person's intention is contrary to the law or the principles of community life.

**Art. 755. Unlawful changes.** If a person managing another person's affairs has made changes to the property of the person whose affairs he is managing without such changes being specifically needed by or giving benefit to that person or contrary to that person's intention of which he was aware, he is obliged to restore the former condition, and if that is not possible, to remedy the damage. He may take the outlays back if he can do so without damaging the things.

**Art. 756. Confirmation by the substituted person.** Confirmation by the person whose affairs are managed gives the management of the affairs the same effects as a mandate.

**Art. 757. Rescuing another person's interests.** Anyone who in order to avert danger threatening another person rescues that person's interests may demand that that person reimburse reasonable expenses, even if his actions had no effect, and is liable only for willful misconduct or gross negligence.

## **Tytuł XXIII. Agency Contract.**

### **Art. 758. Concept.**

§ 1. By an agency contract, the person accepting the order (agent) commits, within the scope of operations of his enterprise, against remuneration, to provide regular intermediary in executing contracts with clients for the benefit of the entrepreneur being the principal or to execute contracts on its behalf.

§ 2. The agent is entitled to execute contracts on the principal's behalf and to collect declarations for the principal only when he is authorized to do so.

### **Art. 758<sup>1</sup>. Remuneration, commission.**

§ 1. If the contract does not specify the remuneration payment manner, the agent is entitled to commission.

§ 2. Commission is remuneration which depends on the number or value of the contracts executed.

§ 3. If the contract does not specify the amount of the commission, the commission due is the amount customarily accepted in relations of the given type in the place of business conducted by the agent, and if the commission cannot be determined in this way, the agent is entitled to commission of an appropriate amount, taking into account all the circumstances directly related to performance of the actions ordered.

**Art. 758<sup>2</sup>. Written confirmation.** Each party may demand that the other party confirm in writing the content of the contract and provisions amending or supplementing it. Any waiver of this right is invalid.

**Art. 759. Presumed authorization.** In case of doubt, it is deemed that the agent is authorized to receive, for the principal, payment for any performance made for the principal and to receive for the principal performances for which he pays, and to accept notices of defects and declarations concerning performance of any contract which he has executed on the principal's behalf.

**Art. 760. Loyalty of the parties.** Each party is obliged to act loyally towards the other party.

### **Art. 760<sup>1</sup>. Agent's obligations.**

§ 1. The agent is obliged especially to communicate any information that is significant to the principal and to comply with instructions of the principal that are reasonable in the given circumstances, and to take, within the scope of the affairs managed, any action needed to protect the principal's rights.

§ 2. Provisions of a contract contrary to § 1 are invalid.

### **Art. 760<sup>2</sup>. Principal's obligations.**

§ 1. The principal is obliged to submit to the agent the documents and information needed to properly perform the contract.

§ 2. The principal is obliged to notify the agent within a reasonable time of the acceptance or refusal of any proposal to execute a contract and of the non-performance of any contract executed with the agent's intermediary or which the agent has executed on the principal's behalf.

§ 3. The principal is obliged to notify the agent within a reasonable time that the number of contracts the principal expects to be executed or their value will be significantly lower than that which the agent could normally have expected.

§ 4. Provisions of a contract contrary to § 1-3 are invalid.

**Art. 760<sup>3</sup>. Tacit confirmation.** If the agent executing a contract on the principal's behalf has no authorization or exceeds the scope of his authorization, the contract is deemed confirmed if, immediately after receiving

information on the execution of the contract, the principal does not represent to the client that he does not confirm the contract.

**Art. 761. Commission.**

§ 1. The agent may demand commission on contracts executed during the term of the agency contract if they were executed as a result of his activity or if they were executed with clients previously obtained by the agent for contracts of the same type.

§ 2. If the agent was granted an exclusive right with regard to a specified group of clients or geographical area, and during the term of the agency contract a contract is executed with a client from this group or area without the agent's participation, the agent may demand commission on the contract. The principal is obliged to notify the agent, within a reasonable time of the execution of the contract.

**Art. 761<sup>1</sup>. Commission after contract dissolution.**

§ 1. The agent may demand commission on a contract executed after dissolution of the agency contract if, subject to fulfillment of the premises set forth in Article 761, the principal or the agent received a proposal from a client to execute the contract before the agency contract was dissolved.

§ 2. The agent may demand commission on a contract executed after the agency contract was dissolved also if the said contract was executed primarily as a result of his activity during the term of the agency contract and within a reasonable time of its dissolution.

**Art. 761<sup>2</sup>. Conflict of rights.** The agent cannot demand the commission referred to in Article 761 if the commission is due in accordance with Article 761<sup>1</sup> to the previous agent unless it is equitable because of the circumstances for the commission to be shared between agents.

**Art. 761<sup>3</sup>. Claim due and payable.**

§ 1. In the absence of a provision in the agency contract to the contrary, the agent acquires the right to commission at the time the principal should, according to the contract with the client, have made the performance or actually made it, or when the client made his performance. However, the parties cannot agree that the agent acquires the right to commission later than when the client made the performance or should have made it if the principal had made his performance.

§ 2. If a contract executed between a principal and a client is to be performed in parts, the agent acquires the right to commission as the contract is being performed.

§ 3. A claim for payment of commission becomes due and payable at the end of the last day of the month following the quarter in which the agent acquired the right to commission. Any provision of a contract less favorable for the agent is invalid.

**Art. 761<sup>4</sup>. Return of commission.** The agent cannot demand commission if it is obvious that the contract with the client will not be performed due to circumstances for which the principal is not liable, and if the commission has already been paid to the agent it will be returned. Any provision of an agency contract less favorable for the agent is invalid.

**Art. 761<sup>5</sup>. Declaration.**

§ 1. The principal is obliged to submit a declaration to the agent with information on the commission due not later than on the last day of the month following the quarter in which the agent acquired the right to the commission. This declaration should show all the data constituting the basis for calculating the commission due. Any provision of an agency contract less favorable for the agent is invalid.

§ 2. The agent may demand to be given access to the information needed to determine whether the amount of the commission due to him has been correctly calculated; he may especially demand excerpts from the principal's commercial books or demand that a certified auditor chosen by the parties be given access to and provided with an excerpt from those commercial books. Any provision of an agency contract less favorable for the agent is invalid.

§ 3. If the information referred to in § 2 is not made available to the agent, the agent may demand that it be made available by bringing an action in court within six months of the demand being submitted to the principal.

§ 4. If the parties fail to reach agreement in choosing the certified auditor referred to in § 2, the agent may demand, by bringing an action in court within six months of the demand being submitted to the principal, that a certified auditor designated by the court be given access to and make an excerpt from the commercial books.

**Art. 761<sup>6</sup>. Appropriate application.** If the commission constitutes the whole remuneration or a part thereof, Articles 761-761<sup>5</sup> apply unless the parties agreed to apply those provisions to another type of remuneration.

**Art. 761<sup>7</sup>. Del credere commission.**

§ 1. An agency contract executed in writing may stipulate that the agent is liable, against separate remuneration (*del credere* commission), within an agreed scope, for the client performing the obligation. The agent is liable for the client making the performance unless the contract provides otherwise. If written form is not observed for the contract, the agency contract is deemed executed without this stipulation.

§ 2. The agent's liability may apply only to a specified contract or contracts with a specified client executed with the intermediary of the agent or executed by the agent on the principal's behalf.

**Art. 762. Reimbursement of expenses.** In the absence of a contractual provision to the contrary, the agent may demand reimbursement of expenses related to performing the order only insofar as they are reasonable and their amount exceeds the usual amount accepted in the given relations.

**Art. 763. Security for a claim.** In order to secure a claim for remuneration and for reimbursement of expenses and advances paid to the principal, the agent has the statutory pledge on the principal's things and securities received in connection with the agency contract so long as those objects are with him or with a person who holds them on his behalf or so long as he can dispose of them using documents.

**Art. 764. Performance after deadline.** A contract executed for a fixed term and performed by the parties after the term for which it was executed is deemed executed for a non-fixed term.

**Art. 764<sup>1</sup>. Notice periods.**

§ 1. A contract executed for a non-fixed term may be terminated with one month's notice in the first year, two months' notice in the second year and three months' notice in the third year and in subsequent years of the contract term. Statutory notice periods cannot be shortened.

§ 2. Statutory notice periods may be extended in a contract; however, the period set for the principal cannot be shorter than the period set for the agent. An extension of the period for the agent results in the same extension for the principal.

§ 3. A notice period ends at the end of the calendar month unless the contract provides otherwise.

§ 4. The provisions of § 1-3 apply to a contract executed for a fixed term and transformed under Article 764 into a non-fixed term contract. The period for which a fixed term contract was executed is taken into account in establishing the notice period.

**Art. 764<sup>2</sup>. Early termination.**

§ 1. An agency contract, even though executed for a fixed term, may be terminated without notice due to non-performance of the obligations by either party in whole or in a significant part, and also if extraordinary circumstances occur.

§ 2. If termination is made due to circumstances for which the other party is liable, the other party is obliged to remedy any damage suffered by the terminating party as a result of the contract being terminated.

**Art. 764<sup>3</sup>. Compensatory performance.**

§ 1. After the agency contract is terminated, the agent may demand a compensatory performance from the principal if, during the term of the agency contract, he obtained new clients or led to a significant increase in turnover with existing clients, and the principal continues to draw significant benefits from contracts with those clients. The agent is entitled to that claim if, given all the circumstances, and especially the loss by the agent of the commission on the contracts executed by the principal with those clients, such a claim is supported by the equitable principle.

§ 2. A compensatory performance cannot exceed the agent's remuneration for one year calculated on the basis of the average annual remuneration received during the last five years. If the term of the agency contract is shorter than five years, the remuneration is calculated with account taken of the average for the whole contract term.

§ 3. Obtaining a compensatory performance does not deprive the agent of the right to claim compensation on general terms.

§ 4. In the event of the agent's death, the compensatory performance referred to in § 1 may be demanded by his heirs.

§ 5. The possibility to claim a compensatory performance depends on the agent or his heirs filing an appropriate demand with the principal within one year of the contract being dissolved.

**Art. 764<sup>4</sup>. Exclusion.** A compensatory performance is not due to the agent if:

1) the principal has terminated the contract due to circumstances for which the agent is liable and which constitute grounds for termination without notice,

2) the agent has terminated the contract unless the termination is justified by circumstances for which the principal is liable or by the agent's age, disability or illness, and the equitable principle does not allow further performance of the agent's actions to be demanded from him,

3) the agent, with the principal's consent, has transferred his rights and obligations under the contract to another person.

**Art. 764<sup>5</sup>. Stipulation.** Until the contract is dissolved, the parties cannot agree on terms and conditions which are less favorable for the agent than the provisions of Articles 764<sup>3</sup> and 764<sup>4</sup>.

**Art. 764<sup>6</sup>. Restricted activity.**

§ 1. The parties may, in writing subject to invalidity, restrict the agent's competitive activity for a period following the dissolution of the agency contract (restriction of competitive activity). The restriction is valid if it relates to a group of clients or a geographical area covered by the agent's activity and the types of goods or services being the subject of the contract.

§ 2. Restriction of competitive activity cannot be stipulated for a period longer than two years after the contract is dissolved.

§ 3. The principal is obliged to pay the agent an appropriate amount of money for the restriction of competitive activity during its term unless the contract provides otherwise or unless the agency contract was dissolved due to circumstances for which the agent is liable.

§ 4. If the amount referred to in § 3 is not set forth in the contract, the amount due corresponds to the benefits obtained by the principal as a result of the restriction of competitive activity and the agent's earning opportunities lost as a result thereof.

**Art. 764<sup>7</sup>. Cancellation of restriction.** The principal may, until the day the contract is dissolved, cancel the restriction of competitive activity to the effect that after six months pass from the cancellation, he will be released from the obligation to pay the sum referred to in Article 764<sup>6</sup> § 3 and 4. Written form is required for a cancellation of the restriction of competitive activity; otherwise it will be invalid.

**Art. 764<sup>8</sup>. Releasing the agent from restriction.** If the agent terminates the contract due to circumstances for which the principal is liable, he may be released from the obligation to observe the restriction of competitive activity by submitting a written declaration to the principal within one month of the termination date.

**Art. 764<sup>9</sup>. Appropriate application.** The provision of this title, save for Articles 761-761<sup>2</sup>, Article 761<sup>5</sup> and Articles 764<sup>3</sup>-764<sup>8</sup> apply to a contract of the content referred to in Article 758 § 1 executed with an agent by a person who is not an entrepreneur.

#### **Tytuł XXIV. Commission Sales Contract.**

**Art. 765. Concept.** By a commission sales contract, the agent (the commission agent) commits, against remuneration (commission) within the scope of operations of its enterprise, to buy or sell movables on the principal's account (commissioning party) but on his own behalf.

**Art. 766. Hand-over of benefits.** The commission agent should hand over to the commissioning party all that he obtains for the commissioning party in performing the order, he should especially transfer to the commissioning

party any claims which he obtained on the commissioning party's account. The above rights of the commissioning party are also effective towards the commission agent's creditors.

**Art. 767. More favorable contracts.** If the commission agent executes a contract on terms and conditions more favorable than those specified by the commissioning party, the accrued benefit is due to the commissioning party.

**Art. 768. Less favorable contracts.**

§ 1. If the commission agent sells a thing which he was given to sell for a price lower than the price set by the commissioning party, he is obliged to pay the difference to the commissioning party.

§ 2. If the commission agent acquires a thing for a price higher than that set by the commissioning party, the commissioning party may, immediately after receiving notice of performance of the order, state that it does not recognize the act as performed on its account; failure to make this declaration is equivalent to consent to the higher price.

§ 3. The commissioning party cannot demand payment of the price difference or refuse consent to a higher price if the order could not be performed at the price set and the execution of the contract has protected the commissioning party from damage.

**Art. 769. Perishable things.**

§ 1. If a thing is perishable and it is not possible to wait for the commissioning party's instructions, the commission agent is entitled, and obliged if the commissioning party's interests so requires, to sell the thing using due care. He is obliged to notify the commissioning party immediately of the sale.

§ 2. If the commissioning party defaults in collecting the thing, the provisions on the effects of a buyer's default in collecting a thing sold apply accordingly.

**Art. 770. Implied warranty for defects.** The commission agent is not liable for latent physical defects in a thing or for legal defects therein if he informs the buyer to that effect before executing the contract. However, exclusion of liability does not apply to defects in a thing about which the commission agent knew or could have easily learned.

**Art. 770<sup>1</sup>. Reference.** The provisions on consumer sales apply to a contract for the sale of a movable executed between a commission agent and a natural person who acquires the thing for a purpose unrelated to his business or professional activity.

**Art. 771. Loan, commission agent's advance.** A commission agent who, without the commissioning party's authorization, extends a loan or an advance to a third party acts at his own risk.

**Art. 772. Commission due and payable.**

§ 1. The commission agent acquires a claim for payment of commission at the time the commissioning party receives the thing or the price. If the contract is to be performed in parts, the commission agent acquires a claim for commission as the contract is being performed.

§ 2. The commission agent may demand commission also if the contract has not been performed for reasons attributable to the commissioning party.

**Art. 773. Pledge right.**

§ 1. In order to secure claims for commission and claims for reimbursement of expenses and advances paid to the commissioning party, and in order to secure any other amounts due arising from commission orders, the commission agent is entitled to a statutory pledge on the things which are the object of the commission sales so long as those things are with him or with a person who holds them on his behalf or so long as he may dispose of them using documents.

§ 2. The said amounts due may be satisfied from claims acquired by the commission agent on the commissioning party's account, with priority over the commissioning party's creditors.

§ 3. (*deleted*)

## Tytuł XXV. Carriage Contract.

### Dział I. General Provisions.

**Art. 774. Concept.** By a carriage contract, the carrier commits, within the scope of operations of its enterprise, to carry persons or things against remuneration.

**Art. 775. Relevant provisions.** The provisions of this title apply to carriage with regard to particular types of transportation only insofar as the carriage is not regulated by separate provisions.

### Dział II. Carriage of Person.

**Art. 776. Transport terms and conditions.** A carrier is obliged to provide travelers with health and safety conditions corresponding to the type of transportation and such comfort as is considered indispensable for that type of transportation.

**Art. 777. Liability for baggage.**

§ 1. The carrier is liable for baggage which the traveler carries with him only if the damage results from the carrier's willful misconduct or gross negligence.

§ 2. The carrier is liable for baggage entrusted to him in accordance with the principles governing the carriage of things.

**Art. 778. Statute of limitations.** Claims under a carriage contract become barred by the statute of limitations one year after the carriage was performed and, if the carriage was not performed, from the day on which it was to have been performed.

### **Dział III. Carriage of Things.**

**Art. 779. Required data.** The sender should give the carrier his address and the consignee's address, the destination, label of the shipment by type, quantity and packaging method, and the value of particularly valuable things.

**Art. 780. Waybill.**

§ 1. At the carrier's demand, the sender should issue a way bill<sup>5)</sup> containing the data mentioned in the preceding article, and any other material provisions of the contract. The sender bears the consequences of any inaccurate or untrue declaration.

§ 2. The sender may demand that the carrier issue to him a copy of the way bill or other certificate showing that the shipment has been accepted for carriage.

**Art. 781. Inappropriate condition of shipment.**

§ 1. If the external condition of the shipment or its packaging are inappropriate for the given type of carriage, the carrier may demand that the sender submit a written declaration on the condition of the shipment, and in the case of serious deficiencies, he may refuse carriage.

§ 2. If the carrier accepts the shipment without stipulations, it is presumed that the shipment is in a proper condition.

**Art. 782. Documents.** The sender should give the carrier all the documents required with regard to customs, tax and administrative regulations.

**Art. 783. Obstacles in performing carriage.** If the carriage cannot be started or performed due to temporary obstacles resulting from circumstances concerning the carrier, the sender may rescind the contract, though he should pay the carrier appropriate remuneration for the part of the carriage performed within the limits of what he saved on the cost of the carriage. This does not preclude claims for remedy of any damage if the obstacle resulted from circumstances for which the carrier was liable.

**Art. 784. Notice of arrival.** The carrier should immediately notify the consignee that the shipment has arrived at its destination.

**Art. 785. Consignee's rights.** Upon arrival of the shipment at the destination the consignee may exercise, on his own behalf, all the rights under the carriage contract; he may especially demand that the shipment and the way bill be handed over if at the same time he performs the obligations under the contract.

**Art. 786. Effects of shipment acceptance.** By accepting the shipment and the way bill, the consignee commits to pay the carrier's fees specified on the way bill.

**Art. 787. Refusal to accept.**

§ 1. If a consignee refuses to accept a shipment or if, for other reasons, the shipment cannot be delivered to him, the carrier should immediately notify the sender. If the sender does not send instructions in due time, the carrier should deposit the shipment for safekeeping or otherwise secure it, informing the sender and consignee of this fact.

§ 2. If the shipment is perishable or if its safekeeping requires costs for which there is no cover, the carrier may sell it appropriately applying the provisions on the consequences of the buyer's default in collecting a thing sold.

**Art. 788. Limited compensation.**

§ 1. Compensation for the loss of, depletion in or damage to a shipment from the time it is accepted for carriage until it is handed over to the consignee cannot exceed the normal value of the shipment unless the damage is due to the carrier's willful misconduct or gross negligence.

§ 2. The carrier is not liable for any depletion that does not exceed the limits set forth in relevant regulations, and in the absence of such regulations - within customarily accepted limits (natural depletion).

§ 3. The carrier is liable for loss of, depletion in or damage to money, valuables, securities or things of particular value only if the properties of the shipment were given at contract execution unless the damage is due to the carrier's willful misconduct or gross negligence.

**Art. 789. Further carrier.**

§ 1. A carrier may give a shipment for carriage to another carrier for the whole distance of carriage or part thereof, though he is liable for the actions of further carriers as for his own actions.

§ 2. Each carrier who accepts a shipment based on the same way bill is jointly and severally liable for the whole carriage in accordance with the way bill.

§ 3. A carrier who pays compensation as a result of joint and several liability has a recourse claim against the carrier liable for the circumstances from which the damage resulted. If the circumstances cannot be established, all the carriers are liable in proportion to the freight charge due to them. A carrier who proves that the damage has not occurred on his carriage route is free of liability.

**Art. 790. Pledge right.**

§ 1. In order to secure claims under a carriage contract, especially the freight charge, storage fees, customs duty and other expenses, and in order to secure such claims to which previous forwarding agents and carriers are entitled, the carrier has a statutory pledge on the shipment so long as the shipment stays with him or a person who holds it on his behalf or so long as he may dispose of it using documents.

§ 2. *(deleted)*

**Art. 791. Extinction of claims against carrier.**

§ 1. Payment of the amounts due to the carrier and acceptance of the shipment without stipulations extinguish all claims against the carrier under the carriage contract. This does not apply, however, to claims related to invisible damage to a shipment if, within a week of accepting the shipment, the consignee notifies the carrier of them.

§ 2. The above provision does not apply if the damage is due to the willful misconduct or gross negligence of the carrier.

**Art. 792. Statute of limitations.** Claims under a carriage of things contract become barred by the statute of limitations one year after the shipment delivery date, and in the case of complete loss or late delivery of the shipment, the day on which the shipment was to have been delivered.

**Art. 793. Carrier's recourse claims.** Carrier's claims against other carriers that participated in carrying the shipment become barred by the statute of limitations six months after the day on which the carrier remedied the damage or the day on which a court action was brought against him.

## Tytuł XXVI. Forwarding Contract.

### **Art. 794. Concept.**

§ 1. By a forwarding contract, the forwarding agent commits to send or collect a shipment or to provide other services related to transporting a shipment against remuneration within the scope of operations of its enterprise.

§ 2. The forwarding agent may act on its own behalf or on behalf of the principal.

**Art. 795. Relevant regulations.** The provisions of this title apply to forwarding insofar as it is not regulated by separate provisions.

**Art. 796. Reference.** If the provisions of this title or specific regulations do not provide otherwise, the provisions on mandate contract apply accordingly to a forwarding contract.

**Art. 797. Forwarding agent's special obligations.** The forwarding agent is obliged to take the actions required to recover any amounts unduly collected as the freight charge, customs duty and other charges related to carriage of the shipment.

**Art. 798. Expansion.** The forwarding agent is obliged to take the actions required to secure the rights of the principal or a person indicated by the principal against the carrier or another forwarding agent.

**Art. 799. Liability for contractors.** The forwarding agent is liable for the carriers and other forwarding agents which he uses to perform the order unless he is not at fault in choosing them.

**Art. 800. Forwarding agent as carrier.** The forwarding agent may perform the carriage himself. In this case, the forwarding agent also has the rights and obligations of a carrier.

### **Art. 801. Limited compensation.**

§ 1. Compensation for loss of, depletion in or damage to a shipment from the moment it is accepted until it is handed over to the carrier, further forwarding agent, the principal or a person indicated by the principal, cannot exceed the normal value of the shipment unless the damage is due to the forwarding agent's willful misconduct or gross negligence.

§ 2. The forwarding agent is not liable for any depletion that does not exceed the limits set forth in the relevant regulations, and in the absence of such regulations, customarily accepted limits.

§ 3. A forwarding agent is liable for loss, depletion in or damage to money, valuables, securities or things of particular value only if the properties of the shipment were given at contract execution unless the damage is due to the forwarding agent's willful misconduct or gross negligence.

### **Art. 802. Pledge right.**

§ 1. In order to secure claims for freight charge and claims for commission, reimbursement of expenses and other charges resulting from forwarding orders, and in order to secure such claims to which previous forwarding agents and carriers are entitled, the forwarding agent has a statutory pledge on the shipment so long as the shipment stays with him or a person who holds it on his behalf, or so long as he may dispose of it using documents.

§ 2. *(deleted)*

### **Art. 803. Statute of limitations.**

§ 1. Claims under a forwarding contract become barred by the statute of limitations after one year.

§ 2. The limitations period starts running: in the case of claims for damage to or depletion of shipment - on the shipment delivery date; in the case of complete loss or late delivery of a shipment - on the day on which the shipment was to have been delivered; in all other cases - on the order performance date.

**Art. 804. Forwarding agent's claims.** The forwarding agent's claims against the carriers and further forwarding agents that he used to carry the shipment become barred by the statute of limitations six months after the day on which the forwarding agent remedied the damage or the day on which a court action is brought against him. This provision applies accordingly to the said claims among persons whom the forwarding agent used to carry the shipment.

## Tytuł XXVII. Insurance Contract.

## Dział I. General Provisions.

### Art. 805. Concept; performance types.

§ 1. By an insurance contract, the insurer commits, within the scope of operations of its enterprise, to make a specific performance if an event provided for in the contract occurs, and the policyholder commits to pay a premium.

§ 2. The insurer's performance consists particularly in paying:

1) in properly insurance - the specified compensation for damage caused by an event provided for in the contract;

2) in personal insurance - the agreed amount of money, annuity or other performance if an event provided for in the contract occurs in the life of the insured.

§ 3. The provisions of this Code on annuity do not apply to annuity paid under an insurance contract.

§ 4. Articles 385<sup>1</sup> -385<sup>3</sup> apply accordingly if the policyholder is a natural person executing a contract related directly to his business or professional activity.

### Art. 806. Invalid contract; ineffectiveness.

§ 1. An insurance contract is invalid if the occurrence of the event provided for therein is not possible.

§ 2. Insurance coverage for a period preceding contract execution is ineffective if, at the contract execution time, either party knew or using due care could have learned that the event had occurred or that the possibility of its occurrence no longer existed.

### Art. 807. Non-Code regulations.

§ 1. The general terms and conditions of insurance or provisions of an insurance contract contrary to the provisions of this title are invalid unless further regulations provide for exceptions.

§ 2. *(repealed)*

### Art. 808. Insurance in favor of a third party.

§ 1. The policyholder may execute an insurance contract on another person's account. The insured need not be named in the contract unless it is necessary in order to determine the object of the insurance.

§ 2. The insurer may raise claims for premium payment only against the policyholder. The insurer may raise a defense affecting his liability also against the insured.

§ 3. The insured is entitled to demand due performance directly from the insurer unless the parties have agreed otherwise; such an agreement, however, cannot be made if the event has already occurred.

§ 4. The insured may demand that the insurer provide him with information on the provisions of the contract executed and the general terms and conditions of insurance to the extent they apply to the insured's rights and obligations.

§ 5. If an insurance contract is not directly related to the business or professional activity of an insured natural person, Articles 385<sup>1</sup> -385<sup>3</sup> apply accordingly to the extent to which the contract relates to the insured's rights and obligations.

### Art. 809. Insurance document.

§ 1. The insurer is obliged to confirm execution of the contract by an insurance document.

§ 2. Subject to the exception provided for in Article 811, in case of doubt, a contract is deemed executed upon delivery of the insurance document to the policyholder.

*(repealed)*Article 810

### Art. 811. Protection of policyholder.

§ 1. If, in response to an offer, the insurer delivers to the policyholder an insurance document containing provisions which differ to the policyholder's disadvantage from the policyholder's offer, the insurer is obliged to point this fact out to the policyholder in writing upon delivery of the document, giving him at least seven days to raise objections. If this obligation is not fulfilled, changes made to the policyholder's disadvantage are ineffective and the contract is executed in accordance with the terms and conditions of the offer.

§ 2. In the absence of objections, the contract comes into effect in accordance with the insurance document on the day following the day on which the time limit set for raising objections passes.

### Art. 812. General terms and conditions of insurance.

§ 1. *(repealed)*

§ 2. *(repealed)*

§ 3. *(repealed)*

§ 4. If an insurance contract is executed for a term longer than six months, the policyholder has the right to rescind the insurance contract within 30 days and, if the policyholder is an entrepreneur, within 7 days of contract execution. Rescission of the insurance contract does not release the policyholder from the obligation to pay the premium for the period in which the insurer provided insurance coverage.

§ 5. If the contract is executed for a fixed term, the insurer may terminate it only in the instances set forth in the law and for good cause set forth in the contract or the general terms and conditions of insurance.

§ 6. *(repealed)*

§ 7. *(repealed)*

§ 8. The insurer is obliged to present the difference between the wording of the contract and the general terms and conditions of insurance to the policyholder in writing before contract execution. If this obligation is not fulfilled, the insurer cannot rely on a difference disadvantageous to the policyholder. This provision does not apply to insurance contracts executed through negotiations.

§ 9. The provisions of § 5 and § 8 apply accordingly to a change in the general terms and conditions of insurance during the term of the contractual relationship. This does not prejudice the application of Article 384<sup>1</sup> in this case.

### Art. 813. Premium.

§ 1. The premium is calculated for the term of the insurer's liability. If the insurance relationship expires before the end of the period for which the contract was executed, the policyholder is entitled to reimbursement of the premium for the period during which insurance coverage was not used.

§ 2. Unless otherwise agreed, the premium should be paid at the time the insurance contract is executed and if the contract came into effect before the insurance document was delivered, within fourteen days of delivery.

**Art. 814. Commencement of liability; failure to pay premium.**

§ 1. Unless otherwise agreed, the insurer's liability starts from the day following the contract execution date, not earlier, however, than the day following the date the premium or its first installment is paid.

§ 2. If the insurer is liable even before the premium or its first installment is paid and the premium or its first installment is not paid on time, the insurer may terminate the contract with immediate effect and demand payment of the premium for the period during which it was liable. If the contract is not terminated, it expires at the end of the period for which the unpaid premium was due.

§ 3. If the premium is paid in installments, failure to pay the next premium installment on time may result in the insurer's liability ceasing only if such consequences are provided for in the contract or the general terms and conditions of insurance, and the insurer, after the period has passed, calls on the policyholder to pay with the sanction that failure to pay within 7 days of receiving the call for payment will extinguish the liability.

**Art. 815. Notification obligation.**

§ 1. The policyholder is obliged to disclose to the insurer all the circumstances known to it about which the insurer has enquired in the offer form or in other letters before contract execution. If the policyholder executes the contract through a representative, this obligation also rests on the representative and also covers the circumstances known to the representative. If the insurer executes the insurance contract despite receiving no reply to particular enquiries, the omitted circumstances are deemed insignificant.

§ 2. If the insurance contract stipulates that during the contract term, any change in the circumstances referred to in the preceding paragraph should be reported, the policyholder is obliged to notify the insurer of those changes immediately on learning of them. This provision does not apply to life insurance.

§ 2<sup>1</sup>. If the insurance contract is executed on another person's account, the obligations set forth in the preceding paragraphs rest on the policyholder and the insured unless the insured did not know about the contract having been executed on his account.

§ 3. The insurer is not liable for the effects of circumstances about which, in violation of the preceding paragraphs, he was not informed. If the preceding paragraphs are breached due to willful misconduct, in case of doubt it is assumed that an event provided for in the contract and its consequences result from the circumstances referred to in the preceding sentence.

**Art. 816. Increase in the likelihood of an accident.** If circumstances are disclosed which significantly change the likelihood of an event, each party may demand an appropriate change in the amount of the premium from the time the circumstance occurred, though not earlier than from the beginning of the current insurance period. If such a demand is made, the other party may, within 14 days, terminate the contract with immediate effect. This provision does not apply to life insurance.

**Art. 817. Performance date.**

§ 1. The insurer is obliged to make the performance within thirty days of being notified of the event.

§ 2. If it is not possible to clarify the circumstances needed to determine the insurer's liability or the amount of the performance within the above period, the performance should be made within 14 days of the day on which, having used due care, it was possible to clarify the circumstances. However, the insurer should make the undisputed part of the performance within the period set forth in § 1.

§ 3. An insurance contract or the general terms and conditions of insurance may contain provisions more advantageous for the insured than those set forth in the preceding paragraphs.

**Art. 818. Official notification of event.**

§ 1. An insurance contract or the general terms and conditions of insurance may provide that the policyholder is obliged to notify the insurer of an event within a specified period.

§ 2. If an insurance contract is executed on another person's account, the obligation set forth in the preceding paragraph may be imposed both on the policyholder and on the insured unless the insured does not know about the insurance contract being executed on his account.

§ 3. In the event of breach of the obligations set forth in the preceding paragraphs, due to willful misconduct or gross negligence, the insurer may accordingly reduce the performance, if the breach contributes to an increase in the damage or prevents the insurer from establishing the circumstances and consequences of the event.

§ 4. Failure to notify the insurer of an event has no consequences if the insurer was notified of the circumstances which should have been disclosed to it within the notification period.

**Art. 819. Statute of limitations.**

§ 1. Claims under an insurance contract become barred by a statute of limitations after three years.

§ 2. *(repealed)*

§ 3. In the case of third party liability insurance, the aggrieved party's claims against the insurer for compensation or recompense become barred by the statute of limitations after the period provided for such a claim in the provisions on liability for damage caused by tort or arising from non-performance or improper performance of an obligation.

§ 4. The running of the limitations period of a claim for a performance against an insurer is also interrupted by a claim being filed with the insurer or by an event covered by the insurance being reported. The limitations period starts running anew from the day on which the party filing the claim or reporting the event receives a written declaration from the insurer according or refusing the performance.

**Art. 820. Maritime insurance; reinsurance.** The provisions in this title do not apply to maritime insurance and indirect insurance (reinsurance).

**Dział II. Property Insurance.**

**Art. 821. Scope.** Property insurance may cover any property interest which is not unlawful and which may be assessed in money.

**Art. 822. Third party liability insurance.**

§ 1. By a third party liability insurance contract, the insurer commits to pay the compensation set forth in the contract for any damage caused to third parties with regard to whom liability for damage is borne by the policyholder or the insured.

§ 2. Unless the parties have agreed otherwise, a third party liability insurance contract covers the damage referred to in § 1 arising from an event provided for in the contract which occurred during the insurance period.

§ 3. The parties may decide that the contract will cover damage arising, disclosed or reported in the insurance period.

§ 4. The loss payee, in connection with an event covered by a third party liability insurance contract, may raise claims directly against the insurer.

§ 5. The insurer cannot raise against the loss payee a defense of breach by the policyholder or the insured of obligations arising from the contract or the general terms and conditions of insurance if the breach occurred after the event.

**Art. 823. Change of owner; transfer of rights.**

§ 1. If the object of the insurance is transferred, the rights under the insurance contract may be transferred to the acquirer of the insurance object. The transfer of those rights requires the insurer's consent unless the insurance contract or the general terms and conditions of insurance provide otherwise.

§ 2. In the event the rights referred to in § 1 are transferred, the acquirer of the object also assumes the obligations borne hitherto by the transferor unless, with the insurer's consent, the parties agreed otherwise. Despite the transfer of the obligations, the transferor is jointly and severally with the acquirer liable for paying the premium due for the period until the object of the insurance is transferred.

§ 3. If the rights referred to in § 1 are not transferred to the acquirer of the insurance object, the insurance relationship is extinguished upon the transfer of the insurance object to the acquirer.

§ 4. The provisions of § 1-3 do not apply to the transfer of claims which arise or could arise as a result of an event provided for in the contract.

**Art. 824. Insurance sum.**

§ 1. Unless otherwise agreed, the insurance sum set in the contract constitutes the upper limit of the insurer's liability.

§ 2. If, after the contract is executed, the value of the insured property decreases, the policyholder may demand an appropriate reduction in the insurance sum. The insurer may unilaterally reduce the insurance sum for the same reason, notifying the policyholder of this fact at the same time.

§ 3. A reduction in the insurance sum entails an appropriate reduction in the premium starting from the first day of the month in which the policyholder demands a reduction in the insurance sum or in which the insurer notifies the policyholder of the unilateral reduction in this sum.

**Art. 824<sup>1</sup>. Liability.**

§ 1. Unless otherwise agreed, the sum of money paid out by the insurer under insurance cannot be higher than the damage suffered.

§ 2. If the same insurance object is at the same time insured against the same risk by two or more insurers for amounts which in total exceed its insurable value, the policyholder cannot demand performance in excess of the damage. Among the insurers, each is liable in the proportion in which the insurance sum accepted by that insurer is to the total sums arising from double or multiple insurance.

§ 3. If, in any of the insurance contracts referred to in § 2, it is agreed that the sum paid out by the insurer under the insurance may be higher than the damage suffered, the policyholder may demand performance in excess of the amount of damage only from that insurer. In this case, in order to establish liability among the insurers, it should be assumed that, in the insurance referred to in this paragraph, the insurance sum is equal to the insurable value.

**Art. 825 (deleted)**

**Art. 826. Obligation to reduce damage.**

§ 1. If an event occurs, the policyholder is obliged to use all measures available to it in order to rescue the insurance object and to prevent or reduce damage.

§ 2. An insurance contract or the general terms and conditions of insurance may provide that, if an event occurs, the policyholder is obliged to secure the possibility of claims for compensation being brought against the persons liable for the damage.

§ 3. If the policyholder has intentionally or due to gross negligence failed to use the measures referred to in § 1, the insurer is released from liability for the resulting damage.

§ 4. The insurer is obliged, within the limits of the insurance sum, to reimburse the costs of using the measures referred to in § 1 if the measures were purposeful even if they proved ineffective. The contract or the general terms and conditions of insurance may contain provisions more advantageous for the policyholder.

§ 5. In the case of insurance taken out on another person's account, the provisions of the preceding paragraphs also apply to the insured.

**Art. 827. Policyholder's fault.**

§ 1. The insurer is released from liability if the policyholder causes damage intentionally. In the event of gross negligence, compensation is not due unless the contract or the general terms and conditions of insurance provide otherwise or the payment of compensation in the given circumstances is in line with the equitable principle.

§ 2. Third party liability insurance may set forth different principles for the insurer's liability than those set forth in § 1.

§ 3. Unless otherwise agreed, the insurer is not liable for any damage caused intentionally by a person with whom the policyholder lives in a common household.

§ 4. If an insurance contract is executed on another person's account, the principles set forth in the preceding paragraphs apply accordingly to the insured.

**Art. 828. Transfer of claims.**

§ 1. Unless otherwise agreed, as of the day the insurer pays the compensation, the policyholder's claim against the third party liable for the damage is transferred by force of law to the insurer up to the amount of the compensation paid. If the insurer covers only part of the damage, the policyholder has priority of satisfaction of the remaining part over the insurer's claim.

§ 2. The policyholder's claims against persons with whom the policyholder lives in a common household are not transferred to the insurer unless the perpetrator causes the damage intentionally.

§ 3. The principles arising from the preceding paragraphs apply accordingly if an insurance contract is executed on another person's account.

### Dział III. Personal Insurance.

#### Art. 829. Scope.

§ 1. Personal insurance may especially cover:

1) in life insurance - the death of the insured or attainment by the insured of a certain age;

2) in accident insurance - bodily injury, health disorder or death due to an accident.

§ 2. In a life insurance contract executed on another person's account, the insurer's liability starts not earlier than on the day following the day when the insured states to the party named in the contract that he wishes to take advantage of the insurance coverage stipulated to his benefit. This declaration should also include the insurance sum. An amendment to the contract to the detriment of the insured or the beneficiary in the event of the insured's death requires the insured's consent.

#### Art. 830. Termination by policyholder.

§ 1. In personal insurance, the policyholder may terminate the contract at any time with the notice period set forth in the contract or in the general terms and conditions of insurance, and where there is no such notice period, with immediate effect.

§ 2. In the absence of a stipulation to the contrary, a contract is deemed terminated by the policyholder if the premium or an installment is not paid in the period set forth in the contract or in the general terms and conditions of insurance despite a prior call for payment within an additional period set forth in the general terms and conditions of insurance; the call for payment should inform the policyholder of the consequences of non-payment of the premium.

§ 3. An insurer may terminate a life insurance contract only in the instances specified in the law.

§ 4. The provisions of § 3 and Article 812 § 8 apply accordingly in the event of a change in the general terms and conditions of life insurance during the contractual relationship. This does not prejudice the application of Article 384<sup>1</sup> in such a case.

#### Art. 831. Beneficiary.

§ 1. The policyholder may indicate one or more persons entitled to receive the insurance sum in the event of the insured's death; he may also execute a contract of insurance payable to the bearer. The policyholder may change or revoke either of those stipulations at any time.

§ 1<sup>1</sup>. If an insurance contract is executed on another person's account, the exercise of the rights referred to in the preceding paragraph requires the insured's prior consent; the contract or the general terms and conditions of insurance may provide that those rights may be exercised by the insured independently.

§ 2. If several beneficiaries have been named and their respective shares in the sum have not been indicated, their shares are equal.

§ 3. An insurance sum due to the beneficiary is not included in the insured's estate.

#### Art. 832. Expansion.

§ 1. An indication of the beneficiary that will receive the insurance sum becomes ineffective if the beneficiary dies prior to the death of the insured or if the beneficiary has intentionally contributed to the insured's death.

§ 2. If, at the time of the insured's death, there is no beneficiary, the insurance sum is due to the immediate family of the insured in the order set forth in the general terms and conditions of insurance unless otherwise agreed.

**Art. 833. Suicide.** In life insurance, the insured's suicide does not release the insurer from the performance obligation if the suicide occurs two years after the insurance contract execution. The insurance contract or the general terms and conditions of insurance may shorten this period, though to not less than six months.

**Art. 834. Defense of untrue information.** If an event occurs three years after the life insurance contract execution, the insurer cannot raise the defense that untrue information was given upon execution of the contract, especially that an illness of the insured was concealed. The contract or the general terms and conditions of insurance may shorten this period.

### Tytuł XXVIII. Safekeeping.

**Art. 835. Concept.** By a safekeeping contract, the keeper commits to keep in a non-deteriorated condition a movable given to him for safekeeping.

**Art. 836. Remuneration.** If the remuneration for safekeeping is not set forth in the contract or in a tariff, the keeper is entitled to the remuneration accepted in the given relations unless it follows from the contract or the circumstances that he agreed to safekeep the thing without remuneration.

**Art. 837. Manner of safekeeping.** The keeper should safekeep the thing in the way he committed to, and in the absence of a contract in this respect, in the way following from the properties of the thing kept and from the circumstances.

**Art. 838. Change of place and manner.** The keeper is entitled and even obliged to change the place and the manner of safekeeping the thing specified in the contract if it transpires that it is necessary to protect it from loss or damage. If it is possible to obtain the depositor's prior consent, the keeper should obtain the same before making the change.

**Art. 839. Use of the thing.** The keeper cannot use the thing without the depositor's consent unless required to keep it in a non-deteriorated condition.

**Art. 840. Substitute.**

§ 1. The keeper cannot give the thing to another person for safekeeping unless he is forced to do so by the circumstances. In such a case, he is obliged to notify the depositor immediately where and with whom he deposited the thing, and if notification is given, he is liable only for lack of due care in choosing the substitute.

§ 2. The substitute is also liable towards the depositor. If the keeper is liable for the actions of his substitute as for his own actions, their liability is joint and several.

**Art. 841. Accidental loss.** If the keeper, without the depositor's consent and without a real need, uses the thing or changes its place or manner of safekeeping, or if he gives the thing for safekeeping to another person, he is also liable for any accidental loss of or damage to the thing which would not otherwise have occurred.

**Art. 842. Keeper's expenses and obligations.** The depositor should reimburse the keeper for any expenses the keeper incurs in order to properly safekeep the thing together with statutory interest and release the keeper from the obligations assumed by him for this purpose on his own behalf.

**Art. 843. Joint safekeeping.** If several persons jointly accept or give a thing for safekeeping, their liability towards the other party is joint and several.

**Art. 844. Return of a thing.**

§ 1. The depositor may at any time demand that the thing given for safekeeping be returned.

§ 2. The keeper may demand that the thing be collected before the end of the period specified in the contract if, due to circumstances which he could not have foreseen, he cannot, without loss to himself or danger to the thing, safekeep it in the way to which he committed. If the safekeeping time was not specified or if the thing was accepted for safekeeping without remuneration, the keeper may demand that the thing be collected at any time so long as its return does not take place at a time inconvenient for the depositor.

§ 3. The thing should be returned in the place where it was to be safekept.

**Art. 845. Irregular deposit.** If it follows from specific regulations or the contract or the circumstances that the keeper may dispose of money or fungibles given for safekeeping, the provisions on loan (irregular deposit) apply accordingly. The time and place of the return are set forth in the provisions on safekeeping.

## **Tytuł XXIX. Liability, Pledge Right and Statute of Limitations for Claims of Persons Running Hotels and Similar**

### **Establishments.**

**Art. 846. Premises for liability.**

§ 1. A person running a hotel or similar establishment for profit is liable for the loss of or damage to things brought in by a person using the services of the hotel or similar establishment, hereinafter referred to as a „guest”, unless the damage was due to the properties of the thing brought in or force majeure or if it arose solely from a fault on the part of the aggrieved party or a person who accompanied or visited him or was employed by him.

§ 2. Within the meaning of the provisions of this title, a thing brought in is a thing which, during the time the guest uses the services of the hotel or similar establishment, is in the hotel or similar establishment or is outside the hotel or the establishment and has been entrusted to the person running the hotel or similar establishment for profit or to a person employed by him or deposited in a place indicated by them or intended for that purpose.

§ 3. A thing brought in is also a thing which in a short, customarily accepted period before or after the guest uses the services of the hotel or similar establishment has been entrusted to the person running the hotel or similar establishment for profit or to a person employed by him or deposited in a place indicated by them or intended for that purpose.

§ 4. Motor vehicles and things left in them and living animals are not deemed things brought in. The person running the hotel or similar establishment for profit may be held liable for them as a keeper if a safekeeping contract has been executed.

§ 5. The exclusion or limitation of the liability referred to in § 1 by a contract or announcement has no legal effect.

**Art. 847. Notification obligation.** A claim for remedy of damage due to the loss of or damage to a thing brought into a hotel or similar establishment is extinguished if the aggrieved party did not, after learning of the damage, immediately inform the person running the establishment of it. This provision does not apply if the damage was caused by the person running the hotel or similar establishment for profit or if he had accepted the thing for safekeeping.

**Art. 848. Statute of limitations.** Claims for remedy of damage due to the loss of or damage to things brought into a hotel or a similar establishment become barred by the statute of limitations six months after the day on which the aggrieved party learns of the damage, and in any case, one year after the day on which the aggrieved party ceases to use the services of the hotel or similar establishment.

**Art. 849. Limitation of liability.**

§ 1. In the event of loss of or damage to things brought in, the scope of the obligation of the person running the hotel or similar establishment for profit to remedy the damage is limited, with respect to one guest, to one hundred times the amount due for the accommodation provided to him for one 24-hour period. However, liability for each thing cannot exceed fifty times this amount.

§ 2. Limitations on the scope of the obligation to remedy any damage do not apply when the person running a hotel or similar establishment for profit has accepted the things for safekeeping or has refused to accept them for safekeeping despite being obliged to accept them and when the damage is due to the willful misconduct or gross negligence of that person or a person employed by him.

§ 3. A person running a hotel or similar establishment for profit is obliged to accept for safekeeping money, securities and valuable objects, especially valuables and objects of scientific or artistic value. He may refuse to accept those things only if they pose a threat to safety or if, given the size or standard of the hotel or similar establishment, their value is too high or they occupy too much space.

**Art. 850. Pledge right.** In order to secure payment for the accommodation, board and services provided to a person using the services of a hotel or similar establishment, and to secure a claim for reimbursement of expenses incurred for that person, a person running a hotel or similar establishment for profit has a statutory pledge on things brought in. This right is subject to the provisions on a landlord's statutory pledge.

**Art. 851. Statute of limitations of the establishment's claims.** Claims arising within the scope of operations of hotel enterprises regarding payment for the accommodation, board and services provided and regarding expenses incurred for persons using the services of such enterprises become barred by the statute of limitations after two years. This provision applies accordingly to catering enterprises.

**Art. 852. Liability of other establishments.** The provisions on liability and statutory pledge of a person running a hotel or similar establishment for profit apply accordingly to bathing establishments. However, in the case of objects which are not customarily brought in by persons using the services of such establishments, the liability of the person running the establishment is limited to the case where he accepts such an object for safekeeping or where the damage is due to the willful misconduct or gross negligence of that person or a person employed by him.

### Tytuł XXX. Storage Contract.

**Art. 853. Concept; storage receipt.**

§ 1. By a storage contract, a warehouseer commits to store, against remuneration, the movables specified in the contract.

§ 2. A warehouseer is obliged to give the depositor a storage receipt which should specify the type, quantity, labeling and packing method of the things, and other significant provisions of the contract.

**Art. 854. Preclusion.** The provisions of this title do not apply if the warehouseer acquires the ownership of the things deposited and is obliged to return only the same quantity of things of the same kind and quality.

**Art. 855. Liability, maintenance.**

§ 1. A warehouseer is liable for any damage arising from loss of, depletion in or damage to a thing from the time it is accepted for storage until it is handed over to the person entitled to collect it unless he proves that he could not have prevented the damage despite having used due care.

§ 2. A warehouseer is obliged to carry out appropriate maintenance activities. Any provision to the contrary is invalid.

§ 3. A warehouseer is not liable for depletion within the limits set forth in the relevant regulations, and in the absence of such regulations - within customarily accepted limits.

§ 4. Compensation cannot exceed the ordinary value of the thing unless the damage is due to the warehouseer's willful misconduct or gross negligence.

**Art. 856. Insurance.** A warehouseer is obliged to insure the thing only if he is ordered to do so.

**Art. 857. Obligation to secure.** If the condition of the things sent to the warehouseer raises a suspicion that the things are missing, depleted, deteriorated or damaged, the warehouseer should take the actions needed to secure the depositor's property and rights.

**Art. 858. Notice.** The warehouseer should notify the depositor of any events important for the protection of the depositor's rights or concerning the condition of the things deposited for storage unless notification is not possible.

**Art. 859. Sale of things.** If a thing is perishable and it is not possible to wait for the depositor's instructions, the warehouseer has the right, and when the depositor's interests so require, also the obligation to sell the thing using due care.

**Art. 859<sup>1</sup>. Inspection by depositor.** The warehouseer should enable the depositor to inspect, divide or join things, to take samples and carry out other actions in order to preserve the things in a proper condition.

**Art. 859<sup>2</sup>. Joining and dividing.**

§ 1. The warehouseer may join substitute things of the same kind and quality belonging to several depositors with their written consent.

§ 2. The consent of the other depositors is not required to hand over to a depositor part of the things so joined due to him.

§ 3. Division and joining of things should be disclosed in the warehouseer's documents.

**Art. 859<sup>3</sup>. Pledge right.** In order to secure claims for storage charges and indirect charges, reimbursement of expenses and costs, especially freight charge and customs duty, reimbursement of advances paid to the depositor and any other charges arising under the storage contract or contracts, a warehouseer has a statutory pledge on things deposited for storage so long as they are with him or with a person who holds them on his behalf or so long as he may dispose of them using documents.

**Art. 859<sup>4</sup>. Contract extension.** A storage contract executed for a fixed term is deemed extended for a non-fixed term if 14 days before the end of the period the warehouseer did not demand by registered letter that the things be collected within an agreed period.

**Art. 859<sup>5</sup>. Termination.** A warehouseer may terminate a storage contract for a non-fixed term by registered mail with one month's notice, though not earlier than 2 months after the things are deposited.

**Art. 859<sup>6</sup>. Failure to collect a thing.** If the depositor does not collect the thing despite the passing of the agreed period or the contract termination notice period, the warehouseman may deposit the thing for storage at the depositor's cost and risk. He may, however, exercise this right only if he has warned the depositor of his intent to exercise the right by registered letter sent at least 14 days before the lapse of the agreed period.

**Art. 859<sup>7</sup>. Termination for good cause.** Despite execution of a contract for a fixed term, the warehouseman may, for good cause, at any time, call on the depositor to collect the things and set an appropriate period for their collection.

**Art. 859<sup>8</sup>. Extinction of depositor's claims.**

§ 1. Collection of the things without stipulations and payment of all charges to the warehouseman extinguishes all claims against the warehouseman under the storage contract, save for claims related to invisible damage to the thing if, within seven days of collection, the depositor notifies the warehouseman thereof.

§ 2. The provision of § 1 does not apply if the damage is due to willful misconduct or gross negligence.

**Art. 859<sup>9</sup>. Statute of limitations.** Claims under a storage contract become barred by the statute of limitations after one year.

## Tytuł XXXI. Partnership.

**Art. 860. Concept; form.**

§ 1. By a deed of partnership, the partners commit to strive to achieve a common economic purpose by acting in a specified way, especially by making contributions.

§ 2. The deed of partnership should be stated in writing.

**Art. 861. Contribution.**

§ 1. A partner's contribution may consist in contributing to the partnership ownership or other rights or in providing services.

§ 2. It is presumed that the partners' contributions are of equal value.

**Art. 862. Contribution of things.** If a partner commits to contribute the ownership of things to a partnership, the provisions on sale apply accordingly to the performance of this obligation and to liability under implied warranty for defects and to risk of loss of or damage to the thing. If the things are to be contributed only for use, the provisions on tenancy apply accordingly in the above respect.

**Art. 863. Joint co-ownership.**

§ 1. A partner cannot dispose of a share in the joint property of partners or a share in particular elements of the property.

§ 2. During the lifetime of a partnership, a partner cannot demand that the partners' joint property be divided.

§ 3. During the lifetime of a partnership, a partner's creditor cannot demand satisfaction from the partner's share in the partners' joint property or from a share in particular elements of the property.

**Art. 864. Joint and several liability.** The partners bear joint and several liability for the partnership's liabilities.

**Art. 865. Managing the partnership's affairs.**

§ 1. Each partner is entitled and obliged to manage the partnership's affairs.

§ 2. Each partner may, without a prior partners' resolution, manage affairs which do not exceed the partnership's ordinary operations. If, however, before such an affair is completed, even one of the other partners objects to the management thereof, a partners' resolution is required.

§ 3. Each partner may, without a prior partners' resolution, perform an urgent act which, if not taken, could expose the partnership to irreparable loss.

**Art. 866. Representing the partnership.** In the absence of a contract or a partners' resolution to the contrary, each partner is authorized to represent the partnership within the limits covered by his authorization to manage its affairs.

**Art. 867. Share in profits and losses.**

§ 1. Each partner is entitled to an equal share in profits and in the same proportion participates in losses, regardless of the type and value of the contribution. The deed of partnership may set forth the proportion of the partners' share in profits and losses differently. It may even release some of the partners from participating in losses. A partner cannot, however, be excluded from participating in profits.

§ 2. The proportion of a partner's share in profits set forth in the deed of partnership also refers, in case of doubt, to a share in losses.

**Art. 868. Profit allocation and payment.**

§ 1. A partner may demand that profit be allocated and paid only after the partnership is dissolved.

§ 2. However, if a partnership is established for a longer period, the partners may demand that profit be allocated and paid at the end of each financial year.

**Art. 869. Termination of a share.**

§ 1. If the lifetime of a partnership is unspecified, each partner may leave the partnership by terminating his share with three months' notice at the end of the financial year.

§ 2. For good cause, a partner may terminate his share without notice even though the lifetime of the partnership is specified. Any stipulation to the contrary is invalid.

**Art. 870. Termination by personal creditor.** If, within the last six months, an execution on a partner's movables was ineffective, the partner's personal creditor who has obtained an attachment of the rights that the partner would have if he left the partnership or if the partnership were dissolved, may terminate the partner's share in the partnership with three months' notice even though the partnership was established for a fixed term. If the deed of partnership provides for a shorter notice period, the creditor may take advantage thereof.

**Art. 871. Settlements with a leaving partner.**

§ 1. Upon leaving the partnership, a partner receives back in kind the things which he brought into the partnership for use, and the value of his contribution specified in the deed of partnership is paid out to him in money, and in the absence of such a specification, the value of the contribution at the time it was made. The value of any contribution consisting in the provision of services or the partnership using things belonging to the partner is not returned.

§ 2. Furthermore, a leaving partner is paid money for the part of the joint property left after the value of all the partners' contributions has been deducted corresponding to the proportion in which the leaving partner participated in the partnership's profits.

**Art. 872. Partner's death.** It may be stipulated that the heirs of a partner will join the partnership in his place. In this case they should indicate to the partnership one person who will exercise their rights. Until this is done, the other partners may themselves take all actions to manage the partnership's affairs.

**Art. 873. Extension of deed.** If, despite there being reasons to dissolve the partnership as provided for in the deed, the partnership continues to exist with the consent of all the partners, it is deemed extended for a non-fixed term.

**Art. 874. Dissolution of partnership by court.**

§ 1. For good cause, each partner may demand that the partnership be dissolved by a court.

§ 2. A partnership is dissolved on the date a partner is declared bankrupt.

**Art. 875. Effects of dissolution.**

§ 1. From the moment a partnership is dissolved, the provisions on co-ownership in fractional parts apply accordingly to the joint property of the partners, subject to the following provisions.

§ 2. Partners' contributions are returned to the partners from the property remaining after the partnership's debts have been paid off and the provisions on the return of contributions upon a partner leaving the partnership apply accordingly.

§ 3. The remaining surplus of the joint property is divided among the partners in the same proportion in which they share in the partnership's profits.

## Tytuł XXXII. Suretyship.

**Art. 876. Concept; form.**

§ 1. By a suretyship contract, the surety commits to the creditor to perform an obligation if the debtor does not perform it.

§ 2. The surety's declaration should be made in writing; otherwise it is invalid.

**Art. 877. Lack of debtor's capacity.** In the case of suretyship for the debt of a person who cannot incur the obligation due to lack of capacity for legal acts, the surety should make the performance as the principal debtor if, when giving suretyship, he knew about the person's lack of capacity for legal acts or could have easily found out.

**Art. 878. Future debt.**

§ 1. Suretyship may be given for a future debt up to an amount specified in advance.

§ 2. Suretyship unlimited in time for a future debt may be revoked at any time before the debt arises.

**Art. 879. No suretyship.**

§ 1. The scope of the surety's obligation is determined each time by the scope of the debtor's obligation.

§ 2. However, a legal act taken by a debtor with a creditor after suretyship is given cannot increase the surety's obligation.

**Art. 880. Debtor's delay.** If a debtor is late making the performance, the creditor should notify the surety thereof immediately.

**Art. 881. Surety's liability.** In the absence of a stipulation to the contrary, the surety is liable as a joint and several co-debtor.

**Art. 882. Creditor's reminder.** If the debt payment date is not specified or if the debt payment depends on termination notice being given, the surety may, when six months have passed from the suretyship date, and if he gave suretyship for a future debt, from the date the debt arose, demand that the creditor call on the debtor to pay or to give termination notice on the earliest date. If the creditor fails to meet this demand, the surety's obligation is extinguished.

**Art. 883. Defenses against creditor.**

§ 1. The surety may raise against the creditor all defenses to which the debtor is entitled; the surety may in particular set off the debtor's claim against the creditor.

§ 2. The surety does not lose the above defenses even if the debtor has waived them or has acknowledged the creditor's claim.

§ 3. In the event of the debtor's death, the surety cannot rely on the limitation of the heir's liability arising from inheritance law.

**Art. 884. Call on debtor to participate in a case.**

§ 1. A surety against whom the creditor raises a claim should immediately notify the debtor and call on him to participate in the case.

§ 2. If the debtor does not participate in the case, he cannot raise against the surety the defenses which he has against the creditor and which the surety did not raise because he had no knowledge of them.

**Art. 885. Notifying debtor of payment.** A surety should immediately notify the debtor that he has paid a debt for which he gave suretyship. If he fails to do so and if the debtor performs the obligation, he cannot demand that the debtor return what he himself paid to the creditor unless the debtor had acted in bad faith.

**Art. 886. Notifying surety of performance.** If the suretyship was given with the debtor's knowledge, the debtor should immediately notify the surety that the obligation has been performed. If he fails to do so, a surety who has satisfied the creditor may demand that the debtor return what he paid to the creditor unless he had acted in bad faith.

**Art. 887. Disposal of security and evidence.** If a creditor disposes of security for the claims or evidence, he is liable towards the surety for any resulting damage.

### Tytuł XXXIII. Donation.

**Art. 888. Concept.**

§ 1. By a donation contract, the donor commits to make a free-of-charge performance to the donee at the cost of his property.

§ 2. *(deleted)*

**Art. 889. Increment that is not a donation.** The following free-of-charge increments do not constitute a donation:

- 1) if the obligation to make a free-of-charge performance follows from a contract regulated by other provisions of the Code;

- 2) if a person waives a right which he has not yet acquired or which he has acquired in such a way that, if waived, the right is deemed not to have been acquired.

**Art. 890. Form.**

§ 1. The donor's declaration should be made in the form of a notarial deed. However, a donation contract executed without this form being observed becomes valid if the promised performance is made.

§ 2. The above provisions do not prejudice provisions which, in view of the object of the donation, require a specific form for the declaration of the two parties.

**Art. 891. Donor's liability.**

§ 1. The donor is obliged to remedy any damage arising from non-performance or improper performance of the obligation if the damage was caused intentionally or through gross negligence.

§ 2. If the donor is late making a monetary performance, the donee may demand interest for delay only from the date a court action is brought.

**Art. 892. Defect in a thing.** If the donated thing has defects, the donor is obliged to remedy any damage which he has caused to the donee in that, while knowing of the defects, he failed to inform him in due time. This provision does not apply if the donee could have easily noticed the defect.

**Art. 893. Instructions.** The donor may impose an obligation on the donee to act or refrain from acting in a specified manner, without making anyone a creditor (instructions).

**Art. 894. Demand to follow instructions.**

§ 1. A donor who performs an obligation arising from a donation contract may demand that instructions be followed unless their sole purpose is to benefit the donee.

§ 2. After the donor's death, his heirs may demand that instructions be followed and, if the instructions take into account public interest, a competent state authority may demand so.

**Art. 895. Refusal.**

§ 1. The donee may refuse to follow instructions if this is justified by a significant change in circumstances.

§ 2. If a donor or his heirs demand that instructions be followed, the donee may release himself by handing over the object of donation in kind in an „as is” condition. This provision does not apply if a competent state authority demands that the instructions be followed.

**Art. 896. Revocation of donation not made.** A donor may revoke a donation which has not yet been made if, after the contract is executed, his financial condition changes to the extent to which the donation cannot be made without detriment to him keeping himself in accordance with his justified needs or without detriment to his statutory maintenance obligations.

**Art. 897. Donor's impoverishment.** If, after the donation is made, the donor becomes impoverished, the donee is obliged, within the scope of his remaining enrichment, to provide the donor with the means which the latter lacks to keep himself in accordance with his justified needs or to perform his statutory maintenance obligations. The donee may, however, release himself from this obligation by returning the value of the enrichment to the donor.

**Art. 898. Revocation of donation made.**

§ 1. A donor may revoke a donation even if already made if the donee manifests gross ingratitude towards him.

§ 2. The object of a revoked donation should be returned in accordance with the provisions on unjust enrichment. From the time of the event justifying the revocation, the donee is liable equally with the person unjustly enriched who should be aware of the obligation to return the enrichment.

**Art. 899. Pardon; revocation by heirs.**

§ 1. A donation cannot be revoked by reason of ingratitude if the donor has pardoned the donee. If at the time of pardon, the donor did not have the capacity for legal acts, the pardon is effective if it was given with sufficient comprehension.

§ 2. The donor's heirs may revoke a donation by reason of ingratitude only if the donor was entitled to revoke it at the time of his death or if the donee had intentionally deprived the donor of life or intentionally caused the health disorder which led to the donor's death.

§ 3. A donation cannot be revoked after one year has passed from the day on which the person entitled to revoke it learns of the donee's ingratitude.

**Art. 900. Form.** A donation is revoked by a written declaration made to the donee.

**Art. 901. Dissolution by court.**

§ 1. The representative of a legally incapacitated person may demand that a donation contract executed by that person before incapacitation be dissolved if, due to the value of the performance and lack of justified motives, the donation is excessive.

§ 2. Dissolution of a donation contract cannot be demanded after two years have passed from the contract being performed.

**Art. 902. No revocation.** The provisions on revocation of a donation do not apply if the donation fulfills an obligation arising from the principles of community life.

### Tytuł XXXIII<sup>1</sup>. Alienation of Real Estate.

#### **Art. 902<sup>1</sup>. Content of real estate alienation contract.**

§ 1. By a real estate alienation contract, the real estate owner commits to transfer ownership of the real estate to a municipality or the State Treasury free of charge.

§ 2. The State Treasury may execute a real estate alienation contract if the municipality in which the whole or part of the real estate is located does not take advantage of the invitation to execute the contract within three months of an invitation being submitted by the real estate owner.

**Art. 902<sup>2</sup>. Owner's liability excluded.** Unless the parties decide otherwise, the owner alienating the real estate is not liable for defects therein.

### Tytuł XXXIV. Annuity and Life Annuity.

#### Dział I. Annuity.<sup>6)</sup>

**Art. 903. Concept.** By an annuity contract, one party commits to another party to make certain periodical performances in money or in fungibles.

**Art. 903<sup>1</sup>. Written form.** An annuity contract should be stated in writing.

**Art. 904. Payment periods.** If the annuity payment periods are not specified otherwise, an annuity in money should be paid monthly in advance, and an annuity in fungibles should be paid in periods arising from the nature of the performance and the purpose of the annuity.

**Art. 905. Beneficiary's death.** If the beneficiary lives to the date of payment of an annuity payable in advance, he is entitled to the whole performance due for the given period. An annuity payable in arrears should be paid for the time until the day on which the obligation ends.

#### **Art. 906. Remuneration.**

§ 1. The provisions on sale apply accordingly to an annuity established against remuneration.

§ 2. The provisions on donation apply to an annuity established without remuneration.

#### **Art. 907. Non-contractual annuity.**

§ 1. The provisions of this section also apply in the absence of specific regulations where the annuity results from non-contractual sources.

§ 2. If the obligation to pay an annuity follows from the law, each party may, in the event of a change in circumstances, demand that the amount or duration of the annuity be changed even though the amount of the annuity and its duration were set in a court decision or in a contract.

#### Dział II. Life Annuity.

#### **Art. 908. Concept.**

§ 1. If, in exchange for transfer of the ownership of real estate, the acquirer commits to provide the transferor with subsistence for life (life annuity contract), he should, in the absence of a contract to the contrary, accept the transferor as a member of his household, provide him with food, clothing, accommodation, light and fuel, provide him with appropriate help and care in illness and give him a funeral in accordance with local custom at his own expense.

§ 2. If, in the annuity contract, the acquirer of real estate commits to encumber the real estate in favor of the transferor with a usufruct the exercise of which is limited to part of the real estate, the right of habitation or other easement in gross or to make recurrent performances in money or in fungibles, the usufruct, easement in gross or the right to recurring performances form part of the life annuity right.

§ 3. A life annuity may also be stipulated in favor of a person related to the real estate transferor.

#### **Art. 909 (deleted)**

#### **Art. 910. Property and personal consequences.**

§ 1. The ownership of real estate is transferred under a life annuity contract with the simultaneous encumbrance of the real estate with the life annuity right. The provisions on limited real rights apply accordingly to such an encumbrance.

§ 2. If real estate encumbered with a life annuity right is transferred, the acquirer also bears personal liability for the performances covered by that right unless they became due and payable during the time when the real estate was not his property. The personal liability of co-owners is joint and several.

**Art. 911. Death of one of the beneficiaries.** A life annuity right established in favor of several persons is reduced accordingly in the event of the death of one of those persons.

**Art. 912. No transfer.** A life annuity right is non-transferable.

**Art. 913. Exchange for annuity; dissolution.**

§ 1. If, for any reason, such relations arise between the annuitant and the person obliged to provide the life annuity that the parties cannot be required to remain in further direct contact with each other, the court will, at the demand of either party, change all or some of the rights covered by the life annuity right to an annuity for life corresponding to the value of those rights.

§ 2. In exceptional instances the court may, at the demand of either the party obliged to provide the life annuity or the annuitant, if the latter was the transferor of the real estate, dissolve the life annuity contract.

**Art. 914. Transfer of real estate.** If a party obliged under a life annuity contract transfers the real estate received, the annuitant may demand that the annuity right be changed into an annuity for life corresponding to the value of that right.

**Art. 915. Usufruct in order to ensure subsistence.** The provisions of the two preceding articles apply accordingly to contracts under which the acquirer of real estate committed, in order to provide the transferor with subsistence for life, to encumber the real estate with a usufruct, limiting its exercise to part of the real estate.

**Art. 916. Life annuity relatively ineffective.**

§ 1. A person to whom the annuitant has a statutory maintenance obligation may demand that the life annuity contract be declared ineffective with respect to him if, as a result of the contract, the annuitant has become insolvent. This right is held regardless of whether the annuitant has acted knowingly to the detriment of the creditors and regardless of the contract execution time.

§ 2. A declaration that a life annuity contract is ineffective cannot be demanded once five years have passed from the contract date.

#### **Tytuł XXXV. Settlement.**

**Art. 917. Concept.** By a settlement, the parties make mutual concessions within the scope of a legal relationship existing between them in order to avoid uncertainty concerning claims resulting from that relationship or to ensure their performance or in order to avoid an existing or potential dispute.

**Art. 918. Error.**

§ 1. The legal effects of a settlement executed under the influence of an error may be avoided only if the error concerns facts which, according to the settlement, both parties considered undeniable, and the dispute or uncertainty would not have arisen if the parties had known the true state of affairs at the time the settlement was executed.

§ 2. The legal effects of a settlement cannot be avoided on the grounds that evidence has been discovered of the claims to which the settlement relates unless the settlement was executed in bad faith.

#### **Tytuł XXXVI. Public Promise.**

**Art. 919. Concept; reference.**

§ 1. Anyone who promises a reward by way of a public announcement for performing a specified act is obliged to keep the promise.

§ 2. If the promise does not specify the date for the performance of the act and does not contain a stipulation that the promise is irrevocable, the promisor may revoke it. The revocation should be made by way of a public announcement in the same way as the promise was made. Revocation is ineffective towards a person who has already performed the act.

**Art. 920. Performance by several persons.**

§ 1. If the act is performed by several persons independently of each other, each of them is entitled to the reward in the full amount unless only one reward was promised.

§ 2. If only one reward was promised, it will go to the person who first claims it, and if several persons claim it simultaneously, the person who first performed the act.

§ 3. If the act was performed by several persons jointly, in the event of a dispute, the court will divide the reward appropriately.

**Art. 921. Contest.**

§ 1. A public promise of a reward for the best work or for the best act is ineffective if it does not specify the period in which the reward may be claimed.

§ 2. The evaluation whether and which work or act deserves the reward is made at the promisor's discretion unless the reward promise stipulates otherwise.

§ 3. The promisor acquires the ownership of the rewarded work only if he stipulated so in the promise. In such a case, the ownership is acquired at the time the reward is paid. This provision also applies to the acquisition of copyrights or rights to inventions.

#### **Tytuł XXXVII. Remittance and Securities.**

## Dział I. Remittance.

**Art. 921<sup>1</sup>. Concept.** Anyone who remits to another person (remittee) the performance of a third party (remitter) thus authorizes the remittee to accept and the remitter to make the performance on the account of the remitting party.

**Art. 921<sup>2</sup>. Acceptance; statute of limitations.**

§ 1. If the remitter declares to the remittee that it accepts the remittance, it is obliged with respect to the remittee to make the performance set forth in the remittance.

§ 2. In such a case, the remitter may rely only on defenses arising from the substance of the remittance and on defenses to which it is personally entitled with respect to the remittee.

§ 3. The remittee's claims against the remitter arising from the remittance being accepted become barred by the statute of limitations after one year.

**Art. 921<sup>3</sup>. Revocation.** The remitting party may revoke the remittance so long as the remitter has not accepted it or made the performance.

**Art. 921<sup>4</sup>. Coverage relationship.** If the remitter is the remitting party's debtor as to the performance remitted, the remitter is obliged with respect to the remitting party to make the remittance.

**Art. 921<sup>5</sup>. Currency relationship.** If the remitting party is the remittee's debtor, the debt is cancelled only by the performance being made unless otherwise agreed.

## Dział II. Securities.

**Art. 921<sup>6</sup>. Features.** If an obligation results from a security issued, the debtor is obliged to make the performance against returning the document or making it available to the debtor for the purpose of depriving the document of its legal effect in a customarily accepted way.

**Art. 921<sup>7</sup>. Entitlement of instrument holder.** A performance made to the holder entitled by the substance of the security releases the debtor unless he acted in bad faith.

**Art. 921<sup>8</sup>. Registered instruments.** Registered securities entitle the person named in the instrument. Rights are transferred by assignment accompanied by hand-over of the instrument.

**Art. 921<sup>9</sup>. Securities to order; endorsement.**

§ 1. Securities to order entitle the person named in the instrument and anyone to whom the rights have been transferred by endorsement.

§ 2. Endorsement is a written declaration made on a security to order and containing at least the transferor's signature, showing the transfer of rights to another person.

§ 3. In order to transfer rights from an instrument, the instrument needs to be handed over and an unbroken sequence of endorsements needs to exist.

**Art. 921<sup>10</sup>. Bearer instruments.**

§ 1. If a permit from a competent state authority is required to put a bearer instrument into circulation, an instrument issued without such a permit is invalid.

§ 2. A debtor's signature may be imprinted mechanically unless specific regulations provide otherwise.

**Art. 921<sup>11</sup>. Expansion.**

§ 1. A debtor is not obliged to investigate whether the bearer is the owner of the instrument. However, in the case of reasonable doubts whether the instrument bearer is the creditor, the debtor should place the object of the performance in court deposit.

§ 2. If a competent state authority prohibits the performance, release from the obligation takes place by the object of the performance being placed in court deposit.

**Art. 921<sup>12</sup>. Transfer of rights.** The transfer of rights from a bearer instrument requires the hand-over of the instrument.

**Art. 921<sup>13</sup>. Debtor's defenses.** The debtor may rely with respect to the creditor on defenses regarding the validity of the instrument or which result from its content or which he personally has against the creditor. A debtor may also rely on defenses which he has against the previous creditor if the acquirer of the instrument acted knowingly to the debtor's detriment.

**Art. 921<sup>14</sup>. Cancellation.**

§ 1. Cancellation of securities is governed by specific regulations.

§ 2. If a security is finally and non-revisably cancelled, the debtor is obliged to hand over a new instrument to the person for the benefit of whom the cancellation was done, at his cost, and if the claim is due and payable, to make the performance.

**Art. 921<sup>15</sup>. Instruments of entitlement.**

§ 1. The provisions on securities apply accordingly to instruments of entitlement stating an obligation to perform.

§ 2. If the instrument of entitlement stating the obligation to perform at the creditor's demand is lost, the debtor may make the performance conditional on the person making the demand proving his entitlement.

§ 3. The provisions on bearer securities apply accordingly to instruments of entitlement that do not name the entitled person unless specific regulations provide otherwise.

**Art. 921<sup>16</sup>. Instruments which do not relate to receivables.** The provisions of this section apply accordingly to securities providing for rights other than receivables.

## Ksi ga Four. SUCCESSION.

### Tytuł I. General Provisions.

#### **Art. 922. Concept.**

§ 1. Property rights and obligations of the deceased pass, upon his death, to one or several persons in accordance with the provisions of this book.

§ 2. Succession does not include the deceased's rights and obligations that are strictly and personally related to him or rights which, on his death, pass to specified persons irrespective of whether they are heirs.

§ 3. Succession debts include the costs of the deceased's funeral to the extent to which the funeral is customary in the given milieu, costs of the succession proceedings, the obligation to satisfy claims for legitim (forced share) and the obligation to carry out legacies, bequests, devises and instructions, and other obligations provided for in this book.

#### **Art. 923. Relatives' right to reside.**

§ 1. The spouse and other relatives of the deceased who lived with him until the day of his death have the right to use, for three months from the succession being opened, the accommodation and household facilities as formerly. Any disposition of the deceased excluding or limiting this right is invalid.

§ 2. The above provisions do not limit the rights of the spouse and other relatives of the deceased which result from tenancy of premises or from a cooperative right to premises.

#### **Art. 924. Opening.** Succession is opened on the death of the deceased.

#### **Art. 925. Acquisition.** Estate is acquired by an heir on the opening of the succession.

#### **Art. 926. Tytuł to succession.**

§ 1. Title to succession results from the law or from a will (testament).

§ 2. Statutory succession to the entire estate takes place if the deceased did not name an heir or if none of the persons he named wish to or can be an heir.

§ 3. Subject to the exceptions provided for by the law, statutory succession to part of the estate takes place if the deceased did not name an heir for that part of the estate, or if any of the persons named by him to succeed to the entire estate do not wish to or cannot be an heir.

#### **Art. 927. Capacity to succeed.**

§ 1. A natural person who is not alive at the time the succession is opened and a legal person which does not exist at that time cannot be an heir.

§ 2. However, a child that has already been conceived when the succession is opened can be an heir if it is born alive.

§ 3. A foundation established by the testator in a will can be an heir if it is entered in the register within two years of the will being read.

#### **Art. 928. Unworthiness.**

§ 1. An heir may be declared by a court unworthy to succeed if:

- 1) he intentionally committed a serious crime against the deceased;
- 2) by deceit or threat, he incited the deceased to draw up or revoke a will or in the same manner prevented him from performing one of these acts;
- 3) he has intentionally concealed or destroyed a deceased's will, forged it or altered it or has knowingly benefited from a will forged or altered by another person.

§ 2. An unworthy heir is excluded from succession as if he does not live to the opening of the succession.

**Art. 929. Declaration of unworthiness.** Anyone who has an interest in doing so may demand that an heir be declared unworthy. Such a demand may be made within a year of the day on which the person learns of the cause for the unworthiness, though no later than three years after the succession is opened.

#### **Art. 930. Pardon.**

§ 1. An heir cannot be declared unworthy if the deceased had pardoned him.

§ 2. If, at the time of the pardon, the deceased did not have capacity for legal acts, the pardon is effective if it was given with sufficient awareness.

### Tytuł II. Statutory Succession (Inheritance).

#### **Art. 931. Inheritance by descendants and spouse.**

§ 1. The deceased's children and spouse are by law called to the succession first; they inherit in equal shares. However, the spouse's share cannot be less than one-fourth of the entire estate.

§ 2. If a child of the deceased does not live to the opening of the succession, its share falls to its children in equal parts. This provision applies accordingly to successive descendants.

#### **Art. 932. Inheritance by spouse, parents and siblings.**

§ 1. If the deceased leaves no descendants, the deceased's spouse and parents are by law called to the succession.

§ 2. The share of each parent who inherits concurrently with the deceased's spouse is one-fourth of the entire estate. If paternity has not been established, the share of the deceased's mother, inheriting concurrently with the deceased's spouse, is one-half of the estate.

§ 3. If the deceased leaves no descendants or spouse, the deceased's parents inherit the whole estate in equal parts.

§ 4. If one of the deceased's parents does not live to the opening of the succession, the share which would fall to him falls to the deceased's siblings in equal parts.

§ 5. If any of the deceased's siblings does not live to the opening of the succession and leaves descendants, the share which would fall to him falls to his descendants. This share is partitioned in accordance with the principles governing partition among successive descendants of the deceased.

**Art. 933. Extension.**

§ 1. The share of a spouse who inherits concurrently with parents, siblings and descendants of the deceased's siblings is one-half of the estate.

§ 2. If the deceased leaves no descendants, parents, siblings or siblings' descendants, the entire estate falls to the deceased's spouse.

**Art. 934. Extension.**

§ 1. If the deceased leaves no descendants, spouse, parents, siblings or siblings' descendants, the entire estate falls to the descendant's grandparents; they inherit in equal parts.

§ 2. If any of the deceased's grandparents does not live to the opening of the succession, the share that would fall to him falls to his descendants. This share is partitioned in accordance with the principles governing partition of the estate among the deceased's descendants.

§ 3. If a grandparent who does not live to the opening of the succession leaves no descendants, the share which would fall to him falls to the remaining grandparents in equal parts.

**Art. 934<sup>1</sup>. Extension.** If the deceased leaves no spouse or relatives by consanguinity called to the succession by the law, the estate falls in equal parts to those children of the deceased's spouse whose parents did not live to the opening of the succession.

**Art. 935. Extension; State Treasury inheritance.**

§ 1. If the deceased leaves no spouse, relatives by consanguinity or children of the deceased's spouse called to the succession by law, the estate falls to the municipality of the deceased's last place of residence as the statutory heir. If the deceased's last place of residence in the Republic of Poland cannot be established or the deceased's last place of residence is abroad, the estate falls to the State Treasury, as the statutory heir.

**Art. 935<sup>1</sup>. Judicial separation.** The provisions on calling to succession by law do not apply to a spouse of the deceased who is judicially separated from him.

**Art. 936. Inheritance in the case of full adoption.**

§ 1. An adoptee inherits from his adoptive parent and from the adoptive parent's relatives by consanguinity as if he were a child of the adoptive parent, and the adoptive parent and his relatives by consanguinity inherit from the adoptee as if the adoptive parent were the adoptee's birth parent.

§ 2. If one of the spouses adopts the other spouse's child, the provision of § 2 does not apply to such spouse and his relatives by consanguinity, and if the adoption took place after the death of the adoptee's other parent, it does not apply either to the deceased's relatives by consanguinity whose rights and obligations arising from consanguinity were upheld in the court adoption decision.

**Art. 937. Inheritance in the case of simple adoption.** If the effects of adoption consist only in a relationship being created between the adoptive parent and the adoptee, the following provisions apply:

1) the adoptee inherits from the adoptive parent equally with the latter's children, and the adoptee's descendants inherit from the adoptive parent on the same principles as the adoptive parent's successive descendants;

2) an adoptee and his descendants do not inherit from the adoptive parent's relatives by consanguinity, and the adoptive parent's relatives by consanguinity do not inherit from the adoptee and his descendants;

3) the adoptee's birth parents do not inherit from the adoptee, and instead of them the adoptive parent inherits from the adoptee; the adoption does not prejudice calling to the succession based on consanguinity

**Art. 938. Grandparents' rights.** The deceased's grandparents, if they live in poverty and cannot receive their due means of subsistence from the persons who have a statutory maintenance obligation towards them, may demand from an heir not charged with such an obligation, means of subsistence in proportion to their needs and the value of his share of the estate. An heir may satisfy this claim by paying the deceased's grandparents a sum of money corresponding to the value of one-fourth of his share in the estate.

**Art. 939. Household objects.**

§ 1. A spouse inheriting by law concurrently with other heirs, save for the deceased's descendants who lived with the deceased at the time of his death, may demand from the estate more than his share, household objects which he used jointly with the deceased or exclusively by himself when the deceased was alive. The provisions on legacy apply accordingly to a spouse's claims resulting therefrom.

§ 2. A spouse does not have the above entitlement if the spouses ceased to cohabit when the deceased was alive.

**Art. 940. Exclusion of spouse from inheriting.**

§ 1. A spouse is excluded from inheriting if the deceased had filed for divorce or judicial separation through a fault on the spouse's part, and this request was justified.

§ 2. A spouse is excluded from inheriting by a court decision. Exclusion may be demanded by any of the remaining statutory heirs called to the succession concurrently with the spouse; a court action may be brought within six months of the day on which the heir learns of the opening of the succession and not later than one year from the opening of the succession.

## Dział I. Last Will (Testament).

### Rozdział I. General Provisions.

**Art. 941. Exclusive disposition.** No disposition mortis causa can be made otherwise than by a will (testament).

**Art. 942. No joint wills.** A will may contain dispositions of only one testator.

**Art. 943. Revocation.** A testator may at any time revoke the whole will or any provisions thereof.

**Art. 944. Testamentary capacity.**

§ 1. A will may be made and revoked only by a person who has full capacity for legal acts.

§ 2. A will cannot be made or revoked by a representative.

**Art. 945. Defects in declaration of intent.**

§ 1. A will is invalid if it was made:

- 1) in a state precluding conscious or free decision making and expression of intent;
- 2) under the influence of an error, justifying the supposition that if the testator had not acted under the influence of an error, he would not have made a will of that content;
- 3) under the influence of a threat.

§ 2. The invalidity of a will for the above reasons cannot be relied on after three years have passed from the day on which the person having an interest therein learns of the cause of invalidity, and in any case after ten years have passed from the opening of the succession.

**Art. 946. Revocation manner.** A will may be revoked either by the testator making a new will or, with the intention of revoking the will, the testator destroying the will or depriving it of the features which make it valid, or lastly by altering the will in a way indicating that he intended to revoke its provisions.

**Art. 947. Expansion.** If a testator made a new will and did not state therein that he had revoked the previous will, only those provisions of the previous will which are contradictory to the new will are revoked.

**Art. 948. Interpretation.**

§ 1. A will should be interpreted in such a manner so as to ensure that the testator's intentions are realized to the fullest extent possible.

§ 2. If a will can be interpreted in various ways, the interpretation allowing the testator's dispositions to remain in force and giving them reasonable meaning should be applied.

## Rozdział II. Will Forms.

### Oddział 1. Ordinary Wills.

**Art. 949. Holographic.**

§ 1. A testator may make a will by writing it entirely by hand, signing and dating it.

§ 2. The absence of a date, however, does not invalidate a holographic will if it does not raise doubts about the testator's capacity to make a will, about its content or about the mutual relations among several wills.

**Art. 950. Notarial.** A will may be made in the form of a notarial deed.

**Art. 951. Nuncupative will by public act.**

§ 1. A testator may make a will also by declaring, in the presence of two witnesses, his final wishes orally to the head of a municipality (*wójt*), (mayor or president of a city), head of a province (*starosta*), voivodship marshal, secretary of the province or municipality or manager of the Office of Vital Records.

§ 2. The testator's declaration is written down in a record with an indication of the date it was made. The record is read out to the testator in the presence of the witnesses. The record should be signed by the testator, by the person to whom the final wishes were declared, and by the witnesses. If the testator cannot sign the record, this fact must be mentioned in the record together with the reason for there being no signature.

§ 3. Deaf or mute individuals cannot make a will in the manner provided for in this article.

### Oddział 2. Special Wills.

**Art. 952. Oral or nuncupative.**

§ 1. If imminent death of the testator is expected or, if due to extraordinary circumstances, it is not possible or very difficult for a will to be made in ordinary form, the testator may declare his final wishes orally in the simultaneous presence of at least three witnesses.

§ 2. The content of an oral will may be established in such a way that one of the witnesses or a third party writes down the testator's declaration within a year of it being made, giving the place and date of the declaration and the place and date of the written instrument, and the instrument is then signed by the testator and two witnesses or all the witnesses.

§ 3. If the content of an oral will has not been established in the above manner, it may be established, within six months of the succession being opened, by the consistent testimonies of the witnesses given before a court. If the testimony of one of the witnesses cannot be heard or encounters obstacles which are difficult to overcome, the court may consider the consistent testimonies of two witnesses sufficient.

**Art. 953. Written during a journey.** During a journey on a Polish sea-going vessel or aircraft, a testator may make a will before the commander of the vessel or aircraft or his deputy by declaring his final wishes to the commander or his deputy in the presence of two witnesses. The commander of the vessel or the aircraft or his deputy writes down the final wishes of the testator, giving the date they are written, and reads the instrument out to the testator in the presence of the witnesses, after which the instrument is signed by the testator, the witnesses and the commander or his deputy. If the testator cannot sign the instrument, the reason for there being no signature should be given in the instrument. If this form cannot be observed, an oral will may be made.

**Art. 954. Soldier's will.** The specific form of a soldier's will is set forth in a regulation of the Minister of National Defense issued in agreement with the Minister of Justice.

**Art. 955. Effectiveness of special wills.** A special will loses effect six months after the circumstances justifying failure to observe ordinary will form cease to exist unless the testator dies before the end of this period. The running of the period is suspended during the time in which the testator has no possibility of making an ordinary will.

### Oddział 3. Provisions Common to Ordinary Wills and Special Wills.

**Art. 956. Absolute incapacity of witnesses.** The following cannot be witnesses to the making of a will:

- 1) an individual who does not have full capacity for legal acts;
- 2) a blind, deaf or mute individual;
- 3) an individual who is illiterate;
- 4) an individual who does not know the language in which the will is made;
- 5) an individual convicted for perjury.

**Art. 957. Relative inability.**

§ 1. An individual for whom any benefit is envisaged in the will cannot be a witness to the making of a will. Nor can the following individuals be witnesses: a spouse of that individual, his relatives by consanguinity or affinity to the first and second degree and individuals having an adoption relationship with him.

§ 2. If one of the individuals listed in the preceding paragraph was a witness, only that provision is invalid which provides for benefits to that individual, his spouse, relatives by consanguinity or affinity to the first and second degree or an individual having an adoption relationship with him. However, if it follows from the will or the circumstances that, without the invalid provision, the testator would not have made a will of the given content, the whole will is invalid.

**Art. 958. Effects of breach of form.** A will made in breach of the provisions of this chapter is invalid unless those provisions provide otherwise.

### Dział II. Naming an Heir.

**Art. 959. Naming of an heir.** A testator may name one or several persons to succeed to all or part of the estate.

**Art. 960. Succession by several persons.** If a testator has named several heirs to succeed to the estate or a specified part thereof without specifying their shares in the estate, they succeed in equal parts.

**Art. 961. Disposition of specified objects.** If a testator has bequeathed in his will particular property items which nearly exhaust his estate to a specified person, the person is, in case of doubt, considered not a legatee but an heir named to succeed to the whole estate. If such disposition in a will was made in favor of several persons, those persons are, in case of doubt, considered named to succeed to the whole estate in fractional parts corresponding to the proportion of the value of the objects bequeathed to them.

**Art. 962. Naming with a condition or time limit.** The stipulation of a condition or a period made when naming a testamentary heir is deemed non-existent. If, however, it follows from the will or the circumstances that, without this stipulation, the heir would not have been named, the naming of the heir is invalid. These provisions do not apply if the fulfillment or non-fulfillment of the condition or the period occurred before the opening of the succession.

**Art. 963. Ordinary substitution.** A testamentary heir may be named in the event that another person named as the statutory or testamentary heir does not wish to or cannot be the heir (substitution).

**Art. 964. Custody substitution.** A provision of a will whereby the testator obliges the heir to retain the acquired estate and to leave it to another person leads to only this other person being named to succeed to the estate if the heir does not wish to or cannot be the heir. If, however, it follows from the will or the circumstances that, without this limitation, the heir would not have been named, the naming of the heir is invalid.

**Art. 965. Accrual.** If a testator has named several testamentary heirs and one of them does not wish to or cannot be an heir, his share, in the absence of a different disposition of the testator, falls to the remaining testamentary heirs in proportion to their shares (accrual).

**Art. 966. Grandparents' rights.** If, by force of a will, the estate falls to an heir who is not charged with a statutory maintenance obligation with regard to the testator's grandparents, the grandparents, if they live in poverty and

cannot receive their due means of subsistence from the persons who have a statutory maintenance obligation towards them, may demand from the heir means of subsistence in proportion to their needs and to the value of his share in the estate. The heir may satisfy this claim also by paying the testator's grandparents a sum of money corresponding to the value of one-fourth of his share in the estate.

**Art. 967. Maintaining legacies and testamentary instructions.**

§ 1. If a person named a testamentary heir does not wish to or cannot be the heir, the statutory heir to whom that person's share in the estate falls is obliged, in the absence of a different disposition of the testator, to perform the legacies, instructions and other dispositions of the testator with which that person was charged.

§ 2. The above provision applies accordingly to a substitute heir and to an heir to whom a share in the estate falls by way of accrual.

**Dział III. Legacy and Testamentary Instructions.** <sup>7)</sup>

**Art. 968. Legacy and subsequent legacy.**

§ 1. A testator may, by testamentary disposition, oblige a statutory or testamentary heir to make a specific property performance for the benefit of a given person (legacy).

§ 2. The testator may also encumber the legatee with a legacy (subsequent legacy).

**Art. 969** (*deleted*)

**Art. 970. Due and payable.** In the absence of a different disposition of the testator, the legatee may demand that the legacy be delivered immediately after the will is read. However, the legatee encumbered with a subsequent legacy may refrain from delivering it until the legacy has been delivered by the heir.

**Art. 971. Legacy charging several heirs.** If the estate falls to several heirs, the legacy charges them in proportion to their shares in the estate unless the testator decided otherwise. This provision applies accordingly to a subsequent legacy.

**Art. 972. Reference.** The provisions on naming an heir, on capacity to inherit and on unworthiness apply accordingly to legacies.

**Art. 973. Effects of excluding a legatee.** If a person to whom a legacy was made does not wish to or cannot be a legatee, the person encumbered with the legacy is released from the obligation to deliver it; however, in the absence of a different disposition of the testator, he should deliver subsequent legacies.

**Art. 974. Delivery of subsequent legacies.** A legatee encumbered with the obligation to deliver a subsequent legacy may release himself from this obligation also by transferring free of charge to a further legatee the rights received under the legacy or by assigning claims for delivery of the legacy.

**Art. 975. Admissibility of a condition or a time limit.** A legacy may be made on a condition or subject to a time limit.

**Art. 976. Ineffective legacy.** In the absence of a different disposition of the testator, a legacy of goods in specie is ineffective if the thing bequeathed does not belong to the estate at the time the succession is opened or if the testator was at the time of his death obliged to transfer the thing.

**Art. 977. Supplementary claims.** If the object of a legacy is goods in specie, the provisions on claims between an owner and an owner-like possessor of a thing apply accordingly to the legatee's claims for remuneration for the use of a thing, for the return of profits or for payment of their value, as well as claims of the person encumbered with the legacy for reimbursement of outlays made on the thing.

**Art. 978. Defects in goods in specie.** If the object of a legacy is goods in specie, the person encumbered with the legacy is liable to the legatee for defects in the thing in the same manner as a donor.

**Art. 979. Quality of things.** If the object of a legacy is fungibles, the charged person should provide things of average quality, taking the legatee's needs into account.

**Art. 980. Defects in fungibles.** If the object of a legacy is fungibles, the provisions on implied sales warranty apply accordingly to the encumbered person's liability to the legatee for physical and legal defects in a thing. However, the legatee may demand from the person encumbered with the legacy only compensation for improper delivery of the legacy, or that defect-free things of the same kind be supplied to replace the defective things and that any damage arising from the delay be remedied.

**Art. 981. Statute of limitations.** Claims resulting from a legacy become barred by the statute of limitations five years after the legacy becomes due and payable.

**Art. 982. Testamentary instructions.** The testator may in a will impose on an heir or a legatee the obligation to carry out a specific action or to refrain from carrying out from a specific action without making anyone a creditor (testamentary instructions).

**Art. 983. Testamentary instructions charging the legatee.** A legatee encumbered with testamentary instructions may refrain from following them until the heir delivers the legacy. This provision applies accordingly where the instructions charge a subsequent legatee.

**Art. 984. Effects of excluding legatee.** If a person to whom a legacy was made with the obligation to follow testamentary instructions does not wish to or cannot be a legatee, the heir released from the obligation to deliver the legacy should, in the absence of a different disposition of the testator, follow the testamentary instructions. This provision applies accordingly where the testamentary instructions charge a subsequent legatee.

**Art. 985. Claiming performance.** Each of the heirs and the executor of a will may demand that the testamentary instructions be followed unless the testamentary instructions are solely to benefit the person charged with the testamentary instructions. If the testamentary instructions are in the public interest, a competent state authority may also demand that the testamentary instructions be followed.

**Art. 986. Appointment; capacity.**

§ 1. A testator may in the will appoint an executor of the will.

§ 2. A person who does not have full capacity for legal acts cannot be an executor of a will.

**Art. 987. Refusal.** If a person appointed executor of a will does not wish to perform this obligation, he should make an appropriate declaration before a court.

**Art. 988. Obligations and powers.**

§ 1. If a testator has not decided otherwise, the executor of a will should administer the estate, repay succession debts, and in particular deliver legacies and follow testamentary instructions, and then hand the estate over to the heirs in accordance with the testator's wishes and with the law.

§ 2. The executor of a will may sue and be sued in matters arising from administration of the estate. He may also sue in matters concerning rights belonging to the estate and may be sued in matters concerning succession debts.

**Art. 989. Settling accounts with heir.**

§ 1. The provisions on mandate against remuneration apply accordingly to reciprocal claims between the heir and the executor of the will arising from administration of the estate.

§ 2. The costs of administering the estate and the executor's remuneration constitute part of the succession debts.

**Art. 990. Release from function.** For good cause, the court may release the executor of a will.

#### Tytuł IV. Legitim (Forced Share).

**Art. 991. Concept; entitled persons.**

§ 1. The deceased's descendants, spouse and parents who would be named to inherit under the law are entitled, if permanently without the capacity to work or if the entitled descendant is a minor, to two-thirds of the value of the share in the estate which would fall to him in the case of statutory (intestate) succession, and in other cases, to one-half of the value of that share (legitim).

§ 2. If an entitled person has not received the legitim due to him in the form of a donation made by the deceased, or by being named to inherit, or in the form of a legacy, he is entitled to a claim against the heir for payment of the sum of money needed to cover or supplement the legitim.

**Art. 992. Establishing an inheritance share.** When establishing an inheritance share constituting the basis for calculating the legitim, unworthy heirs and heirs who have rejected the inheritance are taken into account, whereas heirs who have waived the inheritance or have been disinherited are not taken into account.

**Art. 993. Adding donations.** When calculating the legitim, legacies and testamentary instructions are not taken into account, whereas donations made by the deceased are taken into account according to the provisions below.

**Art. 994. Omission.**

§ 1. When calculating the legitim, minor donations customarily accepted in given relations or donations made more than ten years before, counting back from the opening of the succession, to persons who are not heirs or forced heirs are not added.

§ 2. When calculating the legitim due to a descendant, donations made by the deceased at a time when the deceased had no descendants are not added. This does not, however, apply where a donation was made less than three hundred days before the descendant was born.

§ 3. When calculating the legitim due to a spouse, donations which the deceased made before entering into marriage with the spouse are not added.

**Art. 995. Determining donation value.** The value of the object of a donation is calculated as at the time it was made and according to the prices at the time the legitim is established.

**Art. 996. Crediting donation against legitim.** A donation made by the deceased to a forced heir is credited against the legitim due to the forced heir. If the forced heir is a successive descendant of the deceased, a donation made by the deceased to an ascendant of the forced heir is also taken into account when calculating the legitim due to him.

**Art. 997. Costs of raising a child included.** If the forced heir is the deceased's descendant, the costs of raising him and of his general and professional education incurred by the deceased, if they exceed the average customary in the given milieu, are credited towards the descendant's legitim.

**Art. 998. Limitation of liability.**

§ 1. If a forced heir is named to inherit, he is liable for legacies and testamentary instructions only up to the amount of the excess over the value of the share in the estate which constitutes the basis for calculating the legitim due to the forced heir.

§ 2. The above provision applies accordingly where a legacy to a forced heir is charged with a subsequent legacy or testamentary instructions or made on a condition or subject to a time limit.

**Art. 999. Expansion.** If an heir obliged to pay a legitim is himself a forced heir, his liability is limited to the amount of the excess over his own legitim.

**Art. 1000. Liability of donees.**

§ 1. If a forced heir cannot receive from the heir the legitim due to him, he may demand from a person who received from the deceased a donation added to the estate, the sum of money needed to supplement the legitim. However, the donee is obliged to pay this sum only within the limits of the enrichment resulting from the donation.

§ 2. If the donee is himself a forced heir, he is liable to other forced heirs only up to the amount of the excess over his own legitim.

§ 3. A donee may release himself from the obligation to pay the sum needed to supplement the legitim by handing over the object of the donation.

**Art. 1001. Order.** Among several donees, an earlier donee is liable under the preceding article only when the forced heir cannot obtain the supplement of the legitim from a later donee.

**Art. 1002. Inheritance of a legitim claim.** A claim for a legitim passes to an heir of the forced heir only when that heir is one of the forced heirs of the first deceased.

**Art. 1003. Reduction in legacies and instructions.** Heirs obliged to satisfy a claim for legitim may demand a proportionate reduction in legacies and testamentary instructions.

**Art. 1004. Reduction principles.**

§ 1. Legacies and instructions are reduced in proportion to their value unless a contrary intention of the testator results from the will.

§ 2. If a legacy charged with a subsequent legacy or instruction is reduced, the subsequent legacy or testamentary instruction is reduced proportionately.

**Art. 1005. Expansion.**

§ 1. If an heir obliged to satisfy a claim relating to a legitim is himself a forced heir, he may demand that legacies and testamentary instructions be reduced to the extent that he is left with his own legitim.

§ 2. If a legatee is himself a forced heir, a legacy made to him is reduced only up to the amount of the excess over his own legitim.

**Art. 1006. Expansion.** In the event of a reduction in a legacy the object of which cannot be divided without a material alteration or a considerable reduction in its value, the legatee may demand that the legacy be fully delivered upon payment of an appropriate sum of money.

**Art. 1007. Statute of limitations.**

§ 1. A forced heir's claims and heirs' claims for a reduction in legacies and testamentary instructions become barred by the statute of limitations three years after the will is read.

§ 2. A claim against a person obliged to supplement a legitim due to a donation received from the deceased becomes barred by the statute of limitations three years after the succession is opened.

**Art. 1008. Disinheritance.** A testator may, in his will, deprive his descendants, spouse and parents of the legitim (disinheritance) if the forced heir:

- 1) against the testator's wishes persistently acts in a manner contrary to the principles of community life;
- 2) has intentionally committed a crime against the testator or a person close to him threatening life, health or freedom or has grossly affronted his dignity;
- 3) persistently fails to perform family obligations with regard to the testator.

**Art. 1009. Disclosure of reason.** The reason for a forced heir being disinherited should follow from the wording of the will.

**Art. 1010. Pardon.**

§ 1. A testator cannot disinherit a forced heir if he has pardoned him.

§ 2. If, at the time of the pardon, the testator did not have capacity for legal acts, the pardon is effective if it was given with sufficient comprehension.

**Art. 1011. Disinheritance of descendant.** The descendants of a disinherited descendant are entitled to a legitim even though the latter survived the testator.

## **Tytuł V. Acceptance and Rejection of Succession.**

**Art. 1012. Types of declarations.** An heir may either accept the succession without limitation of liability for debts (simple acceptance), or accept the succession with a limitation of this liability (acceptance under benefit of inventory), or he may reject the succession.

**Art. 1013 (deleted)**

**Art. 1014. Partial acceptance; rejection.**

§ 1. A share in the estate falling to the heir under substitution may be accepted or rejected irrespective of whether the share in the estate which falls to that heir under another title is accepted or rejected.

§ 2. An heir may reject the share in the estate falling to him by way of accrual, and accept the share falling to him as a named heir.

§ 3. Apart from the instances provided for in the preceding paragraphs, an heir cannot partially accept succession and partially reject it.

**Art. 1015. Declaration period; effects of silence.**

§ 1. A declaration on accepting or rejecting succession may be made within six months of the date on which the heir learns of the title under which he is named.

§ 2. Failure of the heir to make the declaration within the above period is tantamount to simple acceptance of succession. However, if the heir is a person who does not have full capacity for legal acts or a person with respect to whom there are grounds for full legal incapacitation, or a legal person, failure of the heir to make the declaration within the above period is tantamount to acceptance of the succession under benefit of inventory.

**Art. 1016. Benefit of inventory.** If one of the heirs accepts succession under benefit of inventory, it is presumed that the heirs who did not make any declaration within the said period also accepts succession under benefit of inventory.

**Art. 1017. Transmission.** If, before the time limit for making the declaration on accepting or rejecting succession passes, the heir dies without having made the declaration, the declaration on accepting or rejecting succession

may be made by his heirs. The time limit for making the declaration cannot be earlier than the time limit for making the declaration on succession to the deceased heir.

**Art. 1018. Features of the declaration; form.**

§ 1. A declaration on accepting or rejecting succession made on a condition or subject to a time limit is invalid.

§ 2. A declaration on accepting or rejecting succession cannot be revoked.

§ 3. A declaration on accepting or rejecting succession is made before a court or notary. It may be made orally or in writing with an officially certified signature. A power of attorney to make the declaration on accepting or rejecting succession should be in writing with an officially certified signature.

**Art. 1019. Error; threat.**

§ 1. If a declaration on accepting or rejecting succession is made under the influence of an error or threat, the provisions on defects in declaration of intent apply with the following alterations:

1) avoidance of the legal effects of the declaration should be made before a court;

2) the heir should simultaneously declare whether and how he accepts succession or rejects it.

§ 2. An heir who, under the influence of an error or threat, does not make the declaration within the time limit may avoid the legal effects of failing to observe the time limit in the above manner.

§ 3. Avoidance of the legal effects of a declaration on accepting or rejecting succession requires the approval of the court.

**Art. 1020. Effects of rejection.** An heir who rejects succession is excluded from succeeding as if he had not lived to the opening of the succession.

**Art. 1021. Rejection by the administrator of the estate.** If an heir has administered the estate and then rejects succession, the provisions on managing another person's affairs without a mandate apply accordingly to the relations between him and the heirs who were called to succeed in his place.

**Art. 1022. Concurrence of titles to succession.** An heir called to the succession both by a will and by the law may reject the succession as a testamentary heir and accept it as a statutory heir.

**Art. 1023. State Treasury situation.**

§ 1. Neither the State Treasury nor a municipality may reject succession which falls to them by law.

§ 2. Neither the State Treasury nor a municipality makes the declaration on accepting succession, and the succession is deemed accepted under benefit of inventory.

**Art. 1024. Rejection to the detriment of creditors.**

§ 1. If an heir rejects succession to the detriment of creditors, each of the creditors whose claim existed at the time the succession was rejected, may demand that the rejection of the succession be deemed ineffective with respect to him in accordance with the provisions on protection of creditors in the event of a debtor's insolvency.

§ 2. A declaration that rejection of succession is ineffective may be demanded within six months of learning of succession rejection, though no later than three years after the succession is rejected.

## **Tytuł VI. Court Declaration of Succession, Notarial Certification of Succession and Protection of Heir.**

**Art. 1025. Entitlement; effects.**

§ 1. On the application of a person having an interest therein, the court declares that an heir has acquired succession. On the terms and conditions set out in separate regulations, a notary draws up a deed of succession certification.

§ 2. It is presumed that a person who obtains a declaration of succession or a notarial succession certification is an heir.

§ 3. A presumption arising from a registered notarial deed of succession certification cannot be relied on against a presumption arising from a court declaration of succession.

**Art. 1026. Initial declaration date.** A court declaration of succession and a notarial succession certification cannot take place before six months have passed from the succession being opened unless all known heirs have already made declarations on accepting or rejecting succession.

**Art. 1027. Force of evidence.** An heir may prove his succession rights with regard to a person who does not claim rights to the estate by virtue of succession only by a court declaration of succession or a registered deed of notarial succession certification.

**Art. 1028. Protection of third parties.** If anyone who has obtained a court declaration of succession or a notarial succession certification but is not an heir disposes of a right belonging to the estate to a third party, the person to whom the disposition is made acquires the right or is released from the obligation unless he has acted in bad faith.

**Art. 1029. Protection of succession.**

§ 1. An heir may demand that a person who controls the estate as an heir but who is not an heir hand the estate over to him. The same applies to particular items of the estate.

§ 2. The provisions on claims between an owner and an owner-like possessor of a thing apply accordingly to an heir's claims for payment for use of items belonging to the estate, for return of profits or payment of their value, or for remedy of damage caused by use, deterioration in or loss of those items and to claims against an heir for the return of outlays.

§ 3. The above provisions apply accordingly where a claim for his property to be handed over is made by a person in respect of whom a decision declaring him dead has been annulled.

## **Tytuł VII. Liability for Succession Debts.**

**Art. 1030. Scope before and after acceptance of succession.** Until succession acceptance, an heir is liable for succession debts only with the estate. Upon succession acceptance, an heir is liable for those debts with all his property.

**Art. 1031. Simple acceptance and acceptance under benefit of inventory.**

§ 1. In the case of simple acceptance of succession, an heir is liable for succession debts without limitation.

§ 2. In the case of acceptance of succession under benefit of inventory, an heir is liable for succession debts only up to the value established in the inventory of the estate's assets. This limitation of liability does not apply if the heir has deceitfully failed to include in the inventory items belonging to the estate or has included therein non-existent debts.

**Art. 1032. Under benefit of inventory.**

§ 1. If an heir who has accepted succession under benefit of inventory has repaid some succession debts while being unaware of the existence of other debts, he is liable for the unpaid debts only up to the value of the difference between the value of the estate's assets established in the inventory and the value of performances made to satisfy the debts which he has repaid.

§ 2. If an heir who has accepted succession under benefit of inventory, when repaying certain succession debts was aware of the existence of other succession debts, he is liable for those debts over and above the value of the estate's assets, though, only up to the amount he would have been obliged to satisfy them, if he had duly repaid all succession debts.

**Art. 1033. Legacies and testamentary instructions.** An heir's liability for legacies and testamentary instructions is always limited to the value of the estate's assets.

**Art. 1034. Joint heirs.**

§ 1. Until the partition of the estate, the heirs are jointly and severally liable for succession debts. If one of the heirs makes a performance, he may demand that the other heirs return parts corresponding to their shares.

§ 2. From the moment of estate partition, heirs are liable for succession debts in proportion to their shares.

## **Tytuł VIII. Jointly Inherited Estate and Partition of the Estate.**

**Art. 1035. Relevant provisions.** If an estate falls to several heirs, the provisions on co-ownership in fractional parts apply accordingly to jointly inherited estate and to partition of the estate subject to the provisions of this title.

**Art. 1036. Disposition of a share in an item.** An heir may, with the other heirs' consent, dispose of a share in an item belonging to the estate. In the absence of consent of any of the other heirs, the disposition is ineffective if it violates that heir's rights under the provisions on partition of the estate.

**Art. 1037. Contractual and court partition.**

§ 1. An estate may be partitioned either under a contract among all the heirs or under a court decision at the demand of any of the heirs.

§ 2. If the estate includes real estate, the partition contract should be executed in the form of a notarial deed.

**Art. 1038. Total and partial partition.**

§ 1. Court partition of the estate should cover the entire estate. However, for good cause, it may be limited to part of the estate.

§ 2. Contractual partition of the estate may cover the entire estate or be limited to part of the estate.

**Art. 1039. Donations.**

§ 1. If, in the case of statutory succession, the estate is partitioned among descendants or among descendants and a spouse, these heirs are mutually obliged to include in their inherited shares any donations received from the deceased unless it follows from the deceased's declaration or from the circumstances that the donation was released from the obligation of being included in the inherited share.

§ 2. A testator may impose the obligation to include a donation in the inherited share also on the statutory heir not specified in the preceding paragraph.

§ 3. Small donations customarily accepted in the given relations are not subject to inclusion in the inherited share.

**Art. 1040. Donations exceeding inherited share.** If the value of a donation to be included exceeds the value of the inherited share, the heir is not obliged to return the surplus. In such a case, neither the donation nor the heir obliged to include it are taken into account in the partition of the estate.

**Art. 1041. Donations to descendants.** A subsequent descendant of the deceased is obliged to include in the inherited share a donation made by the deceased to his ascendant.

**Art. 1042. Calculation method.**

§ 1. Inclusion in the inherited share is calculated in such a manner that the value of the donations subject to inclusion is added to the estate or to the part of the estate which is partitioned among heir mutually obliged to include the donations, whereupon the inherited share falling to each of them is calculated, and then the value of the donation subject to inclusion is credited towards each heir's inherited share.

§ 2. The value of the object of the donation is calculated according to the condition it was in at the moment the donation was made and according to prices at the time the estate is partitioned.

§ 3. Profits from the object of a donation are not included in the inherited share.

**Art. 1043. Child raising costs.** The provisions on including donations in inherited shares apply accordingly to costs incurred by the deceased in raising and of general and professional education of his descendant to the extent those costs exceed the average level customarily accepted in the given milieu.

**Art. 1044. Awarding co-ownership of items.** At the demand of two or more heirs, the court may allot their inherited shares in whole or in part in such a manner that it awards to them an item or certain items belonging to the estate

as their co-ownership in specified fractional parts.

**Art. 1045. Error.** The legal effects of an estate partition contract executed under the influence of an error may be avoided only if the error concerned facts which the parties considered undeniable.

**Art. 1046. Implied warranty for defects.** After the partition of the estate, the heirs are mutually obliged under implied warranty for physical and legal defects in accordance with the provisions on implied sales warranty. Implied warranty concerning succession claims also extends to the debtor's solvency.

#### **Tytuł IX. Contracts Concerning Succession.**

**Art. 1047. Exceptional admissibility.** Subject to the exceptions provided for in this title, a contract concerning succession to a living person is invalid.

**Art. 1048. Waiver of succession.** An intestate heir may, by a contract with a person to whom he is to succeed, waive succession to that person. The contract should be executed in the form of a notarial deed.

**Art. 1049. Effects.**

§ 1. Waiver of succession also covers descendants of the waiving person unless otherwise agreed.

§ 2. The waiving person and his descendants covered by the waiver of succession are excluded from succeeding as if they had not lived to the opening of the succession.

**Art. 1050. Repeal of waiver.** Waiver of succession may be repealed by a contract between the person who waived the succession and the person whose succession was waived. The contract should be executed in the form of a notarial deed.

**Art. 1051. Disposal of estate.** An heir who has accepted succession may dispose of the whole or any part of the estate. The same applies to the disposal of a share in the estate.

**Art. 1052. Double effect; causality; form.**

§ 1. A contract of sale, exchange, donation or another contract imposing an obligation to dispose of the estate transfers the estate to the acquirer unless the parties have decided otherwise.

§ 2. If the estate transfer contract is executed in performance of an obligation arising from a previously executed contract imposing an obligation to dispose of the estate, the validity of the estate transfer contract depends on the existence of the obligation.

§ 3. A contract imposing an obligation to dispose of the estate should be executed in the form of a notarial deed. The same applies to an estate transfer contract which is executed in performance of a previously existing obligation to dispose of the estate.

**Art. 1053. Acquirer's situation.** The acquirer of the estate steps into the rights and obligations of the heir.

**Art. 1054. Transferor's obligations.**

§ 1. The transferor of the estate is obliged to hand over all that, as a result of the disposal, loss or damage of items belonging to the estate, was obtained in exchange for those objects or as remedy for damage, and if the disposal of the estate was against payment, also to compensate for the loss of value resulting from the items belonging to the estate being used up or disposed of free of charge.

§ 2. The transferor may demand that the acquirer return expenses and outlays made on the estate.

**Art. 1055. Liability for succession debts.**

§ 1. The acquirer of the estate is liable for succession debts to the same extent as the transferor. Their liability towards creditors is joint and several.

§ 2. In the absence of a contract to the contrary, the acquirer is liable towards the transferor for the creditors not demanding that the transferor make performances to satisfy the succession debts.

**Art. 1056. Implied warranty for defects.** In the event of the estate being disposed of, an heir is not liable under implied warranty for physical and legal defects in particular items belonging to the estate.

**Art. 1057. Transfer of benefits and burdens.** The benefits and burdens related to items belonging to the estate, as well as the risk of their accidental loss or damage, are transferred to the acquirer at the time the estate disposal contract is executed unless otherwise agreed.

#### **Tytuł X. Special Provisions on Inheriting Farm.**

**Art. 1058. Relevant provisions.** The provisions of the preceding titles of this book, with account given to changes arising from the following provisions apply to inheritance of farms including farm land of an area of more than 1 hectare.

**Art. 1059. Features of statutory heirs.** Heirs inherit a farm by law if, at the time the succession is opened:

- 1) they are permanently directly engaged in agricultural production; or
- 2) they have vocational education for agricultural production; or
- 3) they are minors or are learning a profession or attending school; or
- 4) they are permanently without the capacity to work.

**Art. 1060. Inheritance by grandchildren.** Within the limits provided for in Article 931 § 2, the grandchildren of the deceased who, at the time the succession is opened, meet the conditions provided for in Article 1059 items 1 and 2, inherit the farm also if their father or mother cannot inherit the farm for failing to meet the conditions provided for in Article 1059. This provision applies accordingly to subsequent descendants.

**Art. 1061** (*repealed*)

**Art. 1062. Inheritance by siblings.**

§ 1. The siblings of a deceased who, at the time the succession is opened, meet the conditions provided for in Article 1059 items 1 and 2, inherit the farm also if the descendants of the deceased cannot inherit the farm for failing to meet the conditions provided for in Article 1059 or in Article 1060.

§ 2. Within the limits set by Article 934, children of the deceased's siblings who, at the time the succession is opened, meet the conditions provided for in Article 1059 items 1 and 2, inherit the farm also if their father or mother cannot inherit the farm for failing to meet the conditions provided for in Article 1059 or in § 1 of this Article. This provision applies accordingly to subsequent descendants.

**Art. 1063. Application of general rules.** If neither the spouse of the deceased nor any of his relatives named to inherit by law meets the conditions set for inheriting a farm or if those entitled to inherit are only persons who, at the time the succession is opened, are permanently without the capacity to work, the farm is inherited by heirs on general terms.

**Art. 1064. Authorization.** A Council of Ministers Regulation will set forth what vocational training is deemed vocational training for agricultural production and the instances in which learning a profession or attending school authorizes a person to inherit a farm, and the principles of and procedure for a declaration of permanent inability to work.

**Art. 1065** *(deleted)*

**Art. 1066** *(repealed)*

**Art. 1067. Legacy of a farm.**

§ 1. Article 216 applies accordingly to a legacy in the form of a monetary performance.

§ 2. If the delivery of a legacy leads to the division of a farm or the contribution of land to an agricultural production cooperative contrary to the principles of proper agricultural management, the heir obliged to deliver the legacy may demand that the object of the legacy be replaced by a monetary performance.

**Art. 1068-1069** *(deleted)*

**Art. 1070. Division.** In the case of division of a farm belonging to the estate, the provisions on division of farms with cancellation of co-ownership apply accordingly.

**Art. 1070<sup>1</sup>. Appropriate application of regulations.** In the case of disposal of a share in an estate including a farm, article 166 and articles 3 and 4 of the Agricultural System Act of 11 April 2003 apply accordingly (J.L. No. 64, item 592).

**Art. 1071-1073** *(deleted)*

**Art. 1074** *(repealed)*

**Art. 1075-1076** *(deleted)*

**Art. 1077** *(repealed)*

**Art. 1078** *(deleted)*

**Art. 1079. Mixed estate.** If, apart from a farm, the estate includes other property items, the heirs' shares in the farm are counted towards their shares in the whole estate.

**Art. 1080** *(deleted)*

**Art. 1081. Liability for agricultural debts.** Liability for succession debts related to running a farm is borne, from the moment the estate is partitioned, by the heir to whom the farm falls and by the heirs receiving payments from him. Each of those heirs is liable in proportion to the value of the received share. Liability for other debts is borne by all the heirs on general terms.

**Art. 1082. Establishment of legitim.** If the estate includes a farm, the legitim is established taking into consideration the provisions of this title and accordingly Article 216.

**Art. 1083-1085** *(deleted)*

**Art. 1086. Inheritance of land contribution in a cooperative.** The provisions of this title apply accordingly where the estate includes a land contribution to an agricultural production cooperative unless the following provisions state otherwise.

**Art. 1087. Characteristics of an heir.**

§ 1. A land contribution to an agricultural production cooperative belonging to the estate is inherited by those heirs who at the time the succession is opened:

- 1) are members of the cooperative; or
- 2) are minors or are learning a profession or attending school; or
- 3) are permanently without the capacity to work.

§ 2. In the absence of the heirs set forth in the first item of the preceding paragraph, the land contribution to an agricultural production cooperative is inherited also by the heirs who work on the farm of the cooperative or who, within six months of the succession being opened, become members of that cooperative.

§ 3. The provisions of the preceding paragraphs apply also to infield and habitat plots if they belong to the estate.

**Art. 1088. (deleted).**

**Footnote 1**

This Law transposes Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic trade) (O.J. EC L 178 of 17.07.2000, p. 1).

- 1) The term „entrepreneur” in the English language denotes a natural person (an individual). In this translation of Civil Code we use the term „entrepreneur” to mean „przedsi biorca” which, however, in Polish covers both an individual and a legal entity. The alternative term „undertaking” for „przedsi biorca” used in the EC regulations is unlikely to be understood outside EC competition law and may be confused with the usual meaning of undertaking as a promise or a business.
- 2) Currently the Minister of the Economy (note from the Publisher).
- 3) Currently the Minister of Agriculture and Rural Development
- 4) Currently the Minister of Agriculture and Rural Development
- 5) For the purposes of this translation a way bill includes a bill of lading.
- 6) As there are no equivalents of the Polish terms „renta” and „do ywocie” in common law, the terms „annuity” and „life annuity” are used to denote the concepts defined in Article 903 § 1 and Article 980 § 1 respectively.
- 7) In this translation the term „legacy” includes bequest and devise.