

**THE DRAFT OF
CIVIL CODE,
CIVIL PROCEDURES CODE
AND REPORT, 2010**

**Government of Nepal
MINISTRY OF LAW AND JUSTICE
KATHMANDU**

CIVIL CODE

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Government of Nepal

Personal Secretariat of Minister of Law and Justice

Hon'ble Prem Bahadur Singh

Message

The civil law of Nepal is being mainly regulated and managed by the *Muluki Ain* (Country Code) enacted and brought into force on the 1st of August, 1963. On the one hand the civil law provisions in the Country Code are extremely primitive, while on the other, the modern principles of civil law have been scattered in other Nepal laws as the Code could not accommodate those principles. Since the principles of civil law enshrined in the prevailing laws could not respond to the necessity and requirements of the open, liberal and democratic system of governance of the 21st century, therefore, the need of formulating a separate Civil Code amending and consolidating the provisions of civil law was felt long time back.

The country ushered in republican form of government after the election to the Constituent Assembly in 2008 as a result of the historic second people's movement. In order to reform and modernize the existing civil law of the country according to the existing economic, social and cultural situation according to the spirit of republic and to prepare the drafts of Civil Code and Civil Procedures Code, Government of Nepal (Council of Ministers) had formed a civil law reform and consolidation task force on December 3, 2008 under the convenorship of Mr. Khilaraj Regmi, Hon'ble Justice of Supreme Court. The task force has prepared the drafts of Civil Code and Civil Procedures Code according to its mandate within the given time and

submitted it to Government of Nepal. I am happy to publish and share with general public these drafts.

It is my sincere belief that if the drafts, which have been prepared by the task force with deep study, wide discussions and massive consultation with the relevant stakeholders, could take the form of Acts, there would be significant breakthrough in civil law administration of the country.

Government of Nepal (Council of Ministers) has directed Ministry of Law and Justice to take necessary actions and to make public these drafts. The ministry has initiated the process of seeking feedbacks from the relevant stakeholders and these drafts have been published for making people informed about them and to seek comments and feedbacks from general public as well. I would like to assure all that after obtaining feedbacks and comments and suggestions from all stakeholders and general people, the ministry will submit Bills to Legislature-Parliament with high priority after fulfilling the required procedures.

Finally, on behalf of Government of Nepal, I would like to extend sincere thanks to the Convenor, members of the task force and other relevant persons who have fulfilled this burdensome responsibility of preparing the draft having adjusted their busy schedules and engaged in morning, evening and public holidays.

Kathmandu, October 7, 2010.

Sd.

Minister

Law and Justice

Foreword

Civil law is the charter of civil relationship of every country. It is the only instrument on the basis of which relationship between citizens is regulated and managed. Since day-to-day behavior and relationship of citizens are operated by principles of civil law, it is of utmost importance in the civil life.

In 1853, the Country Code was first enacted having consolidated the then civil law principles and we are at the present situation with amendment to that Code from time-to-time. The provisions made in the Code are in the primitive stage and it is sure that they could not respond to the changing need of the time, the liberalized policy adopted by the country, provisions made in the international human rights instruments to which Nepal is a party and the principles developed and recognized in international arena in the field of civil law. In this context, it is a matter of national priority to reform and modernize the civil law of the country.

There have been efforts in the past to reform civil law. However, the purpose of those efforts was not to integrate and codify entire civil law. Realizing this need, Government of Nepal (Council of Ministers) had formed a Taskforce under the convenorship of a Justice of the Supreme Court on the recommendation of the Judicial Council and prescribed the terms of reference of the Taskforce.

The Taskforce has prepared the drafts of Civil Code and Civil Procedures Code subject to the prescribed terms of reference. While

performing its tasks, the Taskforce has prepared the drafts having studied, reviewed and analyzed the existing civil law, the principles laid down by the Supreme Court, the provisions made in the treaties to which Nepal is a party, Nepal's social and cultural characteristics, the Civil Codes of the countries which have codified their civil laws (such as Japan, France, the Philippines, Italy), and the substantive and procedural laws of the neighboring countries.

There may be debate as to whether or not codification is the appropriate way of reforming and modernizing law. The task of managing the scattered provisions of law in one Act is itself a challenging job and it is possible only by way of codification. The process of codification of laws in Nepal seems to be relevant as in the recent past, there has been a growing trend of codification even in the countries which did not have experience of codification in the past and codification of civil law by two of the South-East Asian countries (Vietnam and Cambodia) just a few years ago. It is the belief of the Taskforce that with the implementation of the proposed two drafts, there will be qualitative reform on the civil law of Nepal and modern national legal system will be established in the country through simple and comprehensive law.

Drafting of law itself is a difficult, time-taking and technical work. The Taskforce is of the view that drafting of civil law which covers vast and wide areas of civic relationship is much more difficult and challenging. Though effort has been made in the drafts prepared by the Taskforce to give it a final touch from conceptual as well as

drafting point of view, it is not that there may not be any room for further improvement. Since the provisions have been made having had deep studies and intensive discussions on each of them, the concerned agencies would make efforts on the matters to be improved on the drafts without tempering the underlying concepts in them.

Law reform is a perennial process and it would attract in cases of the proposed codes. I express my heartfelt gratitude to Government of Nepal (Council of Ministers) and Judicial Council on the capacity of the convener of the Taskforce for entrusting this significant responsibility having formed the Taskforce in my convenership after taking policy decision to take the convenership and leadership of the by a Justice of the Supreme Court.

In this important task of modernization of civil law by reform and modification and preparation of the drafts, intensive and unprecedented cooperation is extended from national and international organization and persons. The Taskforce is grateful to all the institutions, organizations and persons extending invaluable suggestions in reforming the drafts. The Taskforce also extends thanks to Prof. Hiroshi Matsuo of the Keio University, Japan; Prof. Satoshi Minamikata of the Niigata University, Japan and Prof. Dr. Hiroyuki Kihara of the Asia University, Japan and Mr. Taro Morinaga, Lecturer, Ministry of Justice, Japan for providing suggestions by examining the drafts of the Taskforce. The Taskforce also extends its heartfelt thanks to the Japan International Cooperation Agency (JICA), Government of Japan for providing opportunity to the Taskforce to have interaction

with the Professors in Japan and to observe the various aspects of use of the civil law in Japan.

Similarly, the Taskforce expresses gratitude to Hon'ble Justices of the Supreme Court for making contribution in improving the drafts giving their invaluable suggestions on the proposed drafts.

I would like to thank the Supreme Court, Office of Attorney General, Ministry of Law and Justice, Nepal Bar Association and its Chairperson and the Enhancing Access to Justice Project of UNDP for extending support to the Secretariat of the Taskforce. The Taskforce has highly evaluated the contribution of the Appellate court judges, District court judges of the concerned areas, lawyers, government lawyers, court employees, human rights activists and employees engaged in quasi-judicial bodies, stakeholders and civil society members for being present and making contribution during the discussion. All of them deserve thanks.

I would like to extend heartfelt thanks to the invited member, the Joint Secretary Mr. Kedar Paudel, Mr. Keshariraj Pandey, the judge of Appellate Court invited as an expert, the Under Secretaries duo Mr. Kailash Prasad Subedi and Mr. Basudev Neupane engaged in preparing the drafts, Section Office Mr. Surendra Kumar Bajracharya, Mr. Keshav Prasad Dahal, the Project Manager of the Enhancing Access to Justice Project and other staff.

Finally, I am grateful to all members of the Taskforce for their untiring hard work and labour during morning, evening and on public

holidays continuously in performing the task entrusted to the Taskforce on time irrespective of their respective regular professional and service-related works.

Kathmandu.

Sd.

August 11, 2010

(Khilaraj Regmi)

Justice, Supreme Court and
Convener, Civil Raw Reform and
Modification Taskforce

Government of Nepal

MINISTRY OF LAW AND JUSTICE

Being a law to regulate day-to-day civil and social relationship among citizens in any country, civil law is has very crucial role in civil life. The principles of civil law are being practiced since the very beginning of human civilization and they are in practice even today in their modified forms in various legal systems. The Roman law is one classic example of such vivid realities.

It would not be an overstatement to say that the civil law in Nepal has come to the present form being developed as a blend of principles of the ancient Hindu law, the Common law, Continental law and some of Nepal's own unique local principles. However, some of the principles of the civil law of Nepal are being directed by the jurisprudential principles of civil law and principles laid down by the Supreme Court rather than by legislation enacted by the legislature. In the context of the open and market-oriented economy, the obligations arising out of international treaties to which Nepal is a party and the development of liberal and democratic society, several principles of the existing civil law have already been incomplete and irrelevant. To speak truly, there is lack of proper laws on so many subjects of civil law in Nepal.

In the changed context, reform in the system of governance is one of the major agendas of the country and law reform has been regarded as

one of its inseparable parts. The government has adopted a policy of continuing law reform with a view to make the legal system of Nepal rich, improved, modern and according to needs of 21st century. As a part of this endeavor, preparation is underway to formulate drafts of Civil Code and Civil Procedures Code and to introduce them in Legislature-Parliament in the form of Bills.

As the country has been passing through a transitional phase, it might be argued that law reform is not a necessity at this difficult stage. However, this time has to be taken as an opportunity because of the fact that reform process could be accelerated during difficult times and desired goals could be achieved, though law reform is a perennial process and it is ever lasting. For the first time, an effort has been made for substantial reform of the overall legal system of the country and if this reform could be transformed into practice, there is no doubt that the achievements to be derived from it will have long-lasting place.

The drafts and report prepared by the Taskforce formed by Government of Nepal for modification and reform of civil law in Nepal has been submitted to Government of Nepal (Council of Ministers) and directives has been given to this Ministry to take necessary actions on it. Once the process of consultation with the relevant stakeholders is over, these drafts will be forwarded in the form of Bills. The drafts received from the Taskforce may not be complete in itself and there may be areas of reform as well. In order to facilitate the access of the drafts to the stakeholders, the drafts and

report thereof has been uploaded in the website and are being published in the form of a book. I would like to request all concerned persons/organizations to render their respective assistance in additional modification and reform in the drafts.

Kathmandu

October 7, 2010

Sd.

(Madhab Paudel)

Secretary

Ministry of Law and Justice

ENHANCING ACCESS TO JUSTICE PROJECT

(NEP/08/007)

Remark

Protection and promotion of life, property and liberty of people is the main goal of the modern constitutionalism. This makes all the three organs of the state to be accountable to citizens being confined to their respective limits according to the theory of separation of powers. In order to implement this, there is the need of promulgation of constitution and making of laws. Implementation of law is much more important than its enactment. The journey towards the constitutionalism is not possible unless reforming the old and inadequate laws having accommodated the new concepts of jurisprudence developed as per the need of time and in international level. Reform in existing law is necessary also to institutionalize political context changed in the country over the last few years. Having realized the same fact, Government of Nepal has initiated this effort of reforming civil and criminal laws of the country. Government of Nepal had formed two taskforces on civil law and criminal law reform under the convenership of two Justices of the Supreme Court namely Hon'ble Mr. Khilaraj Regmi and Hon'ble Mr. Kalyan Shrestha respectively. The Penal Code and Criminal Procedures Code has already been published and the Civil Code and Civil Procedures Code is on your hand.

Civil law is one of the major charters of relationship among citizens and between the state and citizen. The family relationship between persons; property and various aspects associated with it; civil rights; matters relating to trade and commerce; relationship between person and state and the procedures to implement those provisions have been dealt with in the separate drafts of the Civil Code and Civil Procedures Code. The Civil Procedures Code has been drafted taking into account of the problems being faced in court procedures and acknowledging the development taken place in the area of information technology. An effort has been made in the proposed codes to modernize the provisions of civil law within and out side the Country Code.

Finally, I would like to offer my heartfelt thanks to the convener and members of the Taskforce for their hard works during days and nights to complete this task. I would also like to express special gratitude to the JICA and the Japanese Professors for the contribution they have made. I also would like to thank the Enhancing Access to Justice Project and its staff for facilitating the Taskforce to complete its task as the Secretariat.

Sd.

(Dr. Ramkrishna Timelsena)

National Program Director

Right Hon'ble Prime Minister,
Office of the Prime Minister and Council of Ministers,
Singhdurbar, Kathmandu.

Subject- Submission of Report

Right Hon'ble Sir,

We do hereby submit the draft of the Civil Code, Civil Procedures Code and report thereof prepared by the civil law Reform and Modification Task Force as follows formed by a decision of Government of Nepal (Council of Ministers) dated December 3, 2008 for reform and modification of civil law of Nepal.

	Hon'ble Justice Mr. Khilraj Regmi, Justice, Supreme Court	Convener
2.	Mr. Hari Prasad Neupane, Vice-Chairperson, Nepal Law Commission	Member
3.	Mr. Madhab Paudel, Secretary, Ministry of Law and Justice	Member
4.	Dr. Ram Krishna Timal, Registrar, Supreme Court	Member
5.	Mr. Shyam Prasad Kharel, Senior Advocate,	Member
6.	Mr. Ramnath Mainali, Advocate, Representative, Nepal Bar Association	Member
7.	Ms. Liladevi Gadtaula, Under Secretary (law), Ministry of Energy	Woman member
8.	Mr. Kamalshali Ghimire, Joint Secretary, Ministry of Law and Justice	Member-secretary

The report submitted on this Wednesday, 11th August, 2010.

1. Background:

1.1 Need of Civil Code:

The *Muluki Ain* enacted for the first time in Nepal in the year 1853 for making provisions of civil law was mainly based on the Hindu religion and philosophy. The *Muluki Ain* was amended from time to time and in the year 1963, a new *Muluki Ain* (hereinafter referred to as the “Country Code” in this report) was enacted. The existing Country Code comprises of substantive as well as procedural provisions of civil and criminal laws. Since this Country Code was enacted in special historical context, it fails to respond to the remarkable achievements and changes occurred in the open, liberal, democratic system, economic liberalization, development of information technology and industrialization in the 21st century. As this Act could not fulfill the needs of the changed context, the need for timely reform and codification of civil law was felt realized long time back; however, the reform and codification works could not be initiated for a long time.

In order for making new civil law by bringing timely reform in the prevailing law, one task force was formed under the convenorship of the then Law Secretary and a draft was prepared and published. Since that draft was in the preliminary stage, that draft could not become a law.

Though most of the subject-matters of the civil law prevailing in the country at present are in the Country Code, however, it

could not have covered all matters of civil law. Some of the matters of civil law are in use through the interpretation and judicial principles laid down by of Supreme Court while some of those matters are being governed by general principles of jurisprudence. Therefore, in the present changed context, it is highly necessary to modernize and codify the civil law covering the matters identified to be reformed, the judicial principles laid down by the Supreme Court and the values developed in Nepal by our own practice, the civil law Reform and Improvement Task Force (herein after referred to as the “Taskforce”) was formed as follows under the convenorship of a Justice of Supreme Court according to a decision of Government of Nepal (Council of Ministers) dated December 3, 2008:-

1.	Hon’ble Justice Mr. Khilraj Regmi, Justice, Supreme Court	Convener
2.	Mr. Hari Prasad Neupane, Vice-Chairperson, Nepal Law Commission	Member
3.	Mr. Madhab Paudel, Secretary, Ministry of Law and Justice	Member
4.	Dr. Ram Krishna Timal, Registrar, Supreme Court	Member
5.	Mr. Shyam Prasad Kharel, Senior Advocate,	Member

6.	Mr. Ramnath Mainali, Advocate, Representative, Nepal Bar Association	Member
7.	Ms. Liladevi Gadtaula, Under Secretary (law), Ministry of Energy	Woman member
8.	Mr. Kamalshali Ghimire, Joint Secretary, Ministry of Law and Justice	Member- secretary

2. Terms of Reference of Taskforce:

The terms of reference of the Taskforce as fixed by Government of Nepal (Council of Ministers) are as follows:-

1. To prepare separate drafts of Civil Code and Civil Procedures Code by making a timely revision and reform, in consonance with the spirit of the Republic, the existing socio-economic and cultural conditions of the country, of the Civil Code published in 2002 by the Taskforce constituted by Government of Nepal, and to submit the same to Government of Nepal;
2. To determine as to the subjects to be dealt with in the Civil Code and the subjects to be dealt with in separate law out of the subjects of the civil law and to give suggestions to Government of Nepal;

3. While preparing the drafts of Civil Code and Civil Procedures Code, to study on the practices in other countries about them and to furnish other necessary suggestions to enrich the Nepali civil law system;
4. The Taskforce to hold consultation with the concerned officials of Government of Nepal, national and foreign experts, lawyers, stakeholders and civil society,
5. Before submitting its suggestions together with report, the Taskforce may hold consultation meetings on the drafts with stakeholders and civil society at regional as well as national level;
6. The Taskforce may form a drafting sub-committee under coordination of the Secretary at the Ministry of Law and Justice and the drafting sub-committee shall, according to the direction of the Taskforce, submit the draft of Civil Code and Civil Procedures Code to the task force;
7. The terms of the Taskforce shall not exceed one year from the date of commencement of its works.

3. Tasks performed by the Taskforce

3.1 The Taskforce initiated its works from March 22, 2009. The Taskforce had invited former Judge of Appellate Court Mr. Bodhariraj Pandey as an expert of the civil law, Mr. Kedar Paudel, Joint Secretary at the Ministry of Law and Justice as

the Support Manager and Mr. Keshav Prasad Dahal, the Project Manager of the Access to Justice Project as the focal point of the Taskforce. Similarly, in order to assist in drafting, the Taskforce had invited Mr. Kailash Subedi and Mr. Bashudev Neupane, the Under Secretaries duo at the Ministry of Law and Justice.

Since all the members of the Taskforce are the officials associated with different service and profession, The Taskforce had performed its tasks in additional time; the time before or after office hour and on public holidays. The Taskforce has prepared the drafts having intense discussions on each of the topics and had decided the matters unanimously. The Taskforce has its meetings convened for 103 times to complete its works.

In the course of performing its works, technical cooperation was made available by the Japan International Cooperation Agency (JICA), Government of Japan. Under this assistance, the Government of Japan had formed an advisory group comprising of Prof. Hiroshi Matsuo of the Keio University, Prof. Satoshi Minamikata of the Niigata University and Prof. Dr. Hiroyuki Kihara of the Asia University to give feedback to the Taskforce on civil laws and practices prevailing in Japan and in other developed countries. Out of the members of the advisory group, Prof. Hiroshi Matsuo studied the draft and gave suggestions on the matters of general principles of civil law, natural and legal persons, bankruptcy of natural person,

property law, and law of torts; Prof. Satoshi Minamikata on the matters relating to family law and Prof. Dr. Hiroyuki Kihara on the matters relating to law of contract and obligation. Similarly, Mr. Taro Morinaga, Lecturer at the Ministry of Justice of Japan had studied and offered comparative analysis of the draft and provided comments and feedback on the proposed provisions contained in the draft on private international law. The Taskforce had had video conferences and direct discussions with the advisory group time and time and the draft has been prepared in such a manner that is would be best suitable and practical in our context.

3.2. The JICA had organized seminars on Civil Code and related laws in August, 2010 and February 2011 for the convener, members, support manager and other officers engaged in the works. In those seminars, discussions were held with the advisory team members on various provisions of the Civil Code in reference with the Uniform Commercial Code, the UNDRUIT Principles of International Commercial Contracts, 2004 and Civil Code of Japan, 1896. The suggestions given there have been incorporated in the draft having considered their relevancy in Nepalese context.

3.3. In connection with preparing the Civil Code and Civil Procedures Code, preliminary drafts were prepared, massive suggestions were solicited from stakeholders in order to improve the drafts. For this purpose, regional seminars were organized in various geographical regions of the country and

intensive discussions were held on the drafts. For soliciting suggestions on the preliminary draft of the Civil Code, seminars were held in Nepalgunj, Janakpur, Butwal and Biratnagar. Similarly, on the draft of the Civil Procedures Code, seminars were held in Hetauda and Pokhara. In those seminars, the Appellate court judges, District court judges of the concerned areas, lawyers, government lawyers, court employees, human rights activists and employees engaged in quasi-judicial bodies, stakeholders and civil society members.

Similarly, two national-level consultative meetings were held in Kathmandu on the drafts of the Civil Code and Civil Procedures Code. In the said consultative meetings, Justices of the Supreme Court, Attorney General, Appellate court judges, District court judges in the Kathmandu valley, officials of Nepal Bar Association, senior advocates and advocates, former judges, government attorneys, Ministry of Law and Justice officials, NGOs representatives, human rights activists and staffs engaged in quasi-judicial authorities. Two professors from Japan, Prof. Hiroshi Matsuo and Prof. Dr. Hiroyuki Kihara also participated in the national consultative meetings.

Final shape has been given to the drafts of the Civil Code and Civil Procedures Code having included the suggestions and feedbacks received from the regional and national consultative meetings. The final drafts of the Civil Code and Civil Procedures Code have been incorporated in Annex-1 and Annex-2 respectively.

The speech delivered by Prof. Hiroshi Matsuo has been given in Annex-3.

4. Reasons for Reforming civil law:

Legal system of Nepal, particularly, civil law system of Nepal is in very primitive stage. The principles in the field of civil law developed in other countries could not have got any space in Nepal law. There have been significant changes in political and social sectors in Nepal, but the scattered civil law provisions could not have addressed the needs of changes and open market economy. On the one hand, civil law of the country is scattered in a traditional manner while on the other, so many of the legal provisions are not complete in themselves. As a result, so many of the important principles, values and provisions of civil law are confined only as the matters of academic discourse in our legal system.

civil law is the backbone of strengthening of an open, liberal and market-oriented economy. It cannot be forgotten that in developed countries, civil law has promoted market economy. As the society has been moving towards modernity from traditional system, it is necessary to codify and modernize civil law accordingly. Because of the liberal economic system the country has adopted, it is the high time for us to modernize and reform civil law also to respond to the needs of collaboration and transactions with other countries. Nepal has to start the journey of codification of laws having regard to the facts that

the countries which were not in favour of codification traditionally have codifying their laws. It is in this background that Government of Nepal has pursued the policy of reforming civil law of Nepal by enacting Civil Code and Civil Procedures Code.

Codification of law means inclusion in a single legislation the legal principles, values and provisions in a particular area (such as civil, criminal law and so on) in a well-managed order and to enforce them. From the process of codification, not only the laws will be codified, they will be simple, easily understandable and logical and it would contribute in making a complete law. With reference to civil law, codification is required for the following reasons:-

- (1) Since civil law is the charter of civic relationship in any society and since it has the ownership of citizen, it is desirable to have included all general principles of civil law in one Code to the extent possible;
- (2) Civil law contributes in development of jurisprudence of the nation which enriches national law, thus, it is necessary to have separate Code on civil matters;
- (3) Not only the making of Civil Code will modernize our legal system, it will also respond to the open market policies adopted by other countries, thus, Civil Code is required;

(4) Civil Code could be developed as a means of promoting national integrity as having a uniform Civil Code and to enforce it would be effective bedrock for consolidating national unity.

5. Purposes of the Civil Code:

Making of and amendment to law is an inseparable part of social development process. The Civil Code and Civil Procedures Code have to be taken as tools of promoting national integration, as means of developing Nepalese jurisprudence, and as cornerstones of modernization of law in Nepal. Since civil law uses to have a very close relationship with living style of every citizen of a country, this is called as the citizen's charter and it is one of the major tools of solving day-to-day problems of people in general. It is believed that the proposed Codes, which have been prepared with inclusion of scattered principles and provisions of civil laws along with those not yet developed in the country, would play a significant role in responding to the ever increasing needs of managing legal relationships in society thereby massively managing civic obligation and protecting rights and interests of general people.

6. Proposed legal provisions, their bases and drafting methodology of the Civil Code and Civil Procedures Code:

6.1 The prevailing Country Code and other laws on relevant subjects have been taken as the main bases of the proposed Civil

Code and Civil Procedures Code. The legal principles the country has practiced over the last one hundred and fifty years in the area of civil law have been given room in both of the Codes either as they are or in their improved forms. Necessary provisions of civil law have been proposed in both Codes having regard to our geographical, ethnic, religious and cultural diversity. Also an effort has been made to include the principles and precedents laid down and by the Supreme Court from time to time and being recognized and used in the field of civil law like legal provisions. The legal principles recognized in the jurisprudence of the country but having no legal provisions to backup them (such as principles relating to persons) are responded to along with concepts and required legal provisions. Similarly, the concepts which have been clearly recognized in our laws but not in practice (such as trusts or *Guthee*) have been proposed as new legal provisions with timely changes and reforms.

6.2 While preparing the proposed Civil Code and Civil Procedures Code, Civil Codes in various countries have also been studied. Since the codification of civil law is mainly the product of continental legal system, the Taskforce has taken into account of the Codes prevailing in the countries which have been adopting the same legal system such as France, Germany, Japan, the Philippines and Quebec province in Canada. However, the provisions contained in those Codes could not be borrowed and implemented as such having regard to special social,

economic and cultural traditions in our country. Despite of this fact, in Nepal, there is the lack of so many of significant civil law provisions prevailing and practiced in countries having the history of codification for the last two hundred years (such as France) and if such provisions could be introduced in our country with special reference of our context, it would enrich our legal system. Therefore, some of such provisions have been proposed.

6.3 Some of the legal principles of civil law which have been in practice in Nepal without any written and elaborative legal provisions to back them have been given space in the Civil Code and elaborated. Such provisions includes provisions relating to maternal and paternal authority, guardianship, curatorship, leasing contracts, hire and purchase contracts, servitude which are in seldom use in Nepal without adequate legal provisions and having regard to the same, provisions have been made in detail in the Civil Code to provide adequate backup for them. Until now, the matters relating to inter-country adoption are being governed by the Country Code Chapter on Adoption and the Terms and Procedures framed by Government of Nepal, under the powers made in the Country Code. Having regard to this fact, the provisions concerning inter-country adoption have to be made as part of substantial law in the proposed Civil Code specially in the context where Nepal is going to be a party to the Hague Convention on Inter-Country Adoption. In addition to this, an effort has been made to include in these Codes the

provisions made in the treaties to which Nepal is a party (specially related to human rights) in such a manner that they may not be inconsistent with the provisions made in such human rights instruments. Since the country does not have any provision concerning private international law, an effort has also been made in the Civil Code to incorporate within it some of the provisions relating to private international law. Moreover, some of the fundamental principles of civil law which have been introduced and in practice in other countries but not provided for in law of Nepal (such as usufruct, testamentary will and other will, parents and children relationship, unjust enrichment and so on) have been dealt with in separate Chapter each.

6.4 So far as the Civil Procedures Code is concerned, the proposed draft contains the procedures of civil cases prevailing in the country in a logical order. However, an effort has been made to reform the existing lengthy and cumbersome procedures of litigation process and to make them timely and it is expected that the proposed Code will substantially improve the court procedures and hearing of cases. From the procedural point of view, some new provisions have been introduced in the Code about which detail elaboration has been made in Paragraph 8 below.

6.5 While drafting the Civil Code and Civil Procedures Code, our existing drafting style and methodology based on common law system have been followed. Separate matters of civil law have been presented in separate chapters treating each of them

as a branch of civil law. The chapters have been chosen based on the need of each of the subject-matters. In each of the chapters, sections and sub-sections have been given as may be necessary.

7. Contents of the Civil Code:

7.1 Though the Taskforce has taken the preliminary draft of the Civil Code prepared in 2006 as its basis of works at the time of commencement of its business, the contents of the Civil Code has been designed also having regard to the laws, practices and experiences of other countries as well. The proposed Code consists of following subject-matters in the following six parts, 52 chapters and 751 sections. If the Code is passed by the Legislature-Parliament and authenticated in its present form, it is sure that it will be the longest ever Act in the country. It is contextual to share here that in other countries as well (such as France, Germany, Japan, the Philippines and Cubec province in Canada), Civil Code is used to be the longest law.

- Part-1 Preliminary (divided in three chapters and 29 sections)
- Part-2 Laws Concerning Persons (divided in three chapters and 22 sections)
- Part-3 Family Law (divided in 12 chapters and 218 sections)

- Part-4 Property Law (divided in 15 chapters and 251 sections)
- Part-5 Laws Concerning contract and other obligations (divided in 18 chapters and 200 sections)
- Part-6 Private International Law (one Chapter and 31 sections)

In the first part of the Civil Code, the subjects such as preliminary provisions, general principles of civil law, and civil rights have been proposed. The provisions of this Code have been treated as general law and it is provided that if there is any special law on any specific subject-matter, the provisions of the special law shall prevail on such matters and this Code will not affect on such provisions. Like general principles of criminal justice in jurisprudence, the universally accepted principles of civil law and principles determined by the Supreme Court in Nepal have been dealt with in a separate Chapter as general principles of civil law. This Chapter deals with the some prevailing general principles of civil law such as ignorance of law not to be an excuse, wrongdoer to bear damages, no benefit out of wrongdoing, civil liability not to be exempted and act against law to be invalid. Under the Chapter on civil rights in this part, provisions such as prohibition in discrimination, special measures not to be

taken as discrimination, inviolability of right to privacy have been made in addition to new provision that if any one has violated a civil right of anyone and has caused loss or if some one is about to violate such right, the aggrieved party may submit a petition to District court as well in addition to Appellate court and the concerned court may issue preventive or directive order as it may deem necessary. There was a long debate among members of the Taskforce as to whether or not to have the separate Chapter for civil rights and finally, it was settled by consensus based on the practice of some of the countries that it be dealt with as a separate Chapter.

The second part of the Civil Code deals with legal provisions relating to persons. There are three chapters in this part viz. natural person, legal person and bankruptcy of a natural person. Though law of person is not new in the Nepalese jurisprudence, however, the Code for the first time has proposed separate provisions as laws of person. The legal capacity of natural persons has been classified in three stages as full legal capacity, partial legal capacity and incapacity. Though unsoundness of mind has been frequently used in our legal context, no provisions have been made with regard to its definition and legal status. Under the provisions relating to legal person, new provisions have been proposed such as the conditions in which a legal person acquires legal capacity, the works

legal person is capable of doing, provisions relating to some entities that acquire legal personality on its own, operation and management of legal persons, and directors of legal persons not to take decisions on matters having conflict with their interests. Since there is separate Insolvency Act, 2006 in force with regard to corporate insolvency, this part deals only with bankruptcy of natural person alone.

The third part of the Code comprises of different chapters on provisions relating to family law. The principles of civil nature elaborated in the Chapters on Marriage and on Husband and Wife of the existing Country Code have been proposed in this part as three chapters viz. Marriage, Effects of Marriage and Divorce. Other provisions proposed in this part includes provisions on Relationship between parents and children; maternal and parental authority; guardianship; curatorship; domestic adoption inter-country adoption; partition of property; testamentary will and succession. Though some of the provisions proposed in the Code are prevailing at present, however, those provisions are not timely and having regard to directive orders issued by the Supreme Court on marriage and divorce, effort has been made to reform and improve those provisions with a view to maintain gender equality. The current provisions of registering marriage at Office of Local Registrar and District Administration Office have

been changed and new provision of registering marriage at District Court has been proposed considering the prevailing international practices as well. Under the Chapter on relationship between parents and children, new provision of claiming of child within two years of the birth has been proposed. In the Chapter on legal capacity, priority order of the persons to be a guardian of the quasi-competent person has been stated and new provision of conferring guardianship to the organization that is taking custody of children. In the Chapter on curatorship, provision have been proposed that in case there is no guardian of any person, any one can be appointed as his/her curator and curator may hold and take care of property of such a person.

The traditional provisions relating to adoption in Nepal are associated with Hindu principles and property though there are significant changes going on in practice. Because of influence of Hindu law, there is a provision that no person having a son may adopt a son and no person having a daughter may adopt a daughter. This traditional approach to adoption has been changed and it is proposed that if the concerned person is financially capable, a court may allow him/her to adopt a son even if he/she is having a son or daughter even if he/she is having a daughter. This provision has been proposed because the absolute traditional provision of prohibiting adoption of a son if

one is having a son and of a daughter if one is having a daughter may not be relevant in the present context. Similarly, the present provision of getting the deed of adoption registered at Land Revenue Office like any deed of property transaction has been proposed to be changed and it is proposed that such deed has to be certified from District Court as it is a matter relating to legal capacity of person rather than a property transaction. In addition, a new provision has been proposed that if the separated husband and wife start to live together again, the son or daughter adopted earlier by either of them shall belong to both of them. Normally, age of the person adopted as son or daughter should be below the age of fourteen years, however, it is proposed as new provision that within the relationship of three generations, the said age bar is not applicable so that even the matured person of old age could become an adopted son or adopted daughter. Since Nepal is a signatory to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption concluded in 1993 and the country is in the process of being a party to it, it is necessary to have separate Chapter on Inter-country Adoption, therefore, some necessary provisions have been made in consistence with the convention.

In so many countries in the world, there is no provision of partition of family property and the owner of property may

transfer the property to the person he/she wills. However, having regard to Nepal's economic, social and cultural aspects, the existing provisions of partition of parental property is left continued. However, this provision leads the children to remain dependent to paternal property. This law is in practice in Nepal for centuries and it is seen to be a natural right of children. Thus, it is not possible for the time being to introduce the will system substituting the partition of property. Rather, it is proposed that the will system be introduced after the interval of certain time, i.e from the 1st of Baisakh, 2080 (corresponding to April 13, 2023) replacing the current partition of property system. Since the provision of taking costs for life maintenance (*jiuni*) and expenses for marriage seem to be irrelevant and impracticable, it is proposed to repeal such provisions.

The fourth part of the Code deals with law of property which contains 15 chapters and such as provisions as to ownership of property, possession, definition and use of government, public and private property and the provisions which are in practice in Nepal either directly or indirectly but not being recognized conceptually such as usufruct, servitude, land cultivation and prescription, house rent, trusts, acquisition and transfer of property, mortgage of immovable property, registration of deeds, donation, and financial transaction have been proposed. On the one hand, this Chapter integrates and brings timely

changes in the related legal provisions prevailing in the existing Country Code, the Land Revenue Act, 1977 and the Land Survey and Measurement Act, 1963 while on the other, the new concepts such as usufruct and servitude have been proposed to be introduced in the Nepalese legal system to enrich our legal system.

Under the provisions of property, definitions of movable, immovable, personal, common, and joint ownership property have been given and according to principles laid down by the Supreme Court, new provision to regard the property personally earned by father and mother as the common property of the family has been added. Under government, public and private property, additional provisions as to definition, use and protection of such property have been made. According to the newly emerged concept of property in the process of social development, the concept of community property has been proposed. Provision of trust to allow property in one's ownership and possession to be managed and operated for the benefits of the beneficiaries has been proposed. The current practice of trusts is proposed to be continued under the law of trust of common law system.

The fifth part of the Code consists of proposed provisions relating to contracts and other obligations. Divided in eighteen chapters, this part includes law relating to general provisions relating to obligation, conditions for formation

of contracts, validity of contracts, performance of contracts, breach and remedies for breach of contracts, sales of goods contracts, contracts of guarantee, bailment contracts, contracts of mortgage and collateral security, agency contracts, transport of goods contracts, lease contracts, hire purchase contracts, indirect and quasi-contracts, unjust enrichment, torts, defective products liability, and works and wages. In this part, on the one hand, the existing laws on contract have been consolidated and inadequate provisions have been improved while on the other, new concepts in our context such as unjust enrichment, torts, defective products liability have been incorporated. Mainly, the law of contracts has been improved according to some of the provisions of UNDRUIT Principles of International Commercial Contracts, 2004 and Uniform Commercial Code. It could be a matter of further debate in the future whether or not a separate commercial Code will be required once the Civil Code and Civil Procedures Code are in enforcement. So many of the countries such as France, Spain, Switzerland, Japan are having separate commercial Code while there is only one civil and commercial Code in the Netherlands. The Chapter on lease investment which is in the preliminary stage of draft has been excluded from this Code and it is recommended to incorporate it in commercial Code or to enact a separate law for it.

The Chapter 6th of the Code comprises provisions relating to private international law. The private international law mainly deals with conflicts of law and such disputes are mainly related to civil law matters. As this concept is law is at the infancy stage in Nepal, it is proposed to incorporate such provisions in a separate Chapter in the Civil Code.

8. The New Legal Principles proposed in the Civil Code and its bases and causes:

The following new provisions introduced in the existing civil law and those improved in the existing law are as follows:-

8.1 New Provision to Presumption of Death of a Person:

As the current law provision (Section 32 of the Evidence Act, 1974) of regarding the person disappeared for the last twelve years without notice to be dead normally seems to be appropriate, it is proposed to be continued. However, if this twelve years clause is made applicable even with regard to the extremely old person or a person deputed to a war zone or person met with an accident, it would be not rational. Thus, the Taskforce has proposed new provision in this regard having studied such provisions in other countries. Since the average maximum age of a person is not more than 100 years, it would not be appropriate to presume that if a person of 95 years disappears, he/she would be presumed to be dead only after 12 years.

Similarly, if there is a clear evidence that a person is deputed to a war zone or he/she has met with an accident, it would not be appropriate to presume such person to be dead only after a long period of 12 years. Therefore, new provision has been proposed that if no normal information is received with regard to a disappeared person who is of 80 years or more or who is deputed to a war zone or who has met with an accident is not surviving for a period of five years, four years and three years respectively, the person so disappeared will be presumed to be dead.

8.2 Detail provision as to legal person:

Though the concept of legal person is not new in jurisprudence, there is no provision in general law as to the status of legal person. With regard to legal person, a new Chapter has been made providing that legal personality will be acquired only after getting registered with a competent authority and after registration; such person will acquire corporate personality. In addition, matters as to acquisition and exercise of rights by such authorities, decision-making authority within them and consequences of their dissolution have also been made in the proposed Code.

8.3 New Concept in Bankruptcy law:

According to the prevailing law on bankruptcy, it is not clear how long will the status of bankruptcy of a person

declared to be bankrupt last. Since this non-clarity it must be supposed that a person declared to be bankrupt would remain bankrupt for an indefinite period of time. However, as this provision is not appropriate from the human right point of view as well, it requires a fresh look for reform. Thus, it has been proposed that a person declared to be bankrupt from a court will last for a period of 12 years and after that period, he/she would be treated as if he/she is not declared bankrupt.

8.4 New provision in family law:

Some new dimension in family law have been proposed in the Nepali jurisprudence. According to the proposed provision, marriage registration is being gradually made mandatory, new provision as to relationship between father, mother and children, paternal and maternal authority, and provision relating to guardianship and curatorship. Though these concepts are not new in Nepalese society, the legal provisions as such are new.

8.5 Provisions concerning testamentary will:

The provision of will of one's own title or ownership is not new concept in the Nepalese law. The deed of will with immediate effect (*halaiko bakas patra*) or deed of will to be effective after death (*sheshpachhiko bakas patra*) are the mechanism by which the system of will is being practiced to some extent. However, so long as the

present provision of partition of parental property continues, deed of will with immediate effect or deed of will to be effective after death could be implemented subject to the partition of property. So far as the question of provision relating to will system is concerned, parental property or property acquired by a person has to be disposed of after death of such person according to the deed of will he/she has executed.

According to traditional concept of will, if it is proved that a person has executed a deed of will; formal procedures concerning it are of least significance. However, in the present time when honesty and moral values are decaying, it would not be prudent to leave the execution of deed of will open. Therefore, it is proposed that such a deed of will has to be certified by certain authority for its authenticity purpose, and for that Land Revenue Office, Embassy or Consulate general in abroad or a notary public are proposed as the entities to certify the execution of such deeds.

8.6 Provisions concerning Usufruct:

The provision of getting benefit or advantage from somebody else's property without transferring the ownership of such property is one of the major aspects of civil law and it is being practiced to some extent in Nepal as well. However, as there is no legal and institutional

arrangement made in Nepali jurisprudence in this regard, legal provision concerning usufruct has been proposed. From this provision, movable or immovable property will be mobilized to the optimum extent that accelerates economic activities. Thus, this concept has special importance in a market economy. From provision of usufruct, any person may handover property under his/her title and ownership to any one else for certain period for prescription. It is the expectation of the Taskforce that it will accelerate economic activities by way of optimum mobilization of property.

8.7 Provisions concerning servitude:

Concept of servitude with reference to use of private property is not new in Nepalese society, though its use has been very narrowly confined. This does not cover the whole concept of servitude or easement prevailing in other countries. Having regard to the same fact, the Taskforce has proposed to include in Nepali jurisprudence the concept of servitude in the use or prescription of immovable property and has proposed a separate Chapter for its practical use.

8.8 Hire purchase contract and lease contracts:

Though the Contract Act, 1999 had given a new dimension to the literature of Nepali law with regard to general and special provisions of contract, it could not have covered

within it hire purchase contract and lease contract. Hire purchase contract is one of the major means of market economy under which the goods sold by a seller to the buyer is, until full payment of the goods so sold is paid, deemed to be let to the buyer by the seller and ownership of the goods will be transferred to the buyer once the full price of the goods is paid. Though this provision is not there in the Nepali law, it is being governed by general provisions made in contract. Thus, a new Chapter has been proposed for this purpose.

So far as provision of lease contract is concerned, this is letting immovable property for a long time and which is different from house rent.

8.9 Provisions concerning torts:

Though there is no separate law of torts in Nepal, however, it is not the case that there was no use of tortious liability in Nepal. Requirement of payment of damages for loss of crops by cattle (*bali armal*) is one of such example. Nonetheless, there has been no formal use of the word tort in any Nepal law. *Duskriti* may not be the actual translation of the English word “tort.” Nevertheless, this word has been in the use in the Nepali legal field, the Taskforce has used the word *Duscriti* in its original form.

8.10 Provisions concerning Private International Law:

Though transactions and relationship of Nepal and Nepali people with foreign countries and foreign citizens and corporate bodies on various subjects of civil nature are on the rise, there are no provisions relating to private international law in the Nepal law to regulate such matters; therefore, a separate Chapter has been proposed in Part 6 of the proposed Civil Code. Though the proposed provisions could not respond to all the subjects of private international law prevailing in international practice, basic essential principles have been proposed in this Chapter.

One question may be raised as to need of incorporation of provisions of private international law in the Civil Code itself. This is one important and relevant question of codification of law. There is no uniformity in other countries having codification of civil law. However, as the Civil Codes of Italy, of Russian Federation, of Vietnam and of the Quebec province of Canada are having a separate Chapter on private international law, it is felt appropriate to incorporate it in the proposed Civil Code.

9. Civil Procedures Code:

The Civil Procedures Code determined the procedures to be followed for settlement of disputes of civil nature and it none of the significant aspects of civil law administration. Even in the countries not having separate Civil Code (such as India,

Bangladesh, Pakistan) were having Civil Procedures Code since 1908 and the need was felt in Nepal as well long time back. Though efforts were made in the past also to draft Civil Procedures Code, there was no publication of an integrated draft prepared and published. Thus, it has to be taken as the first step in this regard. The proposed Code consists of 23 chapters, 290 sections and 30 schedules, the details of which are as follows:-

Chapter-1	Preliminary	3 sections
Chapter-2	General principles of Civil Procedures Code	12 sections
Chapter-3	Provisions concerning Jurisdiction	12 sections
Chapter-4	Provisions concerning procedures preparation of documents	19 sections
Chapter-5	Provisions concerning limitation	16 sections
Chapter-6	Provisions concerning court fees	22 sections
Chapter-7	Provisions concerning statement of claims and claims	14 sections
Chapter-8	Provisions concerning summons and service of summons	20 sections
Chapter-9	Provisions concerning statement of defense and counter claims	7 sections
Chapter-10	Provisions concerning endorsement	5 sections
Chapter-11	Provisions concerning preliminary hearing	4 sections
Chapter-12	Provisions concerning date for appearing in courts	14 sections
Chapter-13	Provisions concerning power of attorneys	12 sections
Chapter-14	Provisions concerning interlocutory or interim order	5 sections
Chapter-15	Provisions concerning examination of documentary evidences	18 sections
Chapter-16	Provisions concerning examination of witnesses	11 sections

Chapter-17	Provisions concerning hearing of cases and judgment	11 sections
Chapter-18	Suspension and transfer of cases	4 sections
Chapter-19	Provisions concerning appeal	14 sections
Chapter-20	Provisions concerning review and revision	3 sections
Chapter-21	Provisions concerning mutual legal assistance	16 sections
Chapter-22	Execution of judgments	25 sections
Chapter-23	Miscellaneous provisions	23 sections

Mainly, the current draft has accommodated the procedures of civil nature in the Country Code with necessary modification and reform and in so many subjects, procedural provisions have been made in order to make proceedings and settlement of civil cases simple, transparent, predictable and more practical. The main provisions proposed in this Code and the rationale behind them are as follows:-

9.1 Coverage of procedures:

The proposed procedures code has been designed in such a way that both judicial and quasi-judicial authorities to try cases of civil nature may invoke it. Accordingly, the words like court and judge have been defined.

9.2 Nature of the Code:

This procedures code has been proposed as General Code of procedures. If there is a separate civil procedures are provided in the prevailing law, it shall be according to that law and in other matters it shall be according to this Code.

9.3 Clear demarcation of civil and criminal cases:

Though No. 9 of the existing Country Code has classified civil and criminal cases, its use has raised some non-clarity in practice and some of the civil nature cases are being registered in criminal record. Clear demarcation has been made to end this anomaly. This would end the current trend of registering civil nature cases such as divorce in the criminal record.

9.4 General principles of civil procedures

In Chapter 2 of the proposed Code, some of the general principles of civil procedures have been identified and mandatory provision of compliance of these principles in the proceedings of cases of civil nature by judicial and quasi-judicial authorities. It has been expected that these provisions will facilitate even the quasi-judicial bodies to hear and decide cases.

Most of the principles elaborated here are, normally, in our practice but some of them are new provisions proposed. Among the proposed principles, all parties to a dispute in a court including Government of Nepal have to be treated equally and they will have the same capacity. However, if a separate law has afforded special treatment or discount to Government of Nepal or any other person (such as in case of court fee, *locus standi* and so on), it shall be accordingly. Similarly, it is proposed that a civil case may be compromised at any stage or any court and that one level appeal is a matter of right.

9.5 Court fee

The procedures code includes provision to clarify jurisdiction, limitation and court fee which are vital subjects of administration of justice. The provision made in the existing Court Fees Act, 1960 have been modified according to necessity and the English words used in the Act have been converted into Nepali language as *Adalati shulka*.

9.6 New provision of counter claim and defendant:

The existing scattered provisions relating to statement of claims and statement of defense have been included in one Act and proposed to make them simple. In addition, the following new provisions are also made:-

- (a) The current law of filing another statement of claims to make any new claims while filing statement of defense against the claim made in the statement of claims has been modified and it is proposed as new provision that counter-claims may be made in the statement of defense itself. In such situation, the defendant must pay court fee according to the amount claimed in such counter-claims.
- (b) Though there is legal provision at present in No. 139 of the Chapter on Court Proceedings, the Country Code that a court may hear the person who is not made as party to a case but who has been implicated in the case or compliant and he/she may be made a party to the case.

But a person who is not implicated in case could not be made a party. This law is proposed to be changed and propose that though not implicated in a case, if right, interests, claim or concern of a person are related in a case, if the concerned person makes a request for it if the court finds it appropriate, such a person may be made as a party to such a case.

9.7 Provisions concerning preliminary hearing

According to the existing law, even if the defendant has made claims that the plaintiff has no *locus standi*, that the statement of claims is not filed within the limitation, or that the court in which the case has been filed has no jurisdiction to try such a case, these preliminary questions are not settled first and the case-proceedings go on and finally, the cases are decided based on these preliminary cases after so many years. If such provisions are not improved, effectiveness of court proceedings may be questioned and it would promote vexatious litigation. In order to reform this situation, it is proposed that court must settle this question before examining evidences and preliminary hearing should be conducted for that purpose. It is proposed that through preliminary hearing, the statement of claims will be dismissed if there is no jurisdiction, *locus standi* or limitation.

9.8 New provisions concerning submitting copy of statement of claims and service of summons:

In the proposed Code, the existing provisions with regard to service of summons have been continued with necessary modifications. The proposed new provision in this regard is that if the plaintiff himself/herself desires to deliver the statement of claims along with summons of the court, he/she may deliver them and in the case of legal persons, the plaintiff himself/herself has to deliver the summons. Since this provision has been already introduced in the Arbitration Act, 1999, it could be made applicable to all suits of civil nature. Moreover, it is also proposed that the summon in name of the officials, legal practitioners, witnesses, power of attorneys who appear in the court or a party which is engaged in litigation in the same court may be delivered to him/her at the time of his/her presence at the court and in case he/she denies in the delivery, the judge may prohibit him/her in other proceedings in the court.

9.9 Reform in getting extension of elapsed time limit or due date

The existing provision made in No. 59 of the Chapter on Court Proceedings, the Country Code provides that the elapsed time-limit may be extended for three times not exceeding 30 days in total. It is causing delay in hearing and settlement of cases. The existing provision was made in the specific context of lacking communication and transportation facilities in the distant past

and as there has been remarkable progress in communication and transport, the provision of extension of time limit for three times not exceeding 30 days in total is not justifiable. As this provision requires a review, it is proposed that time-limit may be expanded up to a period of 21 days for two times only.

9.10 Use of video conference may be allowed:

It is proposed in the procedures code that in case a party submits an application requesting to examine a witness who could not appear at the court for any special reason through video conference, the witness examination may be conducted through video conference.

9.11 Provisions concerning mutual legal assistance:

Though No. 34 of the Chapter on Court Proceedings, the Country Code provides that service in abroad of summons, notice or closed-questions issued by courts of Nepal and service in Nepal of summons, notice or closed-questions issued by a foreign court shall be according to Rules made by Government of Nepal, however, no such Rules could have been framed so far, and that particular Number has not been implemented. Since Nepal's transactions with foreign countries is on the rise day-by-day and since a large number of Nepali people have been living abroad, it is necessary to have legal provisions for service of summons used by courts in Nepal in abroad, witnesses to be examined and judgments delivered in abroad to be executed in

Nepal, therefore, some legal provisions have been made for the same purpose.

The proposed provisions are based on the following conventions:-

- (1) The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, 1965
- (2) The Hague Convention on the Tasting and Evidence Abroad in Civil and Commercial Matters, 1970
- (3) The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 1971

9.12 Speedy execution of judgment

Execution of judgment is one of the crucial aspects of administration of justice. Judgments of courts will be meaningless if they are not enforced on time. Unless and until judgments are enforced in a simple and easy manner, people in general could not feel to get justice. The ultimate realization of effectiveness of a decision or final order of a court is possible only through execution of judgment. As the Taskforce was of the view that execution of judgment in simple, easy and speedy manner itself is a realization of justice and the procedures relating to execution of justice have to be dealt with in the Civil Procedures, the Taskforce has prepared the draft taking into

special account of creation of machinery for execution of judgments. In order to execute judgments in simple, easy and speedy manner, it is proposed that after preparation of judgment, the court should send the record thereof to the Judgment Execution Section immediately and a separate case-file and record of judgment has to be sent to the concerned District Court for execution.

In order to avoid delay in execution of judgment after the verdict and in order to execute judgment by way of compromise or reconciliation, new procedures have been proposed so that parties to a case may get the judgment executed by making a joint petition to the court for that purpose.

9.13 Procedures for partition of property

The current No. 46 of the Chapter on Partition, the Country Code, provides that a petition shall be filed within three years from the date of decision for partition of property. There is no limitation fixed to file a suit for partition of property. However, in case of effecting the partition, a long period of three years is prescribed. The Supreme Court has also interpreted that if no petition is filed within the said time, partition need not be effected.

Clause (4) of Article 20 of the Interim Constitution of Nepal provides that a son and a daughter shall have equal right in partition of property and a getting a share from partition of family property has been accepted as one of the natural rights

and a right at birth. It is the view of the Taskforce that so long as the provision of partition of family property continues, no one should be deprived from a share of property through any technical basis.

In the context of difficulties faced by courts in executing judgments in partition of property cases and having regard to the increasing flow of such cases in courts, the Taskforce has proposed that if the parties to a suit for partition of property are on due date to appear at the court, the judgment shall be executed within three months. If there are more than one co-parceners and one of the co-parceners does not present at the court, a 15-day notice shall be sent to him/her and if all co-parceners present, partition of property shall be effected then and there.

Similarly, if not all co-parceners present at the court, it is proposed that the court shall separate the share of partition property of the person who is not present at the court. It is also proposed that if the statement of property at the time of partition is not exact, the value of the shortfall property shall be determined and it shall be reimbursed from the property of the person providing the share of property or the person taking custody of the property.

9.14 Guardian may with permission of court file a case:

It is proposed that in order to protect rights of the person who is a minor according to the law, old, blind or incapable of speaking, or having unsound mind, the guardian may file a suit or submit statement of defense, appeal or a petition on behalf of such a person with an approval of the court. This would relieve courts from unnecessary backlog of cases and people will get justice on time.

10. Suggestions concerning policy and institutional reform to be made in civil law:

Though necessary provisions have been proposed in the Civil Code and Civil Procedures Code for reform in the existing laws, however, the following recommendations have been made for strengthening civil law by effective implementation of the proposed Codes:-

- (1) As per the practice until now, the Nepal law has not accepted the requirement of registration of marriage as a mandatory act as provided in civil laws of other countries. If the act of registration of marriage has to be left as a voluntary act, the act of getting marriage concluded will be a never-ending job. According to para (2) of Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979, to which Nepal is a party, it is mandatory to register every marriage in a register to be maintained for that purpose. In order to

implement this provision as well, registration of marriage must be made mandatory in our country. Therefore, it is proposed in the Code that in whatsoever manner may a marriage be solemnized, such marriage has to be registered in order to get legal validity. In order to fully implement this provision, Government of Nepal should raise public awareness massively through mass media and local bodies and civil society should also develop the marriage registration system as a necessary condition of matrimonial life. It is the expectation of the Taskforce that it would further promote the legal status of women. It is also recommended to make necessary legal provision that a non-registered marriage will not have legal validity by being a party to the Convention on Consent to Marriage, Minimum Age to Marriage and Registration of Marriage, 1965.

- (2) The Chapter on lease investment which was in the Civil Code published in 2006 has been excluded from the proposed Code. It is the view of the Taskforce that time has not been matured enough for the concept of lease investment, which is distinct from day-to-day matter of civic relationship, to be included in the civil law. However, it is not the view of the Taskforce that there is no need of lease investment law in the country. The Taskforce is of the view that such a law must be incorporated in bank and financial institutions law rather than in the Civil Code.

(3) According to suggestions received from regional consultation meetings held in various regions and national consultation, the provisions concerning partition of property have been reviewed and provisions to transfer property through will system has been proposed. Though it is easy to make laws relating to will, it is very difficult to move society forward from the centuries old tradition of sons and daughters to have rights in shares of family property from father or husband through partition of property. In a society like our where education is not well-available and opportunities of employment are very minimal, it would be difficult for people to earn a means of livelihood if a share of property is not received from father or husband. Irrespective of that fact, it is necessary to relieve society from the traditional principle of partition of property and to allow people to dispose of their property according to their will thereby changing the traditional style of being dependent on paternal property. This has to be started from a particular point of time. Thus, the Taskforce has proposed that this system be introduced with effect from the 1st of Baisakh, 2080 (corresponding to April 13, 2023). To materialize this provision the state should provide free and compulsory and vocational education, create more and more opportunities of employment, and make people to rely more on hard-work

and labour. We recommend to Government of Nepal to take measures in this regard.

- 4) Once the two Codes are brought into force, it is sure that new dimension will begin in Nepal but as the courts will have extra functions to carry on (marriage registration, appointment of guardians and curators and registration of deeds of adoption), the existing number of staff of District Court and budget will be insufficient. If there is no efficient human resources in judiciary, it could hardly be expected that even a good law may deliver good results. Therefore, the existing staffing of courts must be reviewed, judges and support staff must be trained and physical capacity must be enhanced such as audio-visual aids.
- 5) As the current trends show, the condition of judgment execution is not satisfactory. If judgments of courts are not enforced on time, it will be meaningless. Unless and until judgments are enforced in a simple and easy manner, people in general could not feel to get justice. Taking into account of this fact, this Code has proposed some new procedures. In order to implement this provision in practice, the Taskforce recommends Government of Nepal to establish a mechanism comprising of experienced and appropriate human resources.
- 6) It is already stated that civil law is a matter of concern and interest for general people, it must be revised from time to

time. Law will be developed and people will feel ownership of the policies adopted by the state only if civil laws are reformed according to the policies adopted by the state. Therefore, it is recommended to Government of Nepal to form a Taskforce to review the whole civil law of the country with a view to bringing timely changes in them.

Civil law Reform and Modification Task Force, 2008

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Part -6

Provisions Concerning Private International Law

Annex-1

THE CIVIL CODE

Part -1

PRELIMINARY

A BILL MADE TO AMEND AND CONSOLIDATE CIVIL LAWS

Preamble: Whereas, it is expedient to bring timely changes in the civil law provisions in the *Muluki Ain* (the Country Code) and other laws having amended and consolidated them in order to maintain morality, decency, good conduct, convenience and economic interest of general public by maintaining law and order in the country and to maintain a cordial relationship among different races, tribes or communities by providing for just provisions in economic, social and cultural fields,

Now, therefore, the Constituent Assembly has enacted this Act pursuant to clause (1) of Article 83 of the Interim Constitution of Nepal, 2007.

Chapter-1

Preliminary Statement

- 1. Short title and commencement:** This Act may be cited as "the Civil Code, 2010".

(2) Chapter-11 of this Code shall come into force on April 14, 2023 and the rest Chapters shall come into force from the next day following the completion of one year on which it was authenticated.

- 2. Definition:** Unless the subject or the context otherwise requires, in this Code,-

- (a) "Court" means the Supreme Court, Appellate Court and District Court and also includes any other court, other judicial authority or official empowered according to law to initiate proceedings and to adjudicate any particular type of civil cases.
- (b) "Law" means a law in force for the time being.
- (c) "Person" means a natural person and also includes a legal person,
- (d) "Complaint" means a statement of claims and the word also includes a complain, claim or counter claim of any other type.
- (e) "Local body" means the Village Development Committee or Municipality, as the case may be.
- (f) "Property" means movable or immovable property.

3. Not to prejudice special legal provisions: Where a law in force provides for a separate provision in the matters regulated by this Code, no provision of this Code shall be deemed to have affected such matters.

Chapter-2

General Principles of civil law

4. **General applicability of principles and provisions:** The principles and provisions referred to in this Chapter shall generally be applicable to the matters of civil laws.
5. **Ignorance of law not to be excused:** The ignorance of law shall not be excused. Every one shall be presumed to have the knowledge of law.
6. **Act against public interest not to be carried out:** No one shall carry out any act in such a manner that it may be against public interest.
7. **Act contrary to law to be invalid:** An act contrary to law shall be invalid.
8. **A wrongdoer to bear damages:** (1) Whosoever causes loss or damage to another person by committing a wrong while doing or causing to be done an act shall have to provide compensation therefor.

(2) Every person shall himself /herself have to bear the consequences of the wrong act committed by him/her.
9. **Act causing nuisance to other not to be committed:** No one shall commit or cause to be committed any act that causes nuisance,

- annoyance or damage to prestige, reputation or property of other person.
10. **Not to enjoy benefit of wrong:** No one shall be entitled to enjoy benefit accrued from his/her own wrong.
 11. **Act against interest to be invalid:** Any act carried out against interest of a person who is under one's own guardianship, curatorship, subjection or influence or where he/she is likely to have influence shall be invalid.
 12. **Personality to be recognized:** Every person shall have to recognize other person's personality.
 13. **Good neighborhood to be maintained:** Every person shall have to so maintain good neighborhood as not to cause damage, loss to the community or neighbors of his/her residence.
 14. **Not to be relieved from civil liability:** A person shall not be relieved from a civil liability under the law merely on the ground that proceedings of criminal offense is initiated or not initiated against him/her.
 15. **Customs or tradition contrary to law not to be recognized:** No custom or tradition contrary to law shall be recognized in dispensation of justice.
 16. **Applicable to foreigners as well:** Except in cases where the subject, context or nature requires application only to a Nepali citizen, this Code or provision concerning civil law shall equally be applicable to a foreigner as well.

Chapter-3

Provision Concerning Civil Rights

17. **To be equal in eye of law:** (1) Every citizen shall be equal in the eye of law.

(2) No citizen shall be excluded from the equal protection of law.

18. **Discrimination not to be made:** (1) No citizen shall be discriminated in the application of general law on grounds of religion, color, caste, tribe, sex, origin, language or ideological conviction.

(2) No citizen shall be discriminated on grounds of race, community or profession nor shall be prevented on grounds of caste or race from using service, amenities or utilities of public use or entering into a public place or public religious place or performing religious act in such places.

(3) There shall be no discrimination with regard to remuneration and social security between men and women for the same work.

(4) In a governmental or public office, a person shall be appointed only on the basis of the qualifications determined by the law. In so appointing, no person shall be discriminated on grounds of religion, color, caste, race, sex, origin, language, or ideological conviction.

- 19. Special Measures not to be taken as Discrimination not to be deemed, where specific provision is made:** Notwithstanding anything contained in Section 17 and 18, where special measures have been made by law for protection, empowerment or development of women, *dalit*, indigenous ethnic people, Madhesi, peasant, worker or economically, socially and culturally disadvantaged class, the old, the disabled or physically, or mentally handicapped person, such measures shall not be deemed to be a discrimination.
- 20. Guarantee of freedoms and rights:** (1) No personal liberty of any person shall be deprived except in accordance with law.
- (2) Every citizen shall, subject to law, have the following freedoms and rights:-
- (a) To put one's opinion and expression,
 - (b) To assemble peacefully without arms,
 - (c) To form union and association,
 - (d) To move and reside in any part of Nepal,
 - (e) To practice any profession, employment, industry, business and to carry out the transaction of property,
 - (f) To obtain education of one's own choice or in one's own mother tongue,
 - (g) To earn, use, transfer property and to carry out any other transaction of property,

- (h) To profess and practice one's own religion practiced from time immemorial, subject to the compliance of public morality and traditions,
- (i) To preserve and promote the language, script or culture of one's own community,
- (j) To operate religious place and religious trust, by maintaining independent existence of one's own religious community.
- (k) To protect or maintain privacy of one's own body, residence, property, document, correspondences or information.

21. Right to Privacy deemed to be violated: (1) Whoever commits, save pursuant to law, any of the following acts without obtaining consent of the concerned person, shall be deemed to have violated right to privacy:-

- (a) entry into any person's residence,
- (b) opening a person's correspondences or using it, taping or recording or listening the discourse, speech, sound through the medium of telephone or other technology,
- (c) watching, publishing or disseminating activities, behaviors of personal life of a person,
- (d) taking figure or photograph of a person,

(e) making public of other's name, figure, photograph, sound by imitation.

(2) Notwithstanding anything contained in clauses (d) and (e) of sub-Section (1), where a person carries out the acts referred to in those clauses for literary or artistic purpose or public interest, the right to privacy shall not be deemed to have been violated.

- 22. Right to make contract:** Every citizen shall have the right to make a contract subject to the law.
- 23. No taxation save in accordance with law:** No tax shall be levied and collected from a persons' property or income save in accordance with law.
- 24. Not to employ in work against will:** No person shall be employed into a work against his/her will.
- 25. Property not to be obtained or acquired:** (1) No property of anyone shall be acquired or recovered except in accordance with law for the purpose of public good.
- (2) No property of anyone shall be auctioned or forfeited except in accordance with law.
- 26. Complaint may be filed:** (1) A petition may be filed at the Supreme Court, Appellate Court or District Court for the writ of *habeas corpus* by the person who is arrested or detained or anyone else on his/her behalf.

(2) In case any person has filed a petition at more than one court, the petition filed at the higher court shall be maintained.

(3) If a person commits or there is sufficient suspicion that he/she is going to commit an act in contravention of this Chapter, the person going to be aggrieved from such act may, for enforcement of his/her right, file a petition at the Appellate Court or District Court having territorial jurisdiction.

(4) In case it is found from inquiry into the petition filed pursuant to sub-Section (1) that the person has been arrested or detained against law, the concerned court shall order to release him/her immediately.

(5) In case it is found from inquiry in respect of the petition filed pursuant to sub-Section (3) that the respondent has caused some damage or is about to cause damage in the right of the petitioner, the concerned court may issue an injunctive or directive order to such a respondent not to commit or cause to be committed any act damaging the petitioner's right and, where some acts have already been committed, not to commit or cause to be committed the remaining act or to cause him/her to commit on act.

27. Compensation to be awarded: If, from an examination of the complaint filed pursuant to Section 26, the respondent is found to have committed any act causing damage to the complainant, the concerned court shall, having regard to the circumstances,

order the respondent to pay reasonable compensation to the complainant.

(2) Where an official or employee working in a governmental or public body is held to have knowingly violated the civil rights referred to in this Chapter, such an official or an employee shall personally bear the compensation referred to in sub-Section (1).

28. Compensation for filing false complaint: (1) Where a person is held to have filed a complaint with the intention of knowingly causing pain or loss or damage to a person, the concerned court shall order the person so filing the false complaint to pay a reasonable compensation to the respondent.

(2) The compensation to be paid under sub-Section (1) shall include the cost incurred by the respondent for defense before the court, court fees and legal practitioner's cost as well.

29. Limitation: A person aggrieved by an act carried out under this Chapter may file a complaint whenever he/she desires in case of his/her arrest or detention, and in other cases within a period of six months from the date of carrying out of such an act.

Part - 2

LAW

CONCERNING

PERSONS

Chapter -1

Provision Concerning Natural Person

- 30. To be recognized as a person:** Every person shall, immediately after the birth, be recognized as a person and shall be entitled to exercise right under law until he/she survives.
- 31. Right to Name:** (1) Every person shall, immediately after birth, have right to name and shall be entitled to use the given name respectfully.
- (2) Every person shall have the right to defend his/her name, reputation and prestige and such right shall not be transferable to others.
- (3) No person shall be allowed to abuse other's name.
- 32. To be considered fully competent:** (1) Every person who attains the age of eighteen years shall be considered to become an adult and shall, in the same capacity, be considered to be a legally fully competent.
- (2) A person competent pursuant to sub-Section (1) may, subject to law, exercise every right, bear every obligation and discharge every duty.
- 33. To be Considered Incompetent:** (1) Notwithstanding anything contained in Section 32, a person who has not attained the age of ten years, or even if attained that age, the person who cannot

protect his/her rights and interest for the reason of unsoundness of mind shall be considered to be legally incompetent.

Explanation: For the purpose of this Code "unsoundness of mind" means the condition of being incapable, due to physical and mental ill health, of knowing the act done by oneself in general understanding and consequences thereof.

(2) An incompetent person does not have to bear any type of legal obligation and while exercising a right, it has to be exercised or cause to be exercised only with the consent of guardian or curator or through the guardian or the curator, as the case may be.

(3) In case of executing a deed on behalf of an incompetent person, it has to be executed or caused to be executed through, his/her guardian or curator, as the case may be.

34. To be considered quasi-competent: (1) A person who has attained the age of ten years but not completed the age of eighteen years shall be considered as a quasi-competent person.

(2) A quasi-competent person may, subject to law, exercise every right, bear every obligation and discharge every duty.

(3) A quasi-competent person shall, while exercising a right, it has to be exercised or cause to be exercised through the guardian or the curator, as the case may be.

(4) In executing a deed by a quasi- competent person, it shall be executed in the presence of his/her guardian or curator as the case may be.

35. To be according to court decision: If a dispute arises about a person's full competency, incompetency or quasi competency, it shall be according to decision of the court.

36. Physical examination or organ transplantation may caused to be carried out: (1) Any person may, subject to law, get his/her body examined, treated or transplanted or collected any organ or part or a sample of his/her body.

(2) In case a person is incapable in such a way that he/she could not express his/her consent, his/her guardian or curator may, for the interest of such a person, carryout or cause to be carried out the act referred to in sub-Section (1).

37. Cremation, obsequies rites or funereal act may be specified: Any person may, while he/she is alive, specify the method of cremation, obsequies rites or funereal act to be followed after his/her death.

(2) Where a person has specified the method of cremation, obsequies rites or funereal act pursuant to sub-Section (1), his/her successor shall have to conduct his/her cremation, obsequies rites or funereal acts accordingly.

(3) Where a person has not specified the method of his/her cremation, obsequies rites or funereal act, his/her successor shall have to conduct such person's cremation,

obsequies rites or funereal act according to prevailing customs and tradition.

38. Corpse or organ may be donated: (1) Any person may express in writing his/her will to donate after his/her death his/her corpse or any organ of body or any part thereof to a person to use or cause to be used for a particular work.

(2) Where a person expresses his/her will pursuant to sub-Section (1), his/her, successor shall have to use deceased's corpse, part of the body or a portion thereof according to the will of the deceased.

(3) Where a will is not expressed pursuant to sub-Section or, even where expressed, if such will fails to be executed or becomes impossible to be executed, his/her successor shall have to conduct the deceased's cremation, obsequies rites or funereal act according to prevailing tradition and culture.

39. To be considered a place of residence : (1) Where a person's place of residence needs to be determined, the place given by him/her for that purpose, where he/she has so given and if not so given, his/her place of permanent residence within Nepal shall be considered to be his/her place of residence.

(2) Where a person does not have residence or his/her residence is not traced out pursuant to sub-Section (1), the place of his/her abode for the time being shall be considered to be his/her place residence.

(3) Where a person does not have a residence or his/her residence is not traced out pursuant to sub-Section (1) or (2), the place of carrying out of trade, business, employment or transaction, if he/she is so carrying out, shall be considered his/her place of residence.

(4) Notwithstanding anything contained in sub-Section (1), (2) or (3), where the place of a person's residence is changed, the place where he/she is living for the time being shall be considered to be his/her place of residence.

(5) Where the residence of a quasi-competent person needs to be determined, the place where the guardian or curator, as the case may be, of such a person resides shall be considered as his/her place of residence.

(6) Notwithstanding anything contained elsewhere in this Section, if a person considers a place, as the place of his/her residence for a particular purpose, such a place shall be considered to be his /her place of residence.

40. Presumed to be dead: (1) If a person disappears without any notice for a consecutive period of twelve years or if a person to whom it is natural to have information about such a disappeared person has not received any information about him/her since last twelve years, such a person shall, except in case an evidence establishing that he/she is alive is received, be deemed to be dead.

Provided that in any of the following circumstances, such a person shall be deemed to have died after completion of the following period:-

- (1) In the case of a person having completed eighty years, five years;
- (2) In the case of a soldier deputed to war field, four years from the cessation of the war;
- (3) In the case of a person traveling in an aero plane, ship or other vehicle that met with an accident, three years from the date of such an accident.

(2) Notwithstanding anything contained in clause (3) of proviso to sub-Section (1), where a person dies in an accident and there is no evidence of another person meeting with the same accident to remain alive, such a person also shall be deemed to have died simultaneously.

(3) Where more than one person are dead at one and the same time in an accident, each person so died is deemed, except in the case proved otherwise, to have been died simultaneously.

Provided that where for a particular purpose a question that which of the persons died first in such an accident requires to be determined, the person who was older by age at the time of death shall, unless otherwise proved, be deemed to have died first.

(4) In case the concerned person files a petition stating that any person has disappeared without a notice or died due to a natural calamity or accident and requests for a judicial declaration on such person's death, disclosing therewith the date, place and bases of the death, the court may, after examining evidence, issue an order of judicial declaration on the death of such a person.

(5) If a person declared dead pursuant to sub-Section (4) is alive and himself/herself files a petition to get the judicial declaration passed earlier to be annulled or if his/her successor files a petition for annulment of the previous judicial declaration on death for the reason that the date of the death of such deceased happened to be different than the date referred to in the judicial declaration; the court shall, having examined into this matter, annul or amend the judicial declaration made pursuant to sub-Section (4).

Provided that,-

- (1) Where a wife alive has concluded another marriage after such declaration, the matrimonial relationship with the person declared dead can not be re-established.
- (2) There shall be no adverse affect on the legal rights of the person declared to be dead.
- (3) The act that has already been carried out pursuant to the previous judicial declaration

shall not be prejudiced by virtue of the establishment of a new date of death.

41. Limitation: A person aggrieved by an act carried out under this Chapter may file a complaint as follows:-

- (a) In case of the situation referred to in Section 36, within three months from the date of the action taken;
- (b) In case of the situation referred to in sub-Section (5) of Section 40, within six months from the date of having information thereof,
- (c) In situations other than those referred to in clauses (a) and (b), within six months from the date of carrying out of such action.

Chapter -2

Provision Concerning Legal Person

42. Legal person to acquire capacity: (1) A body corporate incorporated pursuant to law shall obtain legal personality and obtain legal competency in the same capacity.

(2) In order to acquire legal competency pursuant to sub-Section (1), such a body corporate shall have to be registered.

(3) Except where separate provisions have been made in law for registration pursuant to sub-Section (2), an application shall be submitted to the competent authority having specified the following matters:-

- (a) Name of the body corporate,
- (b) Head Office of the body corporate,
- (c) Objectives and functions of the body corporate,
- (d) The capital structure, if any, of the body corporate and details thereof,
- (e) Other necessary details.

(3) After registration of a body corporate pursuant to sub-Section (2), such a body corporate shall be deemed to have been incorporated.

(5) A legal person shall have a corporate personality and shall use a separate seal for its own proceedings.

(6) A body corporate incorporated pursuant to this Section shall be an autonomous and body corporate with perpetual succession and may, in the same capacity, carry out as a person the following functions:-

- (a) to acquire, hold, earn, possess, dispose off, sell or manage otherwise property,
- (b) to execute a contract, exercise rights and discharge obligations under the contract or to assume otherwise right or obligation of any type,
- (c) to frame bye-laws required to operate its own functions, proceedings or business,
- (d) to appoint necessary employees to carry out its functions,
- (e) to open branches or other office subject to its statute and law,
- (f) to open an account in a bank or financial institution and to operate the account,
- (g) to do other functions according to law.

(7) A legal person may initiate a complaint or other legal proceedings in its own name and a complaint or other legal proceedings may be initiated also against such a person.

43. To obtain legal capacity after registration: (1) A legal person shall obtain legal capacity in respect of civil and commercial act and activities after its incorporation

(2) The legal capacity obtained pursuant to sub-Section (1) shall stand existed until the legal person is liquidated, dissolved or wounded up under the law.

44. Legal capacity deemed to be acquired automatically: Notwithstanding anything contained in Section 42, the following body, as a legal person, shall be deemed to have *ipso facto* obtained capacity:-

- (a) The State of Nepal,
- (b) Government of Nepal,
- (c) Ministries, secretariats, departments of Government of Nepal and any other government offices,
- (d) Courts, constitutional bodies or any body thereunder,
- (e) Village Development Committees, Municipalities or District Development Committees,
- (f) Commission, committee and other similar other bodies set up by Government of Nepal,
- (g) Organization or bodies set up under law,

- (h) such organizations established for public purpose as shrine, temple, deity place, *Chaitya*, monasteries, mosque, church, public rest house (*dharmashala*), Public inn, graveyard which has been operated from time immemorial and possesses movable and immovable property,
- (i) Community schools or colleges established for public purpose.

45. Place of location of legal person: The place of location of a legal person shall be as specified at the time of incorporation of body corporate and where such place is not so specified the place where its headquarters or registered office is located and where such office or place also is not specified, the place where the main administrative office or transaction and business of such a body corporate is located shall be considered to be the place of the location.

46. Management and operation of a legal person: (1) A legal person shall be managed and operated in accordance with the provisions of such a person and where such provision is not made, it shall be managed and operated by one or more directors.

(2) The legal person shall be responsible for the management and operation made by a director or directors pursuant to sub-Section (1).

(3) Where there are more than one director, the decision taken by majority directors shall, except otherwise provided, be deemed to be decision of the legal person.

47. Operation of business of a legal person: (1) In operating business on behalf of a legal person, the business shall, except otherwise provided, be operated by directors of such persons.

(2) In operating business pursuant to sub-Section (1), director or directors may so delegate power to any director or directors or other person as to operating any business.

48. Right or liability to devolve upon merger of a legal person:

(1) If a legal person is, for any reason, merged with another legal person, the right and liability of such a person shall be as specified at the time of such merger.

(2) Where a specification is not made pursuant to sub-Section (1), the right and liability of the legal person to be merged shall be devolved to the legal person with which such a person is merged.

49. Legal person may act as agent: A legal person may act as an agent of any other person.

50. Not to participate in decision-making in case of conflict of interest:

(1) A director shall not take part in a decision making process on a matter involving his/her personal interest.

(2) Where a decision is affected by conflict of interest under sub-Section (1), such a decision shall be void.

51. Legal person to be liable: If a loss or damage is caused to a person from an act and action done by a person on behalf of a legal person, such a legal person shall be liable therefor and bear compensation therefor.

Provided that if any loss is caused by doing an act beyond the objective and competency of the legal person, the director or a person doing such an act shall personally be liable therefor.

52. Assets or liability to be settled: If a legal person is dissolved for any reason, the assets and liability of such a person shall be required to be settled according to laws.

53. Limitation: A person aggrieved by an act carried out according to this Chapter may file a complaint within the period of thirty five days in the case of Section 50 and in other cases, within the period of six months of carrying out of such an act.

Chapter-3

Provision Concerning Bankruptcy of Natural Person

54. Bankruptcy proceedings may be initiated: (1) Where a person's debt and other liability to be borne by him/her exceeds his/her assets, bankruptcy proceedings may be initiated for payment or recovery of debt or settlement of liability from such assets.

(2) Notwithstanding anything contained in sub-Section (1), no bankruptcy proceedings shall be initiated in the following conditions:-

- (a) If a person who has regular income proves that his/her income can pay or set off debt or other liability within a certain period or the creditor is satisfied in such matter,
- (b) If the person likely to be a bankrupt asks a period of up to five years specifying the period of time to pay the debts of creditors and sources thereof from the date of origin of conditions necessitating commencement of bankruptcy proceedings in order to enjoin or cause to be enjoined from initiating that proceedings or,

- (c) If the creditor does not agree to initiate or cause to be initiated bankruptcy proceedings.

Explanation:

- (1) For the purpose of this Chapter, the term "assets" means the concerned person's property standing for the time being or to be earned or likely to be earned up to the time prior to completion of bankruptcy proceedings pursuant to this Chapter.
- (2) For the purpose of clause (c), the term "creditor" means, where there are more than one creditor, creditors or a group of creditors who hold fifty percent or more debt over the total debt of the person likely to become bankrupt.
- (3) If a debt or a claim of a creditor is settled from assets of a person under this Chapter, such a person shall be deemed to become a bankrupt.
- (4) The court shall have to send the record of the persons being bankrupt pursuant to sub-section (3) to the Bankruptcy Administration Office to be established according to law.
- (5) The Bankruptcy Administration Office shall have to maintain the updated record referred to in sub-section (4).

(6) Upon declared to be bankrupt pursuant to sub-section (3), he/she shall not be required to pay debt or fulfill the obligation other than the debt or obligation he/she has to pay or fulfill and settled under this Chapter.

(7) Notwithstanding anything contained in sub-section (6), the following obligation shall have to be fulfilled from the trade, business or transaction he/she starts upon his/her declaration of being bankrupt:-

Taxes, fees or charges to be paid to
Government of Nepal;

Amount of punishment or fine to be paid
according to order of a court;

Amount to be paid for embezzlement of
property of the person under his/her
guardianship or curatorship;

Amount to be said for the goods stolen;

Amount to be paid for embezzlement of
property of trust.

(8) *Notwithstanding anything contained elsewhere in this section, in case any person is bankrupt he/she may carry out any trade, business or transaction other than an act or activity he/she*

is prohibited to do in that capacity according to law.

55. Petition to be filed to initiate bankruptcy proceedings: (1) In order to initiate bankruptcy proceedings pursuant to sub-Section (1) of Section 54, the person who is likely to be a bankrupt himself/herself or a creditor or group of creditors having claim at least of twenty five percent or more over the debt of the total debt if the amount of the debt is disclosed and if the amount of the debt is not disclosed having a claim more than one hundred thousand rupees borrowed by such a person may file a petition before the court.

(2) Where a person likely to be a bankrupt himself / herself files a petition pursuant to sub-Section (1), the following details shall have to specify in the petition:-

- (a) exact statement of his/her total assets and value thereof,
- (b) statement of the total debt amount borrowed by him/her, interest accrued thereon and details of the creditor or creditors providing such debt along with their address,
- (c) if he/she has to discharge other liability, details thereof,
- (d) reason for failing to pay debt or discharge other liability.

(3) Where a creditor or group of creditors files a petition pursuant to sub-Section (1), the petitioner shall have to specify in the petition the evidence of his/her borrower likely to be a bankrupt, details of his/her assets to the extent of petitioner's knowledge and approximate value thereof, petitioner's claim, if the petitioner has the knowledge of other creditor's debt or claim such debt and claim and also addresses of such creditors.

(4) Before filing a petition pursuant to sub-Section (1) to initiate bankruptcy proceedings, a creditor or group of creditor shall have to give a notice to the borrower with a time limit at least of three months to pay his/her debt or discharge other liability and matter of filing a petition before the court to initiate bankruptcy proceedings if the borrower fails to pay debt within that period.

56. Notice to be given to the creditor: (1) Where a borrower files a petition pursuant to Section 2 to initiate bankruptcy proceedings, the concerned court shall issue a notice of thirty five days and serve the same in the name of the creditor or group of creditors whose debt the borrower has specified as payable and publish a notice relating thereto in any daily newspaper of national level.

(2) The notice to be published under sub-Section (1) and (2) shall contain a statement inviting any other person having claim, if any, of any type over the assets of the person whose assets is under bankruptcy proceeding to make a claim with

evidence within the time limit as specified in the same sub-Section

(3) The claim made within the time-limit under sub-Section (1) or (2) by the creditor or group of creditors or others shall be considered to be the final claim made against the assets of the borrower and the bankruptcy proceedings of his/her assets shall be commenced on the same basis.

57. Notice to be given to borrower: (1) Where a creditor or group of creditor has filed a petition to initiate the bankruptcy proceedings of the assets of the borrower pursuant to Section 55, the concerned court shall have to issue a notice along with a time limit of thirty five days to the borrower to reply whether or not the bankruptcy proceedings requires to be carried out, and if there exists any grounds for not carrying out bankruptcy proceedings, to appear before the court with evidence thereof.

(2) Where a notice is given to the borrower pursuant to sub-Section (1), a notice shall be given to other creditor or the claimant to make claim in that respect within thirty five days and such a notice shall be published in any daily newspapers of national level.

(3) Notwithstanding anything contained in sub-section (2), in case the court deems that the property under bankruptcy proceedings may be embezzled or such property may not appropriately be managed if it is allowed to be managed by himself/herself or by a member of his/her family, the court may,

on application of a party or on its own discretion, handover the responsibility of management of such property to any of the following persons:-

- a) The person licensed as bankruptcy professional according to law;
- b) The Bankruptcy trustee appointed according to law;
- c) Any employee of officer level of the court or legal practitioner appointed by the court.

(4) The claim of a person who fails to submit a claim within the period under sub-Section (2) shall not be valid after that period.

(5) The fee to be charged for publishing a notice in a national-level daily paper pursuant to sub-section (2) or sub-section (1) of Section 56 shall be recovered from the concerned applicant.

(6) The fee recovered pursuant to sub-section (5) may be got to be paid from the debtor in the course of bankruptcy.

58. Order to be given to initiate bankruptcy proceedings : (1) Where a petition is filed before the court pursuant to Section 55 to initiate bankruptcy proceedings, the court shall have to give an order as to whether it would be appropriate to initiate bankruptcy proceedings in respect of that petition or not.

(2) Where an order is given to initiate bankruptcy proceedings pursuant to sub-Section (1), the court shall, at the

request of the person likely to be a bankrupt himself or herself or the creditor, order any other member of the family of such person to keep as it is basis for the purpose of bankruptcy, the assets of the person in respect of whose assets the bankruptcy proceedings is to be commenced.

(3) If, in issuing an order pursuant sub-Section (2), the court is of the opinion, from the petition of the creditor or otherwise, that such a person may misappropriate the assets or that the assets shall not be distributed in an equitable manner, the court may, by specifying reasons therefor, designate a local body or any person as the manager of such assets.

(4) The local body or person designated pursuant to sub-Section (3) shall have to manage the assets likely to be bankrupt as ordered by the court.

59. Transaction to be ipso facto stayed or void: Where a court issues an order pursuant to sub-Section (1) of Section 58 to initiate the bankruptcy proceedings of a person's assets, any of the following activities can not be carried out without the order of the court after issuance of such an order and where such activities are already commenced or are being carried out but not completed, such activities shall, *ipso facto*, be stayed:

(a) to transfer in any manner to any person the title to, bail, pledge, mortgage or to lease or rent in any way for a period of more than one year, the assets of a person who is likely to be a bankrupt,

- (b) to attach or, execute the pledge, mortgage of, the assets of the person likely to be a bankrupt according to the judgment of a court,
- (c) to pay debt or discharge liability of any person from the assets of the person likely to be a bankrupt.

(2) Any deed, contract, practice, transaction or arrangements executed in contravention of the provision referred to in sub-Section (1) shall, ipso facto, be deemed to be void.

60. Opportunity to be provided to reconcile the sum of debt:

Where the court orders to start bankruptcy proceedings pursuant to sub-Section (1) of Section 58, the local body or a person who is awarded responsibility to manage property pursuant to sub-Section (3) of the same Section shall, after the assets, debt and other liability of the borrower are ascertained, call a meeting of the debtors, creditors, or other claimants.

(2) In the meeting called pursuant to sub-Section (1), the creditor shall be given, by mutual consent of the person likely to be a bankrupt and the creditor or other claimants, a reasonable opportunity to waive his/her claim wholly or partially from the whole or any assets of the borrower or to reconcile sum by taking the money less than his/her claim.

(3) In reconciling the sum pursuant to sub-Section (2), an arrangement may be made whereby a creditor pays the debt or claim of some or majority creditors and such a creditor submits a lump sum claim against such person.

(4) Where the parties secure consent pursuant to sub-Section (2) or (3) or where the concerned parties agree, for any reasons, to stay the bankruptcy proceedings for the time being, a joint petition may be filed before the court accordingly.

(5) If a petition is filed for staying the bankruptcy proceedings pursuant to sub-Section (4), the court shall have to make an order to stay as requested bankruptcy proceedings for a period not exceeding the period set forth in clause (b) of sub-Section (2) of Section 1.

(6) Where an order is made pursuant to sub-Section (5), bankruptcy proceedings in respect of the assets of such property can not be carried out until the expiry of that period.

61. Priority order of paying debt or liability: (1) In carrying out or causing to be carried out bankruptcy proceedings of the assets of a person pursuant to this Chapter, the debt to be paid or the liability to be discharged by such person shall be settled, on the basis of the following priority order, from the assets of such a person:

- (a) cost incurred for carrying out bankruptcy proceedings,
- (b) the liability of the secured creditor who has provided debt against a pledge or mortgage, to the extent of such pledge or mortgage,
- (c) tax, fine to be paid to Government of Nepal or other government charges and dues,

(d) debt of the creditors other than those referred to in clause (b),

(e) claim of other claimants other than those referred to in clauses (b), (c) or (d).

(2) In paying or setting off debt or liability pursuant to sub-Section (1), where there are more than one creditors or claimants of one and same priority order, the debt or claim shall be set off in the proportionate rate from the assets bankrupted in the ratio of the debt or claim of each creditor or claimant.

(3) In paying the debt of the secured creditors pursuant to clause (b) sub-Section (1), if, after recovery of his/her debt from the assets pledged or mortgaged to him/her, there remains any portion or sum of such pledge, other creditors or claimants may make claim over such portion or sum.

Provided that if the secured creditor's debt is not fully recovered from such assets, he/she can not make a claim over other property.

62. Debt of a creditor who shows excess debt not to receive priority: If the creditor and the person likely to be a bankrupt are proved to have shown, by collusion, excess debt or claim from a fictitious transaction with malafide intention of causing loss to other creditors or claimants, notwithstanding anything contained in sub-Section (1) of Section 61, the debt or liability of such a creditor shall be paid or set off only after the debt or liability of other creditor or claimant is satisfied.

63. Property to be set aside: Prior to effecting bankruptcy of the assets of a person pursuant to this Chapter, the following property shall be set aside and bankruptcy proceedings shall be carried out from remaining assets:-

- (a) if there exists any property as the personal property of a person other than one who is likely to be a bankrupt, such property,
- (b) clothes up to three pairs and shoes up to three pairs being worn or to be worn by the person who is likely to be a bankrupt and a member of the undivided family of such a person,
- (c) one set of cooking and dining utensils, one set of bedding materials and reasonable number of furniture, required to the undivided family member of the person likely to be a bankrupt;
- (d) medicines and health-related equipment required to the person likely to be bankrupt and the member of his/her undivided family;
- (e) books required for study;
- (f) food grain required for subsistence for not exceeding three months to the persons referred to in clause (b);
- (g) one set of tools, instruments or arms related to the profession of the persons referred to in clause (b).

(2) Notwithstanding anything contained in clause (b), (c), (d), (e), (f) or (g) of sub-Section (1), the total value of the property referred to in those clauses shall not exceed thirty thousand rupees.

64. Assets not to be concealed: (1) A person who files a petition pursuant to Section 55 for commencing bankruptcy proceedings of his/her assets shall have to submit an exact inventory of his/her whole assets.

(2) In submitting an inventory under sub-section (1), if he/she conceals or suppress such assets with malafide intention of causing loss or damage to the creditor, a separate suit may be instituted against him/her.

(3) Where assets have been concealed pursuant to sub-Section (1), and such assets are discovered before completion of bankruptcy proceedings, the proceedings referred to in sub-Section (2) of Section 61 shall be carried out in respect of the creditor and claimant who discover the assets and other creditor and claimant as well.

(4) If the assets under sub-Section (3) are discovered by a creditor or claimant after bankruptcy proceedings has been completed, where such a creditor or a claimant has already satisfied the sum according to his/her claim at the time of bankruptcy proceedings he/she shall be given ten percent amount of the assets so discovered and where his/her claim amount was not satisfied, his/her sum shall be caused to be

satisfied from such assets and the remaining assets shall be distributed pursuant to the same sub-Section to other creditors and claimants.

Provided that if the creditor or claimant is the successor or relative of the bankrupt person, he/she shall not be entitled to such facility.

(5) If the concealed assets are balanced after payment to the creditor or claimant pursuant to sub-Section (4), such assets shall be returned to the concerned person.

65. Status of bankrupted to be terminated: (1) The status of a bankrupt person falling under bankruptcy shall remain for a period of twelve years from the date on which he/she has become a bankrupt.

(2) Notwithstanding anything contained in sub-section (1), if a bankrupt person pays all liabilities payable to the creditors at the time of bankruptcy, he/she may file a petition to a court to terminate the status of a bankruptcy along with evidences thereof.

(3) If a petition is filed under sub-section (2), the court shall, in order to conduct a hearing thereupon, order to serve a summon giving a period of fifteen days time limit excluding a time required for journey, to all creditors who were either partially paid or unpaid at the time bankruptcy of such a person and invite them therefor.

(4) While conducting a hearing upon the petition submitted under sub-section (2), the court may, if it seems that the bankrupt person has satisfied all the debts and liabilities which were unpaid at the time of bankruptcy, order to revoke the order issued at the time of bankruptcy of the person.

(5) If an order is issued under sub-section (4), the status of the bankrupt person shall be deemed to be terminated after three years from the date on which such an order is issued.

66. Limitation: A person aggrieved by act carried out under Chapter may file a complaint within the following periods from the date of arising out of the cause of action for commencement of the bankruptcy proceedings:-

- a) In matters under Section 54, within three years from the date of arising out of the cause of action;
- b) In matters under Sections 62 and 64, within two years from the date of having knowledge thereof;
- c) In the matters other than those referred to in clauses (a) and (b), within the period of six months from the date of carrying out of such act.

PART-3

FAMILY LAW

Chapter -1

Provision concerning Marriage

- 67. Marriage deemed to be solemnized:** If a man or woman accepts each other as husband and wife through any occasion, ceremony, formal or any act, a marriage shall be deemed to have been solemnized.
- 68. Marriage to be an inviolable social bond:** (1) Marriage shall be a permanent, inviolable and holy social and legal bond, based on free consent, established between man and woman to start conjugal and family life.
- (2) The marital bond under sub-section (1) shall subsist until extinguished pursuant to Section 82.
- 69. Freedom of a marriage:** (1) Every person shall, subject to law, have the freedom to conclude a marriage, establishing family and spending conjugal life.
- (2) Every person's family life shall be inviolable.
- 70. Marriage may be concluded:** (1) Subject to this Chapter, a marriage may be concluded between a man and woman in the following conditions:-
- (a) if a man and woman agrees to accept each other as husband and wife,
- (b) if the man and woman are not relatives, punishable by law in incest,

- (c) if matrimonial relationship of both the man and the woman does not exist,
- (d) if the man has completed twenty two years of age and the woman has completed twenty years of age.

Provided that a marriage may be solemnized with the consent of guardian even if the man and woman have attained eighteen years of age.

(2) Notwithstanding anything contained in clause (b) of subsection (1), it shall not hinder to solemnize or cause to be solemnized a marriage within the relationship that is allowed to marry in accordance with the prevailing practices in an ethnic community or a clan.

71. Marriage not to be solemnized: (1) No person shall solemnize or cause to be solemnized a marriage to a man or woman, as the case may be, lacking the requisites for marriage under Section 70.

(2) No person shall solemnize or cause to be solemnized a marriage between a man or woman of the following conditions by way of misrepresentation:-

- (a) One who has contracted human immunodeficiency virus (HIV) or Hepatitis 'B';

- (b) One who has already been proved that he/she has no sexual organs, is an impotent or having no reproductive capability;
- (c) One who is a dumb, or has lost hearing capacity, has both eye-blinded or is suffering from leprosy;
- (d) One who is not having sound mind;
- (e) One who is already a married;
- (f) One who is a pregnant;
- (g) One who is convicted of a criminal offense involving moral turpitude by a court.

72. Marriage to be void: A marriage solemnized in the following conditions shall, *ipso facto*, be void:-

- (a) A marriage solemnized without the consent of the man or woman,
- (b) A marriage solemnized between the relatives, punishable by law in incest.

Provided that the marriage solemnized pursuant to sub-section (2) of Section 70 shall not be void.

- (2) The void marriage under sub-section (1) shall be invalid *ab initio*.

73. Voidable Marriage: (1) Any of the parties to a marriage solemnized in the following circumstances may get such a marriage annulled if he/she does not accept the marriage:-

(a) If the marriageable age set forth in clause (d) of Section 70 is not completed,

(b) If the marriage is solemnized or caused to be solemnized by misrepresenting pursuant to sub-section (2) of Section 71.

(2) Notwithstanding anything contained in sub-section (1), a marriage shall be void only with consent of the woman if the woman is pregnant as a consequence of the marriage.

74. Marriage to be deemed solemnized if a child is born from physical intercourse: (1) Notwithstanding anything contained in sub-section (2) of Section 69, if a woman is proved to have produced a child by conceiving pregnancy from physical intercourse with a man, marriage between such a man and a woman shall, *ipso facto*, be deemed to have been solemnized.

(2) Notwithstanding anything contained in sub-section (1), no marriage shall be deemed to have been solemnized between a man and woman in the following circumstances even if a child is born from physical intercourse with a man:-

(a) If a woman gives birth to a child by conceiving pregnancy as the consequence of rape,

(b) Except in case of the relationship of under sub-section (2) of Section 70, if a woman gives birth to a child by conceiving pregnancy from a physical intercourse with a man within the relationship punishable by law for incest.

75. No lawful rights of a child already born to be prejudiced:

There shall be no prejudice in the lawful rights of the child born from marriage if the marriage becomes void pursuant to Section 72 or the marriage is declared to be void pursuant to Section 73 or of the child born in the events referred to in sub-section (1) of Section 74.

76. Marriage to be registered: (1) A husband and wife shall have to get their marriage registered by filing an application to the concerned local body.

Provided that in the circumstance referred to in sub-section (1) of Section 74, either of the husband or wife may file an application for registration of the marriage.

(2) A husband and wife residing outside Nepal may submit an application for registration of marriage before the Nepalese embassy or consulate general located in the country in which they have been residing.

(3) If an application is filed pursuant to sub-section (1) or (2) for registration of a marriage, the concerned authority shall, after registering the marriage in the book relating to marriage maintained in its office, issue the Marriage Registration

Certificate to the applicant within fifteen days of submission of the application in the format as specified by Government of Nepal.

Explanation: For the purpose of this Chapter,-

- (a) "Concerned authority" means the authority to register a marriage.
- (b) "Office" also includes the office of a local body.

(4) If the marriage seems not liable to be registered according to the application filed pursuant to sub-section (1) or (2), the concerned authority shall inform the applicant specifying the reasons therefor within a period of seven days of the filing of the application.

(5) In case either of the parties does not appear for registration of a marriage according to the application filed pursuant to the proviso to sub-section (1), the concerned authority shall register the marriage after inquiring such a party.

(6) While inquiring pursuant to sub-section (5), in case such a party expresses disagreement, the concerned authority shall not register the marriage and inform the applicant that the decision on that matter shall be made as decided by court.

(7) The concerned authority shall have to safely maintain the records of the details of the registration of the marriage under this Section.

(8) The couples married before commencement of this Code may, if they so desire, get their marriage registered pursuant to this Section.

Provided that marriage between those couples shall not be deemed to be legally invalid merely for the reason that such marriage is not registered.

77. Marriage by registration: (1) Notwithstanding anything contained in sub-section (2) of Section 69 and Section 74, if a man and woman desires to solemnize a marriage by registration, they shall have to file an application before the concerned district court, if they are living within Nepal, and before the Nepalese embassy or consulate general, if they have been living outside Nepal, specifying therein their name, surname, age, address, profession, the name of their father, mother, grand-father, grand-mother, whether previously married or not, if married, the details of the dissolution of a marriage and also the name of at least two witnesses.

(2) In order to file an application pursuant to sub-section (1), either the man or the woman or both must have resided from at least fifteen days in the concerned district if the application has to be filed before the district court and, if the application is to be filed before the embassy or consulate office, in the country in which such an embassy or consulate general's office is situated.

78. Decision to be made as to whether marriage is solemnizable:

(1) If an application is filed pursuant to Section 77 for solemnization of a marriage by registration, the concerned authority shall have to make, after making a necessary inquiry, a decision within seven days of the filing of the application, as to whether or not the marriage is solemnizable.

(2) Notwithstanding anything contained in sub-section (1), if the marriage authority based in a foreign country has suspicion about the proposed marriage, it shall have to refer the matter to Government of Nepal and dispose off the matter according to the decision of Government of Nepal.

79. Deed of Consent to be prepared: If a decision is made pursuant to Section 78 to the effect that marriage is solemnizable between the applicants, the concerned officer shall prepare a deed of consent for marriage recording the matters specified in the application and a statement to the effect that the parties to the marriage have consented to accept each other as husband and wife, cause the contracting parties and witnesses present to sign on the deed in his/her presence and also himself/herself sign the deed.

80. Provision concerning registration of a marriage: (1) After the deed of consent has been prepared pursuant to Section 79, the concerned officer shall register such a marriage in the registration book and himself/herself sign and cause the parties to the marriage and witnesses present as well to sign in the book.

(2) Once the marriage is registered pursuant to sub-section (1), the concerned officer shall issue a Marriage Registration Certificate in the format as specified by Government of Nepal, to the parties to the marriage registration.

(3) Marriage shall be deemed to have been solemnized between the petitioners from the date on which the Marriage Registration Certificate is obtained pursuant to sub-section (2).

81. Provision concerning use of surname by a married woman:

(1) A married woman may, after marriage, use the surname used by her father or mother or family name of her husband or both the surnames.

(2) If a question arises as to the surname of a married woman, except otherwise proved, she shall be deemed to have used the surname of her husband.

(3) If the marriage of a woman who has used the surname of her husband is dissolved, she may, if she so desires, use the surname used by her father or mother.

82. Matrimonial relationship deemed to be terminated: In any of the following circumstances, the marital relation between the husband and the wife shall be deemed to have been terminated:

(a) if a marriage is annulled pursuant to Section 72 or 73,

(b) if a marriage is dissolved according to law between husband and wife, or

- (c) if the wife concludes another marriage before effecting divorce pursuant to law.

83. Re-marriage may be concluded: Notwithstanding anything contained elsewhere in this Chapter, a man or woman may re-marry in the following conditions:-

- (a) if the matrimonial relationship between a husband and a wife is terminated pursuant to Section 82,
- (b) if a husband or wife dies,
- (c) if it is proved that husband or wife has contracted an incurable venereal disease,
- (d) if a husband and a wife are legally separated with taking partition.

84. Limitation: A person aggrieved by act carried out under this Chapter may file a complaint within three months from the date on which such an act is carried out.

Chapter-2

Provision concerning consequences of a marriage

- 85. To be considered husband and wife:** After solemnization of a marriage between a man and a woman, they shall be considered, so long as such matrimonial relationship subsists, each other's husband and wife.
- 86. Relation and obligation of husband and wife:** (1) The husband and wife must have mutual love and good faith.
- (2) The husband and wife must establish and spend conjugal life by living together.
- (3) The husband and wife must help, protect and respect each other.
- 87. Husband's home to be considered a residence:** Except where a separate residence is fixed by mutual understanding of the husband and wife, the husband's home shall be considered to be a residence of a wife.
- 88. To be considered each other's agent:** The husband and the wife shall, except otherwise provided for in the law or except in cases where there is a legal dispute between husband and wife, be considered as each other's agent in the general household affairs.

- 89. To provide or cause to be provided maintenance cost in accordance with reputation:** The husband and the wife shall provide or cause to be provided each other maintenance cost and health care according to their reputation and ability.
- 90. Household affairs to be managed by consent:** (1) The husband and wife of an undivided family shall have to manage the household affairs by mutual consent according to their property, income and capacity.
- (2) Except otherwise provided for in the law, the husband and the wife shall seek each other's consent in selling or otherwise transferring the movable and immovable property registered in their own name.
- 91. Not to preclude from exercising profession, business or occupation:** The husband and the wife shall not preclude each other from exercising a profession, business, or occupation of his/her skill, qualifications, capability.
- 92. Limitation:** A person aggrieved by act carried out under this Chapter may file a complaint within three months from the date on which such an act is carried out.

Chapter-3

Provision Concerning Divorce

- 93. Divorce may be effected by consent of both:** If both the husband and the wife desire, they may cause the relationship of husband and wife divorced at any time.
- 94. Husband may effect divorce:** The husband may effect divorce in any of the following circumstances even without consent of the wife:-
- (a) Except where the husband and wife are living separately under the law, if the wife has been living separately for three years or more consecutively without consent of the husband;
 - (b) If the wife deprives the husband of maintenance costs or expels him from home;
 - (c) If the wife commits an act or fraud likely to cause the death of or grievous hurt or any other greater physical or mental pain to the husband;
 - (d) If the wife is proved to have committed adultery.
- 95. Wife may affect divorce:** The wife may effect divorce in any of the following circumstances even without consent of the husband:-

- (a) Except where the husband and wife are living separately under the law, if the husband is living separately for three years or more consecutively;
- (b) If the husband deprives the wife of maintenance costs or expels her from home;
- (c) If the husband commits an act or fraud likely to cause the death of or grievous hurt or any other greater physical or mental pain to the wife;
- (d) If the husband concludes another marriage;
- (e) If the husband is proved to have had sexual intercourse with another woman;
- (f) If the husband is proved to have committed a rape of the wife.

96. Petition to be filed for a divorce: The husband or wife, as the case may be, desiring to get the relationship divorced shall have to file a petition to a court.

97. Reconciliation to be made between the husband and wife: If a petition is filed for a divorce pursuant to Section 96, the court first shall, to the extent possible, reconcile both the parties through persuasion.

98. Divorce to be caused: If the court fails to bring reconciliation even after persuasion pursuant to Section 97 and the court deems appropriate to get the relationship divorced than to continue it

any longer, the court shall cause the relationship between them divorced.

99. Partition of property to be effected before divorce: (1) In cases where a divorce is to be affected with the consent of the husband and the wife or because of the husband, the court shall, if the wife so demands, cause the partition to be effected between the husband and the wife before effecting the divorce.

(2) In cases where the husband himself has not obtained partition from his father or other coparceners. The court shall, by causing both the parties to provide the list of coparceners, and if there are other coparceners who are entitled to partition, by inquiring such coparceners as well, cause partition to be apportioned between the husband and the wife.

(3) If it appears that partition under sub-section (1) and (2) will take long time, the court may, by causing the divorce to be effected between the husband and the wife, order the husband to provide the wife monthly expense according to the property and income of the husband until the partition is affected.

Provided that if such a woman concludes another marriage before affecting partition, she shall not be entitled to a partition share.

100. Lump sum amount or alimony may caused to be provided: Notwithstanding anything contained in Section 99, if the wife who effects divorce desires to obtain from the husband a lump sum amount or annual or monthly alimony instead of a partition

share, the court may order the husband to provide such a wife a lump sum amount or annual or monthly alimony on the basis of his property or income.

Provided that if such a wife concludes another marriage, such an amount shall have not to be provided.

101. Maintenance cost may be caused to be provided: If a wife who has not obtained partition from the husband for there being no property for partition under Section 99, desires to receive maintenance cost from the husband and where the husband has income, the court may cause the husband to pay maintenance cost to the wife according to his income.

Provided that:

- (1) If such a wife concludes another marriage, such cost shall have not to be paid,
- (2) If the income of the wife is higher than that of the husband, such cost shall have not to be caused to be awarded.

102. To be according to agreement: Notwithstanding anything contained in other Sections of this Chapter, where a written agreement is concluded at the time of effecting divorce between the husband and wife on partition share or the cost the wife is entitled to on divorce, it shall be according to such agreement.

Provided that no agreement may be concluded which shall be contrary to the interest of a minor.

103. Previous child or husband to obtain property: (1) On death of a divorcee woman, her son and daughter, if any, shall be entitled to her property, and if not, the husband shall obtain the property received by her from such a husband and the successor on her mother's side shall obtain other property.

(2) If a divorcee woman concludes another marriage, the property obtained by her from the husband shall upon divorce be obtained by the son, daughter from such husband; if any, and if not; by the husband prior to divorce.

104. Limitation: A person aggrieved by an act carried out under this Chapter may file a complaint within a period of three months from the date of having knowledge of carrying out of such act.

Chapter-4

Provision concerning relation between the parent and children

- 105. Maternity or paternity to be determined from mother or father:** (1) In case a person's maternity or paternity requires to be determined, it shall be determined on the basis of his / her mother or father, as the case may be.
- (2) In determining paternity pursuant to sub-section (1), the person who was the husband of the mother at the time of the birth of such a person shall be presumed, unless otherwise proved, to be a father of such a person.
- 106. Child presumed to be born from husband:** Unless otherwise proved, a child born in the following circumstances shall be presumed to be born from the married husband:-
- (a) Born after one hundred eighty days from the date on which a marriage was solemnized,
 - (b) Born within two hundred seventy days from the date on which a divorce was effected.
- 107. Paternity may be denied:** (1) Except otherwise agreed upon between the husband and wife, the paternity of a child born to the wife before one hundred eighty days of the solemnization of the marriage may be denied by the husband and where the

husband is already dead before the birth of the child by the successor to the husband.

(2) Notwithstanding anything contained in sub-section (1), where a man solemnizes a marriage with a woman with knowledge or having reasonable ground to know that she was pregnant before the marriage, the paternity of such a child cannot be denied merely on ground of birth before that period.

108. Son, daughter or paternity to be claimed: (1) If a child whose paternity or maternity is not determined has to be claimed as one's own son or daughter, such a claim shall have to be made within a period of two years of the child being born or of being identified, if unidentified.

(2) In claiming the paternity of a child born without the paternity being identified, a claim shall be made within a period of two years of the birth of such a child.

Provided that no claim shall be entertained if such a child is already dead.

109. Paternity of a child born from artificial insemination to be of father: A child born from the use, with consent of the husband and wife, of artificial insemination system from semen of any other person shall be considered to have been born from the married husband and his/her paternity shall be determined accordingly.

110. To be according to court's decision: If a dispute arises as to the maternity or paternity of a person, such a dispute shall be settled as decided by the Court.

111. To obtain name and surname: (1) Each person shall, after birth, obtain the name as designated by his/her mother or father according to one's own religion, culture, usage or tradition.

(2) If the mother or father of a person is not available or is not likely to be available, he/she shall obtain the name is designated by the guardian taking care of him/her. (3)

Each person shall, after birth, be entitled to use after his/her name the surname designated with consent of his/her father and mother or, failing to reach consent, the surname of his/her father.

Provided that a child whose paternity is not traced out shall be entitled to use after his/her name the surname of his/her mother.

(4) Notwithstanding anything contained in sub-section (3), a child may use the surname of his/her father or mother or of both.

(5) If a dispute arises as to the surname of a person, he/she shall be considered, unless proved otherwise, to have used the surname of his/her father.

(6) Notwithstanding anything contained elsewhere in this Section, a child whose father or mother or both are not

traced out shall be entitled to use after his/her name the surname given by the guardian taking care of him/her.

112. Name of a mother, father, grand-father and grandmother may be stated: (1) Where the name of a mother, father and grand-father, grand-mother requires to be stated under a law in a formal, legal act and proceedings or deed, the concerned person shall be entitled to state the name of his/her mother, father and grand-father, grand-mother.

(2) Where the father of the person who has to state the name of his/her mother, father and grand-father and grand-mother pursuant to sub-section (1) is not traced out, he/she may state the name of a mother and the father and grand-mother of the mother, and where even the name of a mother is not traced out, it shall be sufficient to state, by recording the same statement, the name of guardian if he/she is a minor, and only his/her name if he/she is a major.

113. Birth of child to be registered: (1) Where a child is born to a spouse, the mother, father or both have to file an application within forty five days of the birth before the authority specified by Government of Nepal by a notification in the Nepal Gazette or if such a specification is not made, before the concerned Village Development Committee or Municipality, as the case may be, for registration of the birth.

(2) If an application is filed for registration of a birth after expiry of such a period, a charge of fifty rupees shall be applicable.

(3) If an application is filed pursuant to sub-section (1), the concerned authority or the local body, as the case may be, shall, after entering such details into the birth registration book maintained according to law in its office, issue a certificate of birth registration in the format as specified by the law to the applicant.

(4) In entering details in the registration book under sub-section (3), there shall be entered the concerned child's name, surname, birth date (year, month, date and day as well) and place; name, surname and address of his/her mother, father.

(5) The concerned authority or local authority, as the case may be, shall have to forward the details entered, pursuant to sub-section (3), into the registration book maintained in its office up to the end of every month to the district administration office, within a period of fifteen days of the first month thereafter and the said office shall also enter such details up to the end of every month into the birth registration book maintained in its office for that purpose and forward the same in every three months to the ministry specified by Government of Nepal by a notification in the Nepal Gazette.

(6) The concerned Ministry shall enter the details received pursuant to sub-section (5) in the birth registration book maintained for that purpose and maintain up dated description.

114. To care and maintain: (1) Every minor shall be cared and maintained jointly by the mother and father.

(2) In caring and maintaining pursuant to sub-section (1), the father and mother shall have to provide for, according to their financial condition and capability, maintenance, health care, education, sports, and entertainment and make other necessary provisions.

115. To be under custody of a mother or father: (1) Notwithstanding anything contained in Section 114, where matrimonial relationship between a husband and a wife is lawfully dissolved, their minor child shall remain in the custody of the mother or the father as provided herein below:-

- (a) in the case of a minor child below five years of age, into the custody of a mother, if she so desires irrespective of whether or not she has entered into a second marriage;
- (b) in the case of a minor child above five years, except where the mother concludes another marriage, in the custody of a mother, if she so desires;
- (c) in other conditions, except in those referred to in clause (a) or (b) , in custody of the father.

(2) Notwithstanding anything contained in sub-section (1), where the husband and the wife have entered a separate agreement at the time of divorce or of judicial separation on taking custody of a minor, such an agreement shall prevail over the custody of a minor.

(3) Notwithstanding anything contained in sub-section (1), while deciding as to the custody of a child above the age of ten years between the father and mother, the opinion of the concerned child may also be sought.

(4) Notwithstanding anything contained elsewhere in this Section, in case the mother or the father, as the case may be, under whose custody a minor is living, dies, the surviving father or mother, as the case may be, shall have to take the minor into his/her custody without any delay.

Provided that where the mother has already concluded another marriage, she is not obliged to take a minor above five years' age into her custody.

(5) Notwithstanding anything contained in this Section, where the husband and wife separated lawfully have a minor, the maintenance, education, upbringing and health care of such a minor shall be according to the agreement concluded, if any, between the husband and wife and in absence of such an agreement, it shall be as follows:-

(a) In the case of a minor below five years of age, it shall be mother's responsibility,

- (b) In the case of a minor having attained the age of five years, but not attained ten years, it shall be the responsibility of the father;
- (c) In case of a minor attaining the age of ten years it shall be the responsibility of the mother or father with whom the child desires to live.

116. To take necessary care and provide maintenance: (1) The father or mother, as the case may be, who takes a minor in custody pursuant to Section 115 shall have to take care of and provide maintenance to such a minor and in so taking care and providing maintenance, the provisions referred to in sub-section (2) of Section 114 shall be applicable *mutatis mutandis*.

(2) Notwithstanding anything contained in sub-section (1), where the income of the father or mother who does not take custody of the child is higher than that of the father or mother who takes custody of the child, such a mother or father shall have to provide for the purpose of maintenance, education and upbringing of such a minor, the expense as agreed upon between such a father or mother and in absence of such agreement, as specified by the court.

117. Facility to visit to be provided: (1) In cases where matrimonial relationship is lawfully dissolved or the mother or father are living separately, the minor shall be allowed to visit, from time to time, the father if he/she is living in custody of a mother and the mother if he/she is living in custody of the father or by the

consent of mother and father, to stay with either of them for sometime.

Provided that if it appears that the interest of the minor is likely to be prejudiced in availing the facility to such visit or stay, the court may issue an order prohibiting such a visit or stay.

(2) The frequency of visiting to or the period of staying with the father or mother, as the case may be, pursuant to sub-section (1) shall be as fixed by the concerned mother and father in absence of such fixation, as ordered by the court.

(3) During the stay of the minor with his/her father or mother, as the case may be, pursuant to this Section, provisions referred to in sub-section (2) of Section 114 shall be applicable *mutatis mutandis*..

118. Minor's rights to exist: (1) Notwithstanding the matrimonial relationship between the husband and wife is dissolved pursuant to this Chapter, the rights of a child born from them, over the father, mother and the obligation of the father, mother to him/her shall stand existed.

(2) Notwithstanding a person's biological father, mother cannot become husband and wife in accordance with this Chapter, such a person's legal right over such a father and mother and the obligation of such a father, mother to such a person shall stand existed.

119. Home not to be left without consent: (1) A child shall not, without the consent of the parent, be entitled to live separately from his/her parent.

(2) Notwithstanding anything contained in sub-section (1), a child may live separately from the parent in the following circumstances:-

- (a) If one is separated from the parent with or without obtaining partition according to law,
- (b) If he/she concludes a marriage,
- (c) If she or he attains at least twenty two years of age, or
- (d) If he/she is already employed.

120. Minor not to work as labor: A minor who is entitled to be engaged in a work according to law as labor cannot work as labor without the consent of the parent.

121. To be according to decision of father, mother: If a dispute arises as to a matter to be decided in respect of the right and interest of the minor born from the father, mother who cannot conclude a marriage between them or whose matrimonial relationship is dissolved pursuant to this Code, the decision made by the father or mother, as the case may be, with whom such a minor is living shall prevail.

122. A child to honor, respect and care mother, father: (1) Every child shall have to treat his/her parent with honor and respect.

(2) Every child shall, according to his/her capacity, have to provide necessary care, maintenance, medical treatment to his/her parent notwithstanding living in an undivided family or separately.

123. Limitation: If a separate time-limit has been specified in this Chapter with regard to filing a statement of claims, it shall be according to the same and in other cases, the person who is aggrieved from an act carried out under this Chapter may file a complaint within a period of six months from the date of carrying out of such an act.

Chapter-5

Provision concerning Parental Authority

124. To be under supervision and control of the parent: (1) A minor shall live under the supervision, oversight, control or authority of parent.

(2) The minor living under sub-section (1) shall have to obey lawful order or direction given by parent.

125. Parental authority to be exercised jointly: (1) The parent who may exercise the authority over, fulfill responsibility and discharge duties towards their child pursuant to this Chapter shall have to jointly exercise the authority and fulfill obligations and discharge duty with the consent of both.

(2) Notwithstanding anything contained in sub-section (1), the authority to be exercised, responsibility to be fulfilled and duties to be discharged under the said sub-section shall be exercised, fulfilled and discharged in the following circumstances by the following father or mother, as the case may be:-

- (a) If anyone among father or mother dies, by the surviving mother or father;
- (b) If either the mother or father is of unsound mind, by the mother or father of sound mind, during the period of such state of mind;

- (c) Where the matrimonial relationship between the mother, father is dissolved or they have been living separate according to law, by the father, or mother who has taken the minor under custody,
- (d) By the mother if the father of a minor is not traced out.

126. Power, responsibility and duty of the person exercising parental authority: The power of, the responsibility to be fulfilled and the duties to be discharged by the father or mother, as the case may be, who is entitled to exercise parental authority pursuant to this Chapter, shall be as follows:-

- (a) to keep the minor with him/her, provide company and watch the minor's works, actions and behaviors;
- (b) to provide food and clothes and to teach him/her to eat, wear and labor;
- (c) to provide affection and love;
- (d) to inculcate in him/her social dignity, decency, good-behavior, morals, rites, culture, customs and to educate him/her to behave accordingly;
- (e) to provide moral education like honesty, self confidence, self-help, integrity, labor, discipline based on social values;
- (f) to be careful of physical and mental health, to provide and cause to be provided medical treatment;

- (g) to provide opportunity, according to necessity, for sports and entertainment;
- (h) to make available read-worthy and message-oriented educational materials;
- (i) to guide to remain loyal to the family, community, society, nation and state;
- (j) to prevent from detrimental habits, bad association and obscene matter;
- (k) to teach him/her to obey order, to honor and revere,
- (l) to do or cause to be done any act whatsoever required for development of physical, mental and intellectual personality.

127. Not to discriminate: The parent shall not discriminate in any way in the maintenance, education and upbringing, sports, medical treatment or entertainment facility of their children on the grounds of son or daughter or between sons or between daughters.

128. Special care to be taken: (1) If a child is physically or mentally handicapped or disabled or has contracted a deadly disease such as human immunodeficiency virus (HIV) or Hepatitis B, the parent shall have to take special care of and provide special treatment and protection to such a child.

Explanation: for the purpose of this Chapter, the term "physically or mentally handicapped" means a physically

or mentally impaired person who himself/herself is unable or incapable to carryout daily work.

(2) In order to make the child financially self-reliant in the future by having arrangements for providing special medical treatment under sub-section (1), the parent shall have to make, according to their own financial conditions and capacity, arrangements for imparting special education or training.

129. Disciplinary action may be taken: If the parent considers it appropriate to take any disciplinary action against a minor child living under their supervision, oversight, control or authority pursuant to this Chapter to improve his/her behavior, habits and conduct, such parent may take such disciplinary action.

Provided that a cruel, inhumane and torturous treatment can not be made to a child.

130. Deemed to be authority to exercise power: If the parent appoints a teacher for the education and upbringing of a child, admit a child into an educational institute for acquiring education, he/she shall be deemed to have given authority to the teacher so appointed or the headmaster or teacher of such institute to exercise the power under Section 129 in respect of education and upbringing.

131. Other person too may exercise parental power: Where a minor is living with the guardian for reason of death of both the mother and the father, a mother concludes another marriage following the death of the father or both the father and the

mother become a person of unsound mind, his/her guardian may exercise the authority, fulfill the responsibility and discharge the duty, to be exercised, fulfilled and discharged by the parent under this Chapter.

132. Restriction may be imposed to exercise parental authority: If a complaint filed by a person or a child welfare organization incorporated pursuant to law specifying that the person entitled to exercise the authority has committed the following act against a minor is proved from an inquiry, the court may prevent such a person from exercising such authority:-

- (a) if cruel, inhumane or torturous punishment is inflicted or treated;
- (b) if a child is neglected or disregarded or abused from time to time;
- (c) if a child is employed into immoral or sexual vocation;
- (d) if a child is employed in a work likely to endanger body, life or health;
- (e) if loss to him/her is caused by expending his/her property, against his/her interest or such property is sold with the intention of buying oneself later on;
- (f) if a child is induced to become a *Sanyasi*, monk or fakir;

- (g) if a child is employed to begging, except in cases while observing religious or cultural rites, or
- (h) if one is employed in a work to be constituted offense under law.

(2) Where a restriction is imposed pursuant to sub-section (1), the court shall have to appoint a guardian according to law authorizing him/her to exercise the parental authority as regard such a minor.

(3) Where a guardian is appointed pursuant to sub-section (2) to exercise parental authority such a guardian may exercise the parental authority under this Chapter in consonance with the interest of a minor.

(4) If the person who is prevented from exercising the parental authority pursuant to sub-section (1) files a petition before the court promising that he/she shall not repeat the act referred to in the said sub-section, the court may remove the restriction imposed upon him/her and revoke the appointment under sub-section (2).

133. Parental authority to terminate: (1) The parental authority to which the parent are entitled to exercise pursuant to this Chapter over a child shall be deemed to have been terminated in the following circumstances:-

- (a) if the minor attains the age of eighteen years,

(b) if he/she lives separately after getting an employment.

Provided that where a child is physically or mentally handicapped, the parental authority over him/her shall, except in cases where he/she is living separately by concluding a marriage, shall not be terminated.

(2) Notwithstanding anything contained in sub-section (1), except as provided for in this Chapter, the relation, duty, liability and responsibility of mother and father and son and daughter towards each other shall stand existed for life long.

134. Limitation: A person aggrieved by an act carried out under this Chapter may file a complaint within a period of six months from the date of carrying out of such act.

Chapter-6

Provision concerning Guardianship

- 135. To be considered a guardian:** A person appointed or liable under this Chapter to protect the rights, interest of an incompetent or a quasi-competent person shall be considered to be a guardian.
- 136. Priority order of guardian:** (1) Subject to other Sections of this Chapter, a person of the following priority order shall, *ipso facto*, be a guardian of an incompetent or a quasi-incompetent person:-
- (a) a husband or wife of undivided family;
 - (b) a father or mother;
 - (c) a son, widow daughter-in-law, unmarried daughter;
 - (d) a separated husband or wife;
 - (e) a separated son, widow daughter-in-law, unmarried daughter;
 - (f) a grand-father or grand-mother;
 - (g) a grand-son or unmarried grand-daughter;
 - (h) a grand-father, grand mother on mother's parent side, maternal uncle, maternal aunty,

- (i) an elder or younger brother or an unmarried elder or younger sister;
- (j) a married grand-daughter;
- (k) a married elder or younger sister.

(2) Notwithstanding anything contained in sub-section (1) the following person shall be a guardian in the following conditions:-

- (a) where there are more than one person in one priority order eligible to be a guardian, the person mutually agreed by them, and in absence of such an agreement, the person designated by the court.
- (b) in the case of a person of sound mind and having attained the age of fourteen years, a person of his/her choice.

Provided that in so choosing a guardian, a deed thereof shall be executed and be certified by the court.

- (c) in the case of a minor of a spouse whose matrimonial relationship is dissolved, the father or mother who provides maintenance cost to him/her,
- (d) if a person of first priority order declines to be a guardian or does not act in the capacity of a guardian, the person of the following priority order shall act in that capacity.

Provided that if a person of lower order is so becomes a guardian, he/she shall have to certify from the court of the fact that he/she is a guardian.

137. Other person to be considered a guardian: Notwithstanding anything contained in Section 136, where a guardianship to an incompetent or a quasi-incompetent person is provided by a person other than the one referred to in that Section, the person so providing guardianship shall be considered to be a guardian of such a person.

Provided that the person to be so guardian shall have to cause the fact of being a guardian to be certified from the court.

138. Organization to be considered a guardian: (1) If a child living in organization such as child welfare house, orphanage or children's organization established with the object of the welfare and protection of the interest of children who has not a guardian, such an organization itself shall be considered to be a guardian.

(2) Any act to be done on behalf of such a child shall be done by the chief of such an organization.

Explanation: For the purpose of this Chapter and Chapter - 7, "Chief" means the chief executive officer of that organization or the chairperson, general manager, managing director or any other officer acting in that capacity.

139. Guardian may be appointed by a court: (1) Notwithstanding anything contained in Section 136 or 137, the court may, in any

of the following circumstances, appoint a particular person as guardian, specifying reasons therefor:-

(a) If the concerned local body files a petition to appoint a guardian in case a person declines to be a guardian pursuant to Section 136;

(b) If a concerned person files a petition before the court to appoint a guardian.

(2) In appointing a guardian pursuant to sub-section (1), the court shall have to consider whether or not the rights, interest or protection of such an incompetent or quasi-competent person may be secured.

(3) In appointing a guardian in the circumstances referred to in sub-section (1), the court shall have to obtain the consent also of the person to be appointed as a guardian.

(4) After appointing a guardian pursuant to sub-section (1), the court shall have to give a written notice thereof to the person to be a guardian and the local body.

140. Supervisor may be designated: (1) Where a guardian is appointed by a court pursuant to Section 139, the court may, if it considers necessary to inquire the act and activities of such a guardian, designate a person as supervisor.

(2) The supervisor designated pursuant to sub-section (1) shall inquire the act and action of the guardian and submit a report thereof to the court.

(3) Where guardianship is terminated pursuant to Section 148, supervisoryship shall also, *ipso facto*, be deemed to be terminated.

141. Disqualifications for a guardian: None of the following persons may become a guardian:-

- (a) an incompetent or a quasi-competent person;
- (b) a person who has committed an act against rights and interest of an incompetent or a quasi-incompetent person;
- (c) a person sentenced by a court of imprisonment for three years or more.

Provided that this clause shall not be deemed to cause obstruction for being the guardian of the husband, wife, father, mother, son, daughter, grand-father, grand-mother, grand-son, grand-daughter, brothers and sisters.

- (d) a person considered disqualified by the court to be a guardian.

142. Maintenance and care of incompetent or quasi-competent person: (1) The guardian shall have to make arrangement for the maintenance, health, education, entertainment and care of incompetent or quasi-competent person under his/her guardianship from the property of such a person, if any, and if not; from the property of the guardian himself/herself.

(2) The arrangements for maintenance, health, education, entertainment and care of the an incompetent or quasi-competent person pursuant to sub-section (1) shall be made from the movable property of such a person, if any; and where there is no such property or the property to make arrangements for the maintenance, health, education, entertainment and care is not sufficient, his/her immovable property may be sold with the prior-approval of court.

Provided that such an approval shall not be required to sell immovable property where the husband, wife, father, mother, son, daughter, grand-father, grand-mother, grand-son, or grand-daughter is a guardian.

143. To supervise, protect and manage property: (1) A guardian shall have to supervise and protect the property of the incompetent or quasi-competent person under his/her guardianship.

(2) A guardian may carry on any business or transaction by investing the property of the person under his/her guardianship.

144. To keep exact books and accounts: (1) A guardian shall have to keep exact books and accounts of the expenditure incurred on the maintenance, health, education, and care of an incompetent or quasi-competent person under his/her guardianship, and of the income and expenditure from the management of such a

person's property and the inventory proving the ownership of such property.

Provided that where a husband, wife, father, mother, son, daughter, grand-father, grand-mother, grand-son, grand/daughter is the guardian of the incompetent or quasi-competent person, such books and account shall not be required to be maintained.

(2) The guardian shall have to submit the books and accounts and the inventory proving ownership of property kept pursuant to sub-selection (1) within one year from the date of the incompetent or quasi-competent person having attained majority lawfully or notified in writing the court that he/she is competent to carry out act and activities, to such a person.

(3) If an incompetent or quasi-competent person dies at the time when he/she was under guardianship, the guardian shall have to submit the books and accounts and the inventory proving ownership of such property under sub-section (1) within six months from his/her death, to the nearest of a successor of such person.

145. Legal proceedings may be instituted or suit may be defended: A guardian may for protection of rights, interest of the incompetent or quasi-competent person under one's own guardianship, institute a legal proceeding against a person or defend a suit filed against him/her.

Provided that the guardian cannot so renounce a claim of or plea to or to execute deed of compromise in a civil suit to

which an incompetent or quasi-competent person is claimant or defendant as to cause a loss to him/her from which he/she shall be aggrieved.

- 146. Act may be carried out on behalf of incompetent or quasi-competent person:** Subject to the provisions contained elsewhere in this Chapter, the guardian may carry out an act on behalf of an incompetent or quasi-competent person that he/she can carry out according to law.
- 147. Act may be carried out subject to only to terms:** Notwithstanding anything contained in other Section of this Chapter, where a person is designated a guardian for an incompetent or quasi-competent person with specification of certain terms, such a guardian shall have the authority to carry out only the act under such terms.
- 148. Termination of guardianship:** Guardianship shall be deemed to be terminated in any of the following circumstances:-
- (a) if a petition filed by the guardian stating that he/she is unable to be a guardian is accepted by court;
 - (b) if the guardian or the incompetent or quasi-competent person under guardianship dies;
 - (c) if the incompetent or quasi-competent person becomes competent;

(d) if the court removes the guardian at the request of the incompetent or quasi-competent person under guardianship.

(2) If a guardianship is terminated pursuant to subsection (1) and the person who was a guardian and the person who was under guardianship are surviving, the person who had worked as guardian shall have to continue to maintain and take care of the incompetent or quasi-competent person under his/her guardianship until another guardian is appointed.

(3) Where a guardianship is terminated pursuant to subsection (1), the limitation, time of a legal proceedings or time for appearance, to be carried out by the guardian pursuant to this Chapter shall not be deemed to have elapsed, from the date on which guardianship so terminated until next guardian is appointed.

149. Not to be transferred to a successor: Where a guardianship is terminated upon death of a guardian pursuant to Section 148, the right, authority and responsibility vested in him/her in the capacity of a guardian shall not be transferred to his/her successor.

Provided that in cases where another guardian requires to be appointed for an incompetent or quasi-competent person, he/she shall, in the capacity of the successor to the guardian, have to maintain and take care of such incompetent or quasi-competent person until another guardian is appointed.

150. Expense may be recovered: Where a guardian has arranged from his/her own property the maintenance, health, education, sports, entertainment and care of the incompetent or quasi-competent person living under his/her guardianship, he/she may recover the money so incurred from the property of the incompetent or quasi-competent person remained under his/her guardianship.

Provided that if the husband, wife, father, mother, son, daughter, grand-father, grand-mother or grand-son or grand-daughter is a guardian of the incompetent or quasi-competent person, he/she shall not recover such expense.

151. Amount of loss may be recovered: If a guardian knowingly, deceitfully, fraudulently or with malafide intention, causes loss to the property of the incompetent or quasi-competent person remained under his/her guardianship so as to be or not to be benefited himself or herself, the incompetent or quasi-competent person aggrieved from such a loss may recover the amount of loss from such a guardian.

152. Limitation: A person aggrieved by an act carried out under this Chapter may file a complaint within a period of six months from the date of having knowledge of carrying out of such act.

Chapter-7

Provision concerning Curatorship

153. To be curator of minor: (1) Where the father and mother both of a minor die or become insane or have disappeared or are living abroad without making arrangements for proper maintenance, care, supervision of the minor, and if such a minor does not have a guardian according to Chapter 6, the person who has taken custody of such a minor shall be required to act in the capacity of the curator of such a minor, until the minor attains the age of majority.

Explanation: For the purpose of this Chapter:-

- (a) Where there is no information whether a person is alive or dead from three months consecutively or a person to whom it is natural to receive information about such a person has not received any information about such a person during that period or except in cases where information about him/her is received, such a person shall be deemed to be disappeared.
- (b) If a person visits a foreign country for three months or more, he/she shall be deemed to live in a foreign country.

(2) Notwithstanding anything contained elsewhere in this Section, a person may appoint a separate curator for maintenance and care of his/her child.

154. Curator of a person of unsound mind: (1) Where a person of unsound mind does not have a guardian under Chapter-6, a person may act as a curator for maintenance, care of such a person and for management of his/her property.

(2) Where there is no person under sub-section (1) or the person is not ascertained, the person under whose custody, supervision or oversight the person of unsound mind is living for the time being, shall be a curator of such a person.

155. Mother to become curator of a minor: Notwithstanding anything contained in Section 153, in cases where the father of a minor below the age of ten years is dead or disappeared or is in abroad, such minor's mother herself shall be his/her curator even through she has concluded a second marriage.

156. Body corporate could be a curator: (1) If an orphan child or a person of unsound mind having no guardian remains under supervision, protection or custody of a body corporate, such a body corporate shall be a curator of such a person.

(2) Where a body corporate is curator pursuant to sub-section (1), the person working as executive chief of such body corporate shall exercise the authority of a curator.

157. Court may appoint curator: (1) Where there is no person who could be a curator according to Chapter-6 of this Part or a

person declines to be a curator, the concerned local body shall file a petition stating the details thereof before the court to appoint a curator of the concerned person.

(2) In filing petition pursuant to sub-section (1), there shall be stated the name, surname, address and profession of the persons likely to be a curator of the concerned person and a document of the consent given by the person likely to be a curator to work as curator.

(3) Where a petition is filed pursuant to sub-section (1), the court shall issue an order for appointing an appropriate person out of the persons whose names are submitted pursuant to sub-section (2).

(4) A person to be appointed a curator pursuant to sub-section (3) shall have to submit a deed of consent to work in that capacity before the court.

158. Curator's qualifications: A natural person who is capable to conclude a contract pursuant to this Code and is not bankrupt or a legal person which is in operation after being registered pursuant to a law may be a curator.

159. Curator to take custody of property: (1) A person who becomes a curator pursuant to this Chapter shall have to take custody of, manage and operate movable and immovable property.

(2) A person who takes custody of property pursuant to sub-section (1) shall have to maintain, provide medical

treatment and educate the person whom he/she has taken into custody according to his/her capacity from the property he/she has taken into custody.

160. Property may be used: A person who becomes a curator may expend all the returns obtained from the property under his/her curatorship for the maintenance, education and interest of the person whom he/she has taken into his/her custody.

161. Immovable property may be expended by court's approval:
(1) Where the movable property of the person living under curatorship is insufficient for the maintenance, education or medical treatment of such a person, the person who becomes a curator may file petition for permission of the court for sale for that purpose, of immovable property, specifying reasons therefor.

(2) Where a petition is filed pursuant to sub-Section (1), the court may, if it finds the grounds for sale of such immovable property reasonable, grant permission to sell the immovable property or a part thereof in accordance with the conditions as it considers appropriate.

162. Property to be managed rationally and carefully: (1) A person who becomes a curator shall have to take reasonable care of the property under his/her curatorship, in good faith like that of his/her own property and operate and manage it rationally and carefully.

(2) The concerned curator shall be responsible for any loss or damage caused to the property under curatorship for

reasons of not having operated and managed property pursuant to sub-Section (1).

Provided that he/she shall not be responsible for loss or damage of such property due to natural calamities.

(3) If a complaint is filed of not having operated and managed property pursuant to sub-Section (1), the court may remove the concerned person from curatorship.

163. Transfer of title may be annulled: If a curator sells to himself/herself or any member of his/her family the immovable property of the person living under his/her custody with malafide intention of depriving such a person of his/her title or except in cases where succession is devolved within three years of the date of sale, the title transferred in any way to such person's name, may be annulled.

164. Curatorship to be terminated: (1) Curatorship shall be deemed to have been terminated in the following conditions:-

- (a) In case of a minor, if he/she attains the age of eighteen years,
- (b) In case of a person of unsound mind, if he/she becomes sane,
- (c) In case the mother, father of the minor or both take minor into their custody,
- (d) In case a guardian is appointed for a minor or person of unsound mind;

- (e) In case the person disappeared is found,
- (f) In case a court removes a person from curatorship pursuant to sub-Section (3) of Section 162.
- (g) In case the mother, father of the minor who are in abroad return,
- (h) In case a curator is not qualified or no more qualified pursuant to Section 158;
- (i) In case the curator or the person giving curatorship dies.

(2) Where curatorship is terminated pursuant to sub-Section (1), the person who used to be a curator shall promptly return to the concerned person the property taken into custody in the capacity of a curator.

165. Property may be handed over: Notwithstanding anything contained elsewhere in this Chapter, if a person is personally unable to protect and manage property under his/her title, ownership or possession for the reason that he/she has to go elsewhere by leaving the place where he/she resides, he/she may appoint an agent therefor and entrust such property to such a person.

166. Limitation: A person aggrieved by an act carried out under this Chapter may file a complaint within a period of three months from the date of having knowledge of carrying out of such an act.

Chapter -8

Provision concerning Adoption

- 167. To be deemed adopted son or adopted daughter:** If a person accepts a son or daughter of another person as his/her son or daughter, such a son or daughter shall be deemed to be an adopted son or daughter.
- 168. Adoption not to be effected contrary to right and interest of child:** No person shall effect adoption contrary to rights and interests of a child.
- 169. Prohibition on adoption by a person having child:** (1) No person having his/her own son shall adopt a son and no person having his/her own daughter shall adopt a daughter.
- (2) Notwithstanding anything contained in sub-Section (1), if a man or woman who is living separately by the reason of judicial separation, by receiving partition in property or by separating bread and board from the husband or wife, as the case may be, and does not have a biological child, such a person may adopt a child.

Explanation: For the purpose of this Chapter and Chapter 9, "judicial separation" means a circumstance under which a person obtains partition in property according to the order of court or lives separately according to law or lives

separately after separation of bread and board from other coparceners.

(3) Notwithstanding anything contained in sub-Section (1) or (2), if a person having biological child files a petition before the court for adoption of another children disclosing therein his/her financial capacity to make arrangements for their maintenance, health care, education and care and if the statement of petitioner is found to be reasonable upon inquiry into such a petition, the court may grant permission for adoption.

170. Adoption may be effected: (1) The following person may effect adoption of a child:-

- (a) A spouse to whom no child has born even up to ten years of the marriage,
- (b) An unmarried woman having completed forty five years of age, a widow, a divorcee woman or a woman living separately following a judicial separation, having no son or daughter.
- (c) An unmarried man having completed forty five years of age a widower, divorcee or judicially separated man, having no son or daughter.

(2) Notwithstanding anything contained in sub-Section (1), the following person cannot effect adoption:-

- (a) One who is of unsound mind,

- (b) One who is convicted of a criminal offense involving moral turpitude from a court or
- (c) One who does not have financial capacity to afford maintenance, health care, education, sports facility, entertainment and care of children.

(3) The husband and wife of an undivided family shall effect adoption with each other's consent.

171. Adoption not to be effected: (1) No one shall effect adoption of any of the following persons:-

- (a) One who completes fourteen years of age;
- (b) One who is the only son or daughter;

Provided that this provision shall not apply in the circumstance referred to in sub-Section (2) of Section 173,

- (c) One who is adopted for once;

Provided that this provision shall not apply where the adoption is annulled according to law;

- (d) One who is in the higher degree of relationship than the person adopting the son or daughter;
- (e) One who is a non-Nepali citizen.

(2) Notwithstanding anything contained in clause (a) of sub-Section (1) in the case of a person within the relation of

three generations or the child born to the ex-husband of the wife, adoption may be effected even though the person has completed the age of fourteen years.

172. Difference of age between adopter and adoptee: There must be at least the age difference of twenty five years between the adopting and adopted person.

173. Consent to be sought for adoption: (1) In effecting adoption of a child consent of both the father and the mother of the child shall have to be obtained in writing, if both of them are surviving; and consent of the surviving father or mother, s the case may be, shall have to be obtained if either of them is surviving.

Provided that where the matrimonial relationship between the husband and the wife is dissolved or the husband and wife are living separately by receiving partition of property or by separation of bread and board from other coparceners, adoption may be effected by obtaining consent of the person with whom, out of the father or mother, the child has been living.

(2) Notwithstanding anything contained in sub-Section (1), adoption of a child whose father and mother are not traced or surviving or a child whose father and mother are surviving but who has been maintained or cared by a person or organization following the solemnization of another marriage either by father or mother may be effected by obtaining consent

in writing of the person or organization so maintaining or caring a child.

(3) While adopting the child above ten years pursuant to sub-Section (1) or (2), a written consent of such a child shall also have to be obtained.

(4) The written consent under sub-Section (3) shall be executed by the concerned child in the presence of his/her father, mother or the guardian exercising parental authority.

(5) Before obtaining consent pursuant to this Section, the person putting the child up for adoption and the child shall be informed of the meaning, legal status and consequences of the adoption.

(6) No financial inducement of any type shall be given in obtaining consent pursuant to this Section and such consent shall have to be given voluntarily.

174. Adoption deemed to have been effected by spouse: Where adoption was effected by a husband or a wife living separately after obtaining partition in property or by separation of bread and board from other coparceners or judicial separation and the husband and wife live jointly after effecting adoption, the adoption effected before living so jointly shall be deemed to have been effected by both the spouse.

175. Court to give order for adoption: (1) If a person is desirous of effecting adoption of a child, he/she shall have to file a petition

before a concerned court along with a duly executed deed of adoption.

(2) If, upon inquiring into the deed received pursuant to sub-Section (1), the court deems it appropriate to grant permission to the petitioner for adoption, the court shall have to issue an order granting permission for adoption and shall authenticate such a deed.

(3) If the court considers from the inquiry conducted pursuant to sub-Section (2) that it is not appropriate to grant permission to the petitioner for adoption, the court shall issue an order accordingly and give information thereof to the petitioner.

176. Rights and authority of adopted child: (1) The rights, powers, obligations and responsibility of an adopted child shall be equal to that of the biological son or daughter of the adoptive parents.

(2) Even if a child is born to a person who has already adopted a person, the status of such adopted child as equal to that of the biological child shall not be prejudiced.

177. Surname of adopted child: (1) An adopted child may use the surname of the adoptive father or mother or of the both.

Provided that:

(1) If an adopted child so desires, he/she may use the surname also of his/her biological father and mother.

- (2) If the adoption is revoked, the surname of the person previously adopted shall revert to the surname of his/her biological father or mother.

178. Prohibition on claiming in share of property of father and mother: An adopted person shall be entitled to make a claim of a share of property of his/her biological father, mother.

Provided that,-

- (1) Where adoption is revoked, he/she may claim partition in property of his/her biological father, mother,
- (2) Where he/she has already received partition in property at the time of adoption, he/she may receive such property as well.

179. Adopter's obligation: (1) The obligation of the person adopting a child shall be the following:-

- (a) To make arrangements for maintenance, health care sports, entertainment and proper education of the adopted child according to his/her reputation and capacity as if he/she were his/her own child;
- (b) To protect rights and interests of the adopted child.
- (c) To exercise parental authority as referred to in Chapter-5 of this Part.

(2) If the person adopting a child does not fulfill the obligations under sub-Section (1), the adopted child may live separately by obtaining a partition share of property.

180. Obligation of adopted child: The obligation of an adopted child shall be as follows:-

- (a) To make, arrangements for maintenance, health care and care of adoptive father, mother according to his/her reputation and capacity;
- (b) To protect, look after and properly manage property of the adoptive parent;
- (c) To protect the rights and interest of the adoptive parent.

181. Facility to visit and making correspondences to be provided:

The adoptive parent shall have to provide facility to the adopted child to visit to or make correspondence with his/her biological father, mother from time to time.

182. Adoption to be Void: If a person effects adoption in contravention of Section 169, sub-Section (1) and clauses (a) and (b) of sub-Section (2) of Section 170 and Sections 171, 172 and 173, such an adoption shall *ipso facto be* void.

183. Voidable Adoption: (1) In cases where a person adopting a child fails to fulfill the obligations referred to in Section 179, the adopted child may cause the adoption to be void.

Provided that where such adopted child has already received partition share of property, he/she shall not be entitled to cause the adoption to be void.

(2) A the person adopting a child may cause the adoption to be void in any of the following circumstances:-

- (a) If the adopted child fails to fulfill the obligations referred to in Section 180;
- (b) If the adopted child expels him/her from home or causes physical or mental torture from time to time;
- (c) If the adopted child abuses his/her property, or
- (d) If the adopted child lives separately without his/her consent for three years or more, deserting the adopted person.

(3) The provisions referred to in clauses (a) and (d) of sub-Section (2) shall not be applicable in case of the married adopted daughter.

184. Termination of adoption: (1) If an adoption becomes void pursuant to Section 182 or 183, the relationship between the person adopting a child and the adopted child shall be deemed to have been terminated.

(2) If the relationship between the person adopting a child and adopted child is terminated pursuant to sub-Section (1), the rights, authority and obligation vested in the adopted child in that capacity shall also be terminated.

Provided that the facility enjoyed, authority acquired or exercised and obligation fulfilled during the validity period of adoption shall not be prejudiced.

185. Limitation: A person aggrieved by an act carried out pursuant to this Chapter may file a complaint within one year from the date of carrying out of such an act.

Chapter -9

Provision concerning inter-country adoption

- 186. Provision concerning inter-country adoption to be deemed established:** If any foreigner accepts a child of Nepali citizen or of a foreigner residing in Nepal as an adopted son or an adopted daughter, it shall be deemed to be a provision of an inter-country adoption.
- 187. Adoption not to be effected without obtaining permission:**
- (1) No foreigner shall be allowed to effect adoption of any child of any Nepali citizen or of a foreigner residing in Nepal without obtaining a permission from Government of Nepal.
- (2) Permission for adoption under this Chapter shall be granted only to the citizen or spouse of those countries which are opened by Government of Nepal by a notification in the Nepal Gazette for inter-country adoption in Nepal.
- 188. Greater interest of a child to be considered in granting permission for adoption:** (1) Before granting a permission to a foreigner for effecting adoption, Government of Nepal shall have to consider whether or not the best interest of the child will be secured, his/her human rights will be protected and such child will be abducted, sold, trafficked or abused otherwise.
- (2) While considering the matters pursuant to sub-Section (1), permission for adoption under this Chapter shall be

granted only if it is found to be appropriate to grant a permission to a foreigner to adopt a child.

189. Permission may be granted for adoption: Permission may be granted to a foreigner to adopt any of the following children who has stayed in a children home at least for a period of ninety days:-

- (a) An orphan child,
- (b) A voluntarily abandoned child.

Explanation: For the purpose of this Chapter,-

- (a) "Children home" means a child welfare home and orphanage established with the objective of protecting rights and interests of children and includes the children home or *balmandir* (children house) established by Government of Nepal.
- (b) "Orphan child" means any of the following children who is certified as an orphan from the District Administration Office:-

- 1) An unclaimed child found by the police,
- 2) An unclaimed child found in a hospital or a health organization,
- 3) A child either of whose parents is not traced out, or

4) A child whose both parents are dead and who does not possess any property for maintenance.

(c) "Voluntarily abandoned child" means any of the following children surrendered to the custody of a children home through the District Administration Office, after failing to make arrangements for their maintenance and education by any of the following persons by executing a deed relating thereto:-

(1) in the case of a child whose father is dead or disappeared and mother has concluded another marriage, by such a mother,

(2) in cases where, due to birth of more than one child, their maintenance, education is financially unaffordable, by the father and the mother.

(3) in the cases of a child, who is born in more than one number, whose father is dead or is disappeared or is of unsound mind, and his/her mother can not financially afford his/her maintenance and education, by such a mother.

(4) in the cases of a child, who is born in more than one number, mother is dead or of unsound mind and the father can not

financially afford his/her maintenance, by the father of such a child.

(5) in the case of an orphan child who has no property, by the guardian.

190. Foreigner eligible for adopting a son or daughter: (1) The following foreigner may be granted permission for adoption of a child of Nepalese citizen or of a foreigner domiciled in Nepal:-

- (a) A spouse to whom child is not born even up to ten years of their marriage,
- (b) A woman who has completed forty-five years but has not completed fifty five years of age, a widow, divorcee or judicially separated woman having no child,
- (c) A man who has completed forty-five years but has not completed fifty five years, a widower, divorcee or judicially separated man having no child.

(2) Notwithstanding anything contained in sub-Section (1), a foreigner of the following conditions shall not be granted permission for adoption:-

- (a) One who is of unsound mind,
- (b) One who has been convicted of an offense involving moral turpitude from a court.

(3) Notwithstanding anything contained in sub-Section (1), where a foreign country's law permits the citizen of that

country to adopt more than one child, he/she may adopt a child even though he/she has a child.

(4) Notwithstanding anything contained elsewhere in this Section, a citizen of the country where Nepalese citizen is forbidden to adopt a child or where the right of the adopted child and naturally born child are discriminatory, citizen of such a country is not permitted to adopt a child in Nepal.

(5) There shall be the difference of age of at least twenty five years between the foreign couple, woman or man under sub-Section (1) and the child to be adopted.

191. Provision concerning Inter-country Adoption Board: In order to act as a central agency for the recommendation for granting a permission to a foreigner for adoption of a child pursuant to this Chapter, Government of Nepal shall, by a notification published in the Nepal Gazette, form an Inter-country Adoption Board.

Explanation: For the purpose of this Chapter "Board" means the Inter-country Adoption Board.

(2) The functions, powers and duties of the Board, in addition to those referred to elsewhere in this Chapter, shall be as follows:-

(a) To frame and recommend to Government of Nepal policy on inter-country adoption,

- (b) To coordinate various agencies on matters of inter-country adoption,
- (c) To prevent undue financial and other advantage likely to be exchanged while giving for adoption and while adopting;
- (d) To collect and protect information relating to children and persons desirous for adoption and exchange such information to each other;
- (e) To make the procedures for effecting adoption easier and simplified,
- (f) To share with central agencies or organizations of other countries on procedures and experience with regard to giving for adoption and adopting a child;
- (g) To make available any information required by central adoption agency or the concerned other public agency of other countries about the condition of adopted son or daughter;
- (h) To prevent child abuse, exploitation, trafficking or kidnapping likely to happen in effecting adoption and to protect Nepali children from any other practice likely to harm children;
- (i) To make recommendation to Government of Nepal to fix the charges applicable for adoption;

- (j) To specify the format of application to be filed for adoption,
- (k) To make arrangements for maintaining confidentially of records of children, their biological father, mother or adoptive father, mother;
- (l) To carry out such other functions relating to inter-country adoption as may be required.

(2) Other matters including the procedures relating to meeting of the Board shall be as determined by the Board itself.

192. Children home to be listed: A children home being operated upon registration pursuant to law and desirous of carrying out the business relating to inter-country adoption shall have to file a petition accompanied by the following documents and details before the Board :-

- (a) Statute of children home and document relating to renewal thereof,
- (b) A recommendation made by the Central Child Welfare Board to the effect that the children home is operated and managed in accordance with the specified minimum standard and guidelines,
- (c) Details of the physical property of the children home.

(2) The Board shall, if it deems the request of the applicant reasonable upon an inquiry on the petition received pursuant to sub-Section (1), enlist such a home as an organization authorized to carry out the business of inter-country adoption and notify the applicant.

(3) A children's home shall get it renewed from the Board in every two years to maintain its registration.

193. Suspension or removal of a children home from list: (1) If a children home is found to have submitted false statement, committed or is about to commit an act in contravention of law or this Chapter, the Board may suspend, by specifying period or remove such children home from the list.

Provided that before suspending or removing from the list, the home shall not be deprived of an opportunity to defend itself.

194. To forward details of children to selection committee: A children home shall forward to the selection committee under Section 198 individual personal details and documents stated herein below about a the children who may be granted for adoption to a foreigner and provide a notice thereof to the Board:-

- (a) Name and recently taken photograph of children;
- (b) Health report of last six months of the children;
- (c) In the case of a Nepali children, the document revealing that his/her domestic adoption within the

country failed despite making a reasonable efforts for it,

- (d) In the case of an orphan,-
 - (1) In the case of an unclaimed child found in a road, street or public place, the letter issued by the concerned police stating the same, if found in unclaimed condition in a hospital, the letter issued by the concerned hospital stating the reason for leaving the child in the hospital and if found in other places, a letter, including a public inquiry document, issued by the nearby police office;
 - (2) A proof of a notice with thirty five days' time having been published on a daily newspaper of national level within seven days of admission of a child as regards the claim of child together with the photograph of the child including the statement of the date of admission of child, approximate age;
 - (3) Where no claim is made over or information is received about the said child from any person within the period referred to in sub-clause (2), proof of a notice with twenty one days time having been published, after ten days' of

expiry of the period referred to in sub-clause (2), containing the same statements,

(4) A document issued by the concerned District Administration Office certifying such a child as an orphan, on the ground that no claim or information was received even within the period under sub-clause (3) or that the claim or information received was baseless.

(e) In the case of a voluntarily abandoned child,-

(1) Certificate of birth registration,

(2) Age and identifying mark of the child,

(3) Name, address of the father, mother or other guardians of the child and copy of their citizenship certificates,

(4) If the child is abandoned by a guardian other than mother, father, document of appointment of such a guardian,

(5) Reason for abandonment of a child,

(6) A recommendation made by the concerned local body revealing the economic and social conditions of the parent of the child,

(7) Consent as stated in Section 173.

195. Listing of foreign organization or agency: (1) A foreign organization or an agency desirous of carrying business relating

to inter-country adoption in Nepal shall have to file an application accompanied by the following documents, before the Board for listing of such an agency:-

- (a) Proof of having obtained approval from the concerned body of the country of its incorporation to carry out business relating to inter-country adoption,
- (b) A document which certifies that under the law of the concerned country the status of an adopted son and adopted daughter, as the case may be, is equal to that of a biological son and daughter of a citizen of that country,
- (c) A document which certifies that it has been carrying out business relating to inter-country adoption at least from three years,
- (d) A recommendation made by the embassy of the concerned country accredited to Nepal or the responsible body of the concerned country to the effect that it has been working reliably in the field of inter-country adoption, and
- (e) Other necessary document specified from time to time by the Board.

(2) If, from inquiry into the application received pursuant to sub-Section (1), the Board finds the request of the applicant is reasonable, it shall list such a foreign organization or agency as an organization authorized to carry out business

relating to inter-country adoption and give a notice thereof to the applicant.

(3) A foreign organization or agency listed pursuant to sub-Section (3) shall have to appoint its agent in Nepal and give a notice thereof to the Board.

(4) A foreign organization or agency listed pursuant to sub-Section (2) shall, if it so desires, be required to renew in every two year.

196. Foreign organization or agency may be suspended or removed from list: (1) If a foreign organization or an agency listed pursuant to Section 195 is found to have committed an act in contravention of laws in force, this Chapter or the direction of the Board, the Board may suspend, by specifying period, or remove from the list such an organization or agency.

Provided that before so suspending or removing from list, such an organization or agency shall not be deprived of an opportunity to defend itself.

197. Application to be filed for adoption: (1) A foreigner or spouse qualified under Section 190 and desirous of adopting a Nepali child or of a child of a foreigner residing in Nepal shall have to file an application before the Board, accompanied by the following documents, through a foreign organization or agency listed pursuant to Section 195 or the embassy of his/her country in Nepal and where no such an embassy exists in Nepal, the embassy designated for Nepal:-

- (a) applicant's birth registration certificate,
- (b) applicant's recently taken photograph,
- (c) photocopy of applicant's passport,
- (d) a deed certifying the marital status of the applicant;
- (e) a certificate issued by a registered medical doctor as regards the health of the applicant;
- (f) a certificate issued by the governmental body of the concerned country to the effect that applicant bears good characteristics and is not convicted guilty from a court in a criminal charge involving moral turpitude;
- (g) A document that certifies applicant's property and income source;
- (h) applicant's social, psychological home study report,
- (i) age, sex and other details of the child sought for adoption;
- (j) A consent letter issued by the government of his/her country for adoption from Nepal;
- (k) A guarantee letter issued by the government of the concerned country or the embassy of that country in Nepal or designated for Nepal to the effect that under the law of the country of the applicant the status of the child is equal to that of his/her own biological child,

- (1) A guarantee letter issued by the government of the applicant's home country, embassy of that country in Nepal or the embassy designated for Nepal to the effect that under the law of the country of the applicant, he/she is fit for effecting adoption and has the capacity to bear all responsibility including maintenance, health care, education and protection of the child to be adopted.
- (2) The document under sub-Section (1) shall be written in English language or translated into English language by an authorized body.
- (3) If it is found, from an inquiry into the application received pursuant to sub-Section (1), that it is appropriate to grant a permission for adoption according to the request of the applicant, the Board shall forward, by keeping confident the name and address of the applicant, the details relating thereto to the Selection Committee.

198. Provision concerning Selection Committee: For the purpose of making recommendation as to which child shall be fit for adoption by which foreigner, after matching the person desirous of adoption and the child, Government of Nepal shall form a selection committee by a notification published in the Nepal Gazette.

199. To make recommendation by matching person effecting adoption and child: After matching fitness of the applicant for adoption and the child on the basis of the description relating to the applicant received pursuant to sub-Section (3) of Section 197, details relating to the child received pursuant to Section 194 and having regard also to the request of the applicant, the selection committee shall recommend the name of the applicant and the child before the Board.

200. Permissions to be granted for adoption: (1) If the Board finds, from an inquiry into the recommendation received pursuant to Section 199, appropriate to grant any child for adoption by a foreigner, it shall recommend Government of Nepal accordingly.

(2) If Government of Nepal finds, from an inquiry, the content of the recommendation made by the Board pursuant to sub-Section (1) reasonable, it may grant a permission to the applicant foreigner for adoption of such a child, according to the recommendation of the Board.

(3) After a permission that has been granted pursuant to sub-Section (2), Government of Nepal shall issue a certificate relating thereto for that purpose.

(4) After a certificate has been issued pursuant to sub-Section (3), inter-country adoption shall be deemed to have duly been effected from Nepal.

(5) Notwithstanding anything contained in sub-Section (2), if the father, mother or guardian of the concerned child desires

to take back, prior to granting permission to foreigner for adoption, his/her child, such a child may not be granted for adoption.

(6) If Government of Nepal grants a permission to a foreigner pursuant to sub-Section (2) for adoption, the applicant shall takeover the concerned child by being present personally.

Provided that if the applicant is a spouse and one of them is unable to be present personally, the other may takeover the child on the basis of the deed of consent executed by the absent husband or wife, as the case may be.

(7) After permission is granted to a foreigner for adoption of any child, Government of Nepal shall have to provide information thereof to the central agency for inter-country adoption of the country of the adoptive parent and also to the embassy of the concerned country designated for Nepal, if any.

(8) A children home listed pursuant to Section 192, a foreign organization or an agency listed pursuant to Section 195 or a foreigner or spouse having applied for adoption may file an appeal before the Appellate Court designated by the Government of Nepal by a notification published in the Nepal Gazette, if not satisfied with a decision of Government of Nepal.

201. Special provision concerning selection of family for child requiring special care: (1) Notwithstanding any thing contained elsewhere in this Chapter, the Board may prioritize

the families submitting application for adopting a child requiring special care.

Explanation: For the purpose of this Section, “child requiring special care” means a child who requires special care because of his/her physical or mental condition or because of his/her unnatural or extra ordinary development or elder age amongst the helpless child or voluntarily abandoned child.

(2) The Board shall decide whether or not a child is the child requiring special care,

(3) Notwithstanding any thing contained elsewhere in sub-section (1), in case any matter relating to the age, sex and health of the child does not match with the type of the child demanded by the family in the first priority while selecting the family and the child requiring special care, the child requiring special care who matches the type of the child demanded by such family may be selected.

(4) Other procedures relating to selection of family for the child requiring special care and classification of such children shall be as specified by Government of Nepal.

202. Special provision concerning permission of adoption: (1)

Notwithstanding any thing contained elsewhere in this Chapter, in case any renowned foreign citizen desires to adopt a child pursuant to Section 189, he/she may submit an application to the Board along with a recommendation of the Head of the State, Head of the Government or Foreign Minister of the concerned country.

Explanation: For the purpose of this Section, “renowned person” means any of the following persons:-

- a) The Head of the State, Head of the Government or Foreign Minister of a foreign country;
- b) A Nobel laureate;
- c) Celebrity of international fame;
- d) Any person or professional having an annual income of more than three hundred thousand.

(2) While inquiring into the application received pursuant to sub-section (1), if the Board deems it fit to allow such a foreign citizen to adopt a child as per his/her demand, it shall make recommendation to the Government of Nepal, Council of Ministers accordingly.

(3) In case a recommendation is made pursuant to sub-section (2), the Government of Nepal, Council of Ministers may allow such a foreign citizen to adopt a child as per his/her demand.

203. Details to be forwarded: A foreigner who adopts a Nepali child pursuant to this Chapter shall have to forward once a year through the Nepalese embassy or consular general located in his/her country or mission abroad and Government of Nepal the details relating to the arrangements he/she has made for maintenance, education and health of such a child until such a child attains the age of majority according to the law of the concerned country.

204. To monitor: (1) The Board itself may conduct monitoring about whether a foreigner who has adopted a Nepali child has made arrangements for the maintenance, medical care, education and care of such a child or not or may, for that purpose, form according to necessity, a sub-committee comprising also of the representative of Nepalese embassy or consular general based in that country, until such a child attains majority age.

(2) The Board or the sub-committee formed pursuant to sub-Section (1) may, for that purpose, monitor by visiting the place where the child is residing.

(3) The Board or sub-committee under sub-section (1) shall submit a report of the monitoring conducted by it to Government of Nepal.

(4) The report under sub-Section (3) shall, *inter alia*, contain the statement whether the best interest of the adopted Nepalese child is secured when he/she is residing with the adoptive parent or not.

(5) If the report received pursuant to sub-Section (3) contains a statement that the adopted Nepalese child's best interest is not secured when he/she is residing with the adoptive parent, Government of Nepal may, where such a child is able to express his/her opinion or is above ten years age, by taking his/her opinion as well, draw attention of the Government of the concerned country through diplomatic channel.

(6) Where the situation of the adopted Nepalese child is not improved even after attention was drawn pursuant to sub-Section (5), Government of Nepal may, by a notification published in the Nepal Gazette, remove such a country from the list of the countries opened for inter-country adoption from Nepal.

205. Suit may be instituted: A suit may, subject to the law of the concerned country, be filed on the grounds of failure to make arrangements for proper maintenance, medical care, education and care of the adopted child within one year from the date of attaining majority age in the case of a minor and by the Nepalese embassy or consular general based in the concerned country from the date of commission of such an act, for annulment of adoption.

206 Provision of the Code not to be applicable: (1) Provision of Section 189 of this Chapter shall not be applicable for adoption of the child of a foreigner residing in Nepal.

(2) Provisions on adoption provided for in Sections 171, 172, 173, 176, 177, 178, 179, and 181 shall be applicable also to the adoption effected by a foreigner pursuant to this Chapter.

207. Limitation: In the case where a separate statutory limitation in regard to filing a complaint is provided for in this Chapter, it shall be accordingly and in other cases, a person aggrieved by an act carried out under this Chapter may file a complaint within a period of one year from the date of carrying out of such act.

Chapter -10

Provision concerning partition of common property

208. To be deemed coparcener: For the purpose of apportionment of common property of undivided family, the husband, wife, father, mother, son or daughter shall be deemed to be a coparcener.

209. Equal right in common property: (1) Each coparcener shall have equal right in common property.

(2) If a woman is pregnant at the time of apportionment of common property and the child she has conceived is to become a coparcener, the common property shall be apportioned considering such a child to be so born a coparcener and setting aside his/her share of property.

(3) If the pregnant woman under sub-Section (2) does not deliver a live child, the common property set aside for such a child shall be apportioned equally to other coparceners.

210. A child born from spouses whose matrimonial relationship is dissolved to obtain property: A child born to the spouses who cannot solemnize marriage or whose marriage is not considered valid or whose matrimonial relationship is dissolved according to law shall obtain partition of the property from such a parent.

211. To obtain property from a mother: (1) A child whose father is not traced out shall obtain his/her share of property from the property of mother only

(2) A wife kept without making public or a child born from her shall not be entitled to claim a share of property after death of the husband or father.

212. To obtain partition of property from share of a father or husband: (1) The child or wife of brothers living in an undivided family shall obtain partition of property only from the part of the share of the property of their father or husband as the case may be.

(2) If the husband or father dies before effecting partition of the common property, his wife or child, as the case may be, shall have right over such property he has to obtain.

(3) Where a person is the husband of more than one wife they shall obtain partition of the common property only from the part of the property of the husband.

213. Latter wife or offspring to obtain partition of the common property from part of partition of property of husband or father: (1) If a person concludes another marriage or a child is born from the wife so married, after separation by effecting apportionment of common property among previous wife, child or at the time when he is living with such previous wife, child so separated, by mixing his partitioned property with their property, the wife so married latter or offspring born to such a wife shall

obtain partition of the property only from the part of the property of such a husband or father.

(2) Notwithstanding anything contained elsewhere in this Chapter, if a person whose wife is surviving concludes another marriage before effecting partition of the common property, the part of property of other coparcener shall be set aside and the woman who is so married shall be given partition of the property from the part of the property he is to obtain.

214. Partition of the common property to be given if maintenance is deprived: (1) A husband, wife, father, mother, son or daughter having common property of undivided family shall have to make, according to his/her reputation and income, arrangements for maintenance and medical treatment for the wife, husband, son, daughter, father or mother, as the case may be.

(2) The parent shall have to make according to their financial condition, arrangements for proper education of a child.

(3) If a person does not fulfill the obligations under subsections (1) or (2), the concerned coparcener may be entitled to separate by obtaining partition of the common property.

215. Separation may be effected at anytime: (1) If there exists mutual agreement among coparceners, they may effect separation at any time by obtaining share of the common property.

(2) If the husband, father or head of the family considers it appropriate for the coparceners to effect separation by apportionment of common property rather than living in a single family, the coparceners may effect separation by apportionment of the common property.

Explanation:

For the purpose of this Code, “head of the family” means a person having attained the age of majority who carries out works being the main person of the family or who has the responsibility to run the household affairs living in the same joint family engaging in farming, trade, business or any other work in various places.

216. Husband, wife may effect separation by obtaining share in common property: (1) Notwithstanding anything contained in Section 214, the husband or wife, may effect separation at any time by obtaining share-in-common property in any of the following circumstances:-

- (a) If the husband or wife expels the wife or husband from home, or
- (b) If the husband or wife causes physical or mental torture to the wife or husband.

(2) Notwithstanding anything contained in sub-Section (1), if the husband concludes another marriage, the wife may effect separation at any time by taking her share in common property.

(3) If the wife who has effected separation pursuant to sub-Section (1) or (2) concludes another marriage, the property obtained by her for share in common property shall be retained by the child, if any, born to her from previous husband; if not, by the previous husband or his nearest successor.

217. Widow may effect separation by taking share in common property: (1) Notwithstanding anything contained elsewhere in this Chapter, a widow may effect separation at anytime by taking her share in common property.

(2) If a widow concludes another marriage, the property obtained by her shall be retained by the child, if any, born to her from previous husband, if not, by herself.

218. Renouncement of share in common property: (1) Any coparcener may execute a deed renouncing his/her share in common property with or without taking share in part in common property or taking some cash or kind only for share in common property.

(2) While executing a deed of renouncement of share in common property pursuant to sub-Section (1), the renouncement of share in the property shall be deemed to have been executed only if consent of the husband, wife or the son or daughter attaining the age of majority of such coparcener, if any, agrees to it.

(3) If a deed of renouncement is executed under sub-section (2), it shall be deemed to be equal to obtaining the partition of common property.

219. Apportionment of share in common property to be effected:

(1) In apportioning shares in common property of an undivided family, a deed of apportionment of common property shall be executed among the coparceners, subject to the provisions of this Chapter.

(2) In effecting apportionment of share in common property pursuant sub-Section (1), apportionment shall be done in such a manner that it corresponds to the property and debt of the undivided family.

Explanation: For the purpose of this Chapter, "debt of undivided family" means the debt owed as a result of transaction carried out by a person acting as the head of family or by transaction carried out with consent of all the coparceners or by a person who, having attained majority and living in undivided family carries out household affairs, farming, trade or any other work in different places or by the transaction carried out by other persons having obtained age of majority but approved in writing by the head of the family.

(3) In effecting apportionment of share in common property, apportionment shall be made by balancing both high

value and less value property with the consent of all coparceners and, if failing such consent, by a lottery.

(4) If there arises a dispute in any property while effecting apportionment, apportionment shall be effected only after settlement of such dispute.

Provided that if it takes a long time to settle such a dispute, the disputed property shall be kept as undivided common property and other properties shall be apportioned.

(5) While apportioning the shares in common property, it shall be executed in written form.

220. Matters to be specified in deed of apportionment of property: The following matters shall be specified in the deed of apportionment of property:-

(a) Name, surname, age, address of the coparceners and name of father and grand-father,

Provided that if partition of property of the married husband or wife is to be made, their names also shall be specified.

(b) Movable and immovable property to be apportioned among the coparceners,

(c) If a coparcener owes debt or owns property, amount of such debt and property.

- (d) If, upon apportionment of share of property, a coparcener is to live with another coparcener, the matters relating thereto;
- (e) A declaration made by coparceners that they have not concealed the property to be apportioned;
- (f) If a property is to devolve upon a coparcener only upon death of the father, mother or husband, wife, details thereof;
- (g) If the share of property or a coparcener is to be entrusted to a person, matter relating thereto;
- (h) Other necessary matters.

221. Deed of apportionment of share of property to be registered:

(1) In effecting apportionment of share of property, a deed of apportionment of share of property shall be required to be executed in presence of witnesses and which shall be signed and thumb-impressed by such witnesses and the coparceners and be duly registered in the concerned office.

(2) Notwithstanding anything contained in sub-Section (1), where a separation is effected by apportionment of share of property in home balancing highly valuable and less valuable property with or without executing deed of apportionment of share of property among coparceners before January 10, 1978 and the share of property so received has already been transmitted in the register of the concerned office or immovable property of one's own part according to the apportionment is

separately enjoyed or sold or transacted, a deed of division of share of property shall, even though the deed of apportionment of share of property is not registered, be deemed to have been effected.

222. Prohibition on providing property without effecting apportionment of share of property: (1) A person acting as head of family having coparcener who has not received share of property shall have no right to provide property of undivided family to any coparcener only without effecting a apportionment of share of property.

Provided that:

- (1) He/she may provide any property to any coparcener with the consent of all coparceners,
- (2) He/she may provide the property to the extent of share of property of his/her part, even without the consent of other coparceners.

(2) In effecting apportionment of share of property pursuant to this Chapter, the property provided to a coparcener pursuant to clause (1) of proviso to sub-Section (1) shall be set off for the share of property he/she is to obtain and other property shall be apportioned.

223. Statement of claims to be filed by stating inventory of property: (1) If a coparcener is desirous of effecting separation by causing his part of share of property to be set aside, he/she shall have to file a statement of claims specifying therein the

date of separation of bread and board from other coparceners and disclosing the inventory of the apportionable immovable property and debt and assets lying in one's own name and, to the best of his/her knowledge in other coparcener's name.

Explanation: For the purpose of this Section, the term "date of separation of bread and board" means the following date:-

- (a) where there is a deed of separation of bread and board, date of execution of such deed,
- (b) If, there is no such a deed, the date as agreed by coparceners for separation of bread and board,
- (c) If no agreement is reached between coparceners pursuant to clause (b), the day immediately before the day on which the statement of claim is filed.

(2) If the person filing a statement of claims pursuant to sub-Section (1) is unable to submit the inventory of property, he/she shall also have to specify reasons therefor.

(3) If a statement of claims is filed pursuant to sub-Section (1), the concerned person shall also have to submit a statement of defense together with a statement whether the claimant is to be provided a share of property or not and if he/she agrees to provide a share of property together with the

inventory of the movable and immovable property registered in his/her name and the debt and assets.

224. Matters to be stated in inventory: (1) The following matters shall be stated in the inventory to be submitted pursuant to this Chapter:-

- (a) The place of location of land, plot No., area and approximate value,
- (b) In the case of a house, place of location of the house, plot no, area, rooms, size, story of house, whether it is permanently built or mud made and approximate value thereof,
- (c) In the case of movable property, details and approximate value thereof,
- (d) In the case of cash, details thereof, bank balance, share, debenture, treasury bills, if any,
- (e) In the case of livestock, details and approximate value thereof,
- (f) In the case of bullion and jewelries, details and approximate value,
- (g) In the case of vehicle, details thereof and approximate value,
- (h) Details and approximate value of the properties other than those referred to clauses (a) through (g).

(2) If the value of any property is not stated pursuant to sub-Section (1) or a dispute has arisen about the value thereof, the court shall determine the value thereof on the basis in the case of immovable property, the price fixed by the Land Revenue Office and in the case of movable property on the basis of the prevalent market price for the time being.

225. Partition to be made by taking inventory: (1) If it appears from the statement of claims or statement of defense filed pursuant to Section 223 that partition requires to be effected, and where the inventory of property is submitted along with the statement of claims or statement of defense, the court shall effect the partition having the coparceners executed a deed to the effect that the property they have submitted is the only property to be partitioned and that they have not concealed any other property.

(2) If the inventory of property is not submitted along with the statement of claims or statement of defense, the court shall, by specifying time, ask the coparcener to submit inventory, and if the coparceners submit inventory within the time so specified, cause partition to be effected by causing the coparceners to execute a deed pursuant to sub-Section (1).

226. Partition to be effected on the basis of inventory received: (1) If the person who is to submit inventory of property within the time limit as specified in Section 225 fails to submit inventory or has elapsed time without submitting a statement of

defense, the court shall have to effect partition on the basis of the inventory submitted by other coparceners.

(2) Where partition is effected pursuant to sub-Section (1), no statement of claims may be entertained on the ground that one is dissatisfied on partition.

(3) Notwithstanding anything contained in sub-Section (1), if a statement of claims is filed for partition of the property which was not disclosed by the coparceners in the inventory but discovered latter on, court shall have to effect partition of such property.

227. Inventory may be taken by breaking padlock: Where due to failure of a person to submit an inventory required to be submitted by him/her, the inventory of property has to be taken by breaking the padlock of the house custody of which is taken by him/her, the court may, by opening the padlock in presence also of the person holding the key of the house, if he/she is present, if not, in presence of at least two persons including a representative of the local body and also the person submitting statement of claims, the coparcener, prepare an inventory of the property found by maintaining a record thereof.

228. Partition to be effected when inventory is produced: (1) If the person who has to submit an inventory fails to submit the inventory or cause the lapse time without submitting statement of defense and the person submitting statement of claims requesting for the partition of property also fails to submit the

inventory of property, the court shall, by causing the person submitting statement of claims to execute a deed of the same statement, defer the suit subject to the condition that the partition shall be effected, at the time, when inventory is produced.

(2) Where a suit is deferred pursuant to sub-Section (1), if the person submitting statement of claims files a petition along with inventory, the court shall have to effect partition in property under the law on the basis of previous record file itself.

229. Not to conceal property: (1) No person shall conceal, suppress the property that is liable to partition.

(2) If, at the time of partition of property or at the time when asked by the court the partitionable property lying a coparcener's name, is subsequently proved to have been concealed, the person so concealing the property shall have no right over such property.

(3) The property concealed under sub-section (2) shall be partitioned to other coparceners.

230. Property to be reimbursed: If a coparcener is deprived of using any property partitioned, due to the property being defective, all coparceners shall have to proportionately reimburse to him/her property equal to defective property.

231. Property partitioned not to be exchanged: Except by mutual consent of coparceners, no coparcener shall be entitled to exchange any property received by him/her as partitioned

property for reason that after partition it is disordered, damaged or he/she does not prefer it.

232. Partition of pledged or mortgaged property: (1) If a coparcener is found to have pledged or mortgaged a property which is liable for partition, the court shall, if all coparceners agree, effect partition of the property by causing the property to be released on or the condition that it shall be released on charge from the property of undivided family.

(2) If all the coparceners do not agree pursuant to sub-Section (1), and if the person acting as head of the family or other persons having attained majority, by securing signature and thumb-impression also of the person acting as head of the family, is found to have pledged or mortgaged the property, the court shall effect partition of that property by causing the property to be released or on the condition that it shall be released on charge from the property of undivided family.

(3) Save in the conditions referred to in sub-Section (1) or (2), if a coparcener is found to have pledged or mortgaged a property liable to partition in other conditions, the court shall effect partition of property by causing the property to be released or on the condition that it shall be released on the charge from his/her part of the common property.

233. Property or income may be withheld until partition is effected: If a claimant to a suit of the common property appears to obtain partition and if he/she files a petition after the

inventory has been submitted to withhold the property or income thereof to the extent liable to partition to him/her, the court may, having duly followed the procedures under the law, withhold the property or income liable to partition to him/her until the partition is effected.

234. Partition to be so effected as to have the provision of way or passage: While effecting partition of property if there is no access to way or passage to a house or land partitioned to a coparcener and if such a way or passage could be managed from the land of other coparcener, the partition shall be effected in such a manner that the concerned coparcener shall provide the way or passage for access to such house or land.

235. Debtor not to be specified without creditor's consent: (1) While effecting partition, a partition shall not be so effected as to give the responsibility of paying the debt of undivided family to a sole coparcener, without consent of the creditor.

(2) Even if the responsibility of paying the debt is given solely to any coparcener, if the creditor does not agree, all coparceners shall have to pay the debt of the undivided family equally.

236. Compensation to be paid, if statement of claims is filed by a person who is not entitled to partition: If a person who is not entitled to receive a partition in property, files a statement of claims for receiving partition, the court shall order the person filing the statement of claims to pay an amount having regard to

the claimed amount where such claimed amount is specified in the suit filed and where such amount is not specified a reasonable amount to the defendant, as compensation.

237. Partition share, money or expenditure may be awarded: (1)

If a person who is entitled to obtain partition share, money or expenditure from a person according to the judgment, files, having failed to so receive a petition before the court, the court shall, if the parties are the same, cause the partition money or expenditure according to the judgment to be awarded as soon as possible.

(2) If the partition share, expenditure or money is not provided pursuant to sub-Section (1), for that the person who is to provide partition, money or expenditure shall be caused to award a reasonable compensation as well to the petitioner.

238. Limitation: (1) The person aggrieved by an act carried out under this Chapter may file statement of claims as follows:-

- (a) Anytime where partition has never been effected or a common general deed has been executed in effecting partition or even though there is no deed where both the parties have enjoyed the properties;
- (b) Within three months from the date of partition of property if one is not satisfied with the partition of property;

- (c) In case of concealing or suppression of property, till the life of the concerned person; and
- (d) In cases other than those referred to in clauses (a), (b) and (c), within a period of six months from the date of commission of such an act.

239. Saving: (1) The partition effected pursuant to the laws for the time being in force, before commencement of this Code shall be deemed to have been effected under this Code.

(2) Where a person has taken maintenance for living (*Jiuni*) before commencement of this Code, he/she shall be deemed to have taken partition.

Chapter 11

Provision concerning Testamentary Will

240. Property may be given by Testamentary Will: (1) In case a person attaining the age of eighteen years and of sound mind executes a deed unilaterally expressing his/her will of transferring the property under his/her title, possession and ownership to the title, possession and ownership of any other person upon his/her death, he/she shall be deemed to have executed a testamentary will.

(2) In case one has executed a testamentary will pursuant to sub-Section (1), the property he/she has willed shall, upon his/her death, be transferred to the title, possession and ownership of the person so willed.

(3) While executing a testamentary will pursuant to sub-Section (1), the person executing the will may give all or any portion of his/her property or any specific property on any condition or without any condition as stated in the testamentary will.

(4) Notwithstanding anything contained elsewhere in this Section, no joint testamentary will may be executed through a single deed by two or more persons.

241. Procedures of Executing Testamentary Will: (1) Whoever desires to execute a testamentary will pursuant to Section 240 shall prepare two sets of deed stating the details of the property

he/she has desired to will and of he person getting the property according to the testamentary will and get it signed and sealed in the presence of any authority certifying testamentary will pursuant to Section 242.

2) In case the concerned person is present for executing the deed pursuant to sub-Section (1) along with a deed of testamentary will, the concerned official to certify the testamentary will shall, if the deed is found to be duly prepared, read out the contents of the deed and make the meaning and consequence of the deed known and if he/she seems to be desiring to execute the deed on his/her free will and consent, cause him/her to sign on the deed and certify the deed stating the same content on the deed.

3) In the deed referred to in sub-Section (1), at least two persons of full legal capacity shall have to be the witnesses.

4) While executing the testamentary will pursuant to sub-Section (1) or (2), the certified place and date of execution of the testamentary will shall also have to be stated.

5) One copy of the deed certified pursuant to sub-Section (2) shall have to be retained in the office record and another copy of the deed shall be given to the person executing the testamentary will.

(6) The deed not completing the procedures according to this Section shall not be deemed to have been duly executed and

the title, possession and ownership of the person executing the testamentary will shall not be transferred through such deed.

242. Authority to certify Testamentary Will: (1) A testamentary will prepared under this Chapter shall be certified by any of the following authorities:-

- 6) Land Revenue Officer at the Land Revenue Office;
- 7) Staff deputed as a team from the Land Revenue Office;
- 8) In the event of living outside Nepal, the concerned official of the Nepali Embassy or Consulate General's Office in the foreign country;
- 9) Notary public.

(2) Notwithstanding anything contained elsewhere in this Section, no title of immovable property may be transferred through the testamentary will certified by a notary public.

243. Provisions concerning sealed Testamentary Will: (1) Notwithstanding anything contained in Section 241, any one may execute a testamentary will with the condition that the name of the recipient of the testamentary will shall be disclosed only upon his/her death.

2) While executing testamentary will pursuant to sub-Section (1), the person executing the testamentary will shall prepare two copies of the deed and produce them to a Land Revenue Officer at the Land Revenue Office or to the concerned

official at the Nepali Embassy or Consulate General's Office if living in abroad.

3) In case the deed of testamentary will is submitted pursuant to sub-Section (2), the concerned official shall fulfill the procedures referred to in Section 242 and certify the deed and each of the deeds shall be put into separate envelop and seal them and mark on the outer surface of each of the envelops as "Sealed Testamentary Will" and the person executing the will and the official certifying it shall also sign and seal them.

Provided that there is no need of witnesses while executing sealed testamentary will.

(4) One of the envelops sealed pursuant to sub-Section (3) shall be retained safely in the office and another copy shall be given to the person executing the deed.

(5) The person certifying the testamentary will pursuant to sub-Section (4) shall not, until the sealed testamentary will is opened upon death of the person executing the testamentary will, inform anyone about or make public or cause to be disclosed the person getting the property according to the testamentary will.

(6) In case the envelope retained testamentary will pursuant to sub-Section (4) is opened or the name of person getting the property according to the testamentary will is made known to anyone or disclosed, or the sealed envelope is opened, the concerned official shall be deemed to have committed abuse of authority and he/she may be taken actions accordingly.

(7) No envelope of the testamentary will sealed according to this Section shall be opened until the person executing the will is surviving.

(8) Once the sealed envelope is received upon death of the person executing the sealed testamentary will, the person in the order of priority to entitle to the succession shall open the sealed testamentary will in presence of at least one official or staff of the local body and a record of opening of the seal shall have to be maintained.

(9) In case a sealed testamentary will is opened pursuant to sub-Section (8), the person to entitle the property according to the sealed testamentary will shall submit an application to the concerned Land Revenue Office in order to transfer the title of the property according to the testamentary will along with a copy of the testamentary will.

(10) In case the application is filed pursuant to sub-Section (9), the concerned Land Revenue Office shall have to match the copy of the testamentary will with the sealed testamentary will retained in the office.

Provided that in case the testamentary will has been executed in an Embassy or Consulate General's Office, the office to transfer the title of the property shall have to match the copy of the testamentary will after getting the sealed testamentary will from the concerned Embassy or Consulate General's Office.

(11) If the sealed testamentary will and the statement of the applicant is found to be matched while matching the deeds pursuant to sub-Section (10), the testamentary will shall be executed and the title shall be transferred.

244. Special Provisions concerning Holographic Will: (1) In case any person has given any property to any other person writing a deed of will on his/her own stating the details of the property he/she has desired to will and signing on it, notwithstanding anything contained elsewhere in this Chapter, such a deed of will shall be deemed to have been duly executed and once the deed of will becomes effective, the title, possession and ownership of the property referred to in such a deed of will shall be transferred to the name of the person getting the property.

Provided that no title, possession and ownership of immovable property may be transferred through such a deed of will.

(2) The deed of will referred to in sub-Section (1) may be executed with or without a seal.

245. Procedures to be fulfilled if the person executing will is blind: (1) In case the person executing the deed of will is a blind, the official certifying the deed shall have to read out the content of the deed once and the person to witness the deed shall also have to read out the deed to the blind person and meaning and consequences of the deed shall also have to be made known to him/her, before causing such a person to sign on the deed.

(2) If the person executing the deed expresses that he/she has executed the deed on his/her free will and consent while reading out the deed to him/her pursuant to sub-Section (1), the deed shall have to be certified stating the same.

246. Procedures to be fulfilled if the person executing will is hearing impaired: (1) In case the person executing the deed of will is hearing impaired and he/she could not understand the meaning and consequences of the deed while it is read out by the official certifying the deed, the deed shall be given to him/her to read and the meaning and consequences of the deed shall be made known to him/her by noting it down in a separate sheet of paper.

(2) In case the meaning and consequences of the deed shall not be made known to him/her pursuant to sub-Section (1) or in case the person executing the deed is illiterate or unable to read, the deed shall be certified by making known to him/her the meaning and consequences of the deed by way of symbol and also by making the meaning and consequences of the deed known to his/her spouse or son or daughter living in the undivided family, and in case he/she does not have such relative or even such relative is also hearing impaired, to the two persons chosen by the person executing the deed of will.

247. Person ineligible to become witness: In a will to be executed under this Chapter, the following person shall not be eligible to be a witness:-

- a) One who has not attained the age of eighteen years;
- b) One who has no sound mind;
- c) The official to certify the deed for which a witness is required;
- d) If the deed has been certified by a notary public, his/her spouse of the undivided family or a relative within his/her three generations or his/her staff;
- e) The person who is receiving property under the deed or his/her successor.

248. Pre-Conditions to be fulfilled: (1) In case a pre-condition has to be fulfilled by the person receiving the property in order to acquire the property according to a will executed under this Chapter, the deed of will shall not be effective unless he/she fulfills such a pre-condition.

(2) In case the deed of will could not be effective pursuant to sub-Section (1), the property under the will shall be according to the law of succession upon the death of the person executing such deed.

249. Deed of will to be cancelled: Notwithstanding anything contained elsewhere in this Chapter, a testamentary will shall, *ipso facto*, be revoked in the following circumstances:-

- (a) In case the person to receive a property according to a deed of will dies before the person executing the deed of will.

(b) In case the person receiving the property under the will commits or causes to commit a homicide against the person executing the will with the motive to receive the property under such a will.

250. Deed of Will may be amended or revoked: (1) The person executing a deed of will executed under this Chapter may at any time revoke it or alter its terms or conditions.

(2) Where any person has executed a deed of will under this Chapter, he/she may get such deed revoked executing a separate deed being present before the official who has certified the deed of will.

(3) While getting the deed of will revoked pursuant to sub-Section (2), the procedures referred to in Section 241 shall have to be followed.

(4) The property once willed shall not be given to another person without a deed of will and without getting the earlier deed of will revoked under this Chapter.

(5) If a property has been given to another person without getting the earlier deed of will revoked pursuant to sub-Section (4), the deed of will executed earlier shall be valid.

251. Person willed may deny: (1) Where any person has executed a deed of will under this Chapter, the person getting the property according to the deed may deny to accept the property at any time.

(2) In case the person getting the property denies accepting pursuant to sub-Section (1), the deed shall be *ipso facto* be revoked.

(3) In case the person getting the property denies accepting the property pursuant to sub-Section (1) after the death of the person executing the deed of will, such property shall be divested according to the law of succession prevailing at the time of death of the person executing the deed of will.

252. Certain Property to be segregated: Notwithstanding anything contained elsewhere in this Chapter, any person shall, while executing a deed of will, have to segregate one fourth of his/her property for the following people dependent on him/her:-

- a) For livelihood of a spouse having no property or source of income or employment;
- b) For livelihood of incapacitated son or daughter having no property or source of income or employment;
- c) For livelihood and education of the minor son or daughter having not attained the age of twenty one years until he/she attains the age of twenty one years.

253. Transfer of title: (1) In case anyone has executed a deed of will under this Chapter, the title, possession and ownership of the property so willed shall be transferred to the name of the person so willed subject to provisions of this Chapter upon the death of the person executing the will.

(2) In case the title, possession and ownership of the property is transferred pursuant to sub-Section (1), if such property has to be transferred, the office or officer to transfer the property shall have to transfer the title, possession and ownership of the property according to the deed of will.

(3) While transferring the property pursuant to sub-Section (2), the person getting the property shall have to pay the fee equal to the fee that is applicable in the case of deed of will with immediate effect.

254. Provisions concerning Partition of Property and Common Property to be ineffective: (1) After the commencement of this Chapter, the provisions relating to partition of property and common property shall *ipso facto* be ineffective.

(2) After this Chapter commences, the provisions relating to partition of property or a lump sum amount in lieu thereof or an annual amount or partial amount or alimony while divorcing the relationship between husband and wife through the consent of husband and wife or because of the husband shall be *ipso facto* inactivated.

(3) Notwithstanding anything contained in sub-Section (2), in the cases where the relationship between husband and wife is divorced through the consent of husband and wife or because of the husband, if the wife so demands, the court shall have to cause the husband to pay the wife appropriate amount having regard to the following matters:-

(a) The income and property of the husband;

(b) Number of the children

(4) Notwithstanding anything contained in sub-Section (3), in case the income and property of the wife demanding for a share of property or an amount in lieu thereof or expenses is more than the property and income of the husband, no amount shall be required to be paid by the husband to the wife.

(5) Notwithstanding anything contained elsewhere in this Section, in cases where a case for divorce of the relationship of husband and wife has already been filed before the commencement of this Chapter, partition of property between the husband and wife may be effected or an amount or expense may cause to be paid according to the then prevailing law.

255. Limitation: A person aggrieved by an act carried out under this Chapter may file a complaint within a period of six months from the date of having knowledge of carrying out of such an act.

Chapter 11

Provision concerning Succession

256. Succession deemed to be opened: Upon death of a person, his/her succession shall be deemed to be opened.

Explanation: For the purpose of this Chapter "succession" means an act to transfer liabilities and rights of the deceased in regard to debt, wealth or property to a successor in accordance with law.

257. Succession to devolve upon a successor: Where a person's succession is opened, such a succession shall devolve upon his/her nearest successor.

Explanation: For the purpose of this Chapter, "a successor" means a person who stands in the priority order of succession under Section 3.

258. Priority order of the successors upon whom succession shall devolve: (1) The priority order of the nearest successor upon whom succession shall devolve shall, subject to other Section of this Chapter, be as follows:-

- (a) Husband or wife of undivided family;
- (b) Son, daughter, widow daughter-in-law;
- (c) Father, mother, step mother, grandson and granddaughter towards the son of undivided family;

- (d) Separated husband, wife, father, mother, step-mother;
- (e) Separated grand-son, grand-daughter from the son's generation;
- (f) Separated grand-father, grand-mother;
- (g) Uncle, aunty, nephew, niece of undivided family
- (h) Separated grand-son, grand-daughter from son's generation,
- (i) Wife of elder brother, wife of younger brother, of undivided family,
- (j) Separated elder or younger brothers and sisters;
- (k) Other nearest successor within seven generation of male clan.

(2) So long as the person in the upper order of priority referred to sub-Section (1) is surviving, the person in the subsequent order of priority shall not be entitled to succession.

(3) Where more than one person are standing in one and same priority order under sub-Section (1), all persons shall be entitled to equal succession.

(3) If any successor of the priority order upon whom succession devolves pursuant to sub-Section (3) denies to accept succession, the succession shall devolve upon the successors of the same order and if such a successor too denies to accept it, succession shall be devolved to the successor of next in order.

259. Succession to devolve upon distant successor: (1) Notwithstanding anything contained in Section 258, if the succession of a person who was living, by taking his/her share of family property, with a distant relative in spite of having close relatives, is opened upon his/her death, the succession of such a person shall devolve upon the successor with whom the deceased was residing.

(2) Where the deceased was maintained by a distant successor, instead of close one, such deceased's succession shall devolve upon the person so maintaining.

260. Succession to devolve to a caretaker: In case a closer successor has not cared and a distant successor has taken care of a person at the life time of such person, the succession of the person so taken care shall devolve upon the distant successor so caring.

261. Succession to devolve upon separated successor: (1) If the succession of a person who was residing, by taking share of family property, with a successor who is separated, failing maintenance by his/her successor of undivided family, is opened upon his/her death, the deceased's succession shall devolve upon such a separated successor.

(2) Notwithstanding anything contained in sub-Section (1), where the succession of a person who was residing, without having obtained share of property, with any successor only for some days, is opened upon his/her death, the deceased's

succession shall devolve upon the successor with the whom deceased was so living later.

262. Succession to devolve upon person maintaining:

Notwithstanding anything contained elsewhere in this Chapter, where the deceased was maintained by a person other than the successor, such succession shall devolve upon the person who had maintained the deceased.

263. Not to be obliged to accept succession: (1) Notwithstanding anything contained elsewhere in this Chapter, no person shall be obliged to accept a succession.

(2) A person who declines to accept a succession shall have to provide information in writing to the court thereof within three years of devolution of succession.

(3) If a person does not accept succession within the period under sub-Section (2), such succession shall be deemed to be devolved upon another successor.

(4) Even if a person does not accept a succession pursuant to sub-Section (1), he/she shall have to conduct obsequies rites of the deceased in accordance with tradition.

264. No right to succession: Notwithstanding anything contained elsewhere in this Chapter, if a person commits or causes to be committed homicide against person by anger, avenge or with malafide intention of receiving succession, the offspring of the person so committing or causing to be committed shall not be entitled to receive succession of the deceased.

265. Obligations and rights of a person upon whom succession is

devolved: (1) The obligations and rights of the person upon whom succession is devolved shall be as follows:-

- (a) to perform or cause to be performed obsequies rites or funeral procession of the deceased according to his/her tradition,
- (b) to pay deceased's debt due to the creditor, and
- (c) to have right over the deceased's borrower and property.

(2) Where the obsequies rites or funeral procession of a deceased was performed by a person other than the person who is entitled to the succession of the deceased, the person entitled to such succession shall have to provide the cost incurred for performing obsequies rites or funeral procession of the deceased and additional twenty five percent amount of such cost to the person who has performed such obsequies rites or funeral procession.

Provided that if any person has caused to perform the obsequies rites or funeral procession of the deceased by others, he/she shall be liable to pay merely the exact expense incurred in such obsequies rites or funeral acts.

266. Creditor may recover debt: Where a person whose succession is opened has creditors, such creditors may recover his/her debt from the person upon whom succession has devolved.

Provided that a successor shall not be obliged to pay the debt in excess of the deceased's property succeeded by him/her.

267. Local body to receive succession property: (1) Where the succession of a person is opened and his or successor declines to accept such succession, the deceased's property remaining after deducting the cost incurred for his/her funereal act rites and obsequies acts and after payment of debt due to his/her creditors shall be devolved to the local body.

(2) Where a person dies in a place and has no successor but has but property in that place, the person who performs his/her funereal act rite or maintains his/her books and accounts shall have to promptly give notice thereof to the local body.

(3) If a notice is received pursuant to sub-Section (2), the local body shall prepare an inventory of the property and goods of the deceased in the presence of two local gentlemen and forward notice thereof including a public inquiry deed thereof to the concerned District Administration Office.

(4) If a public inquiry deed together with the inventory of wealth and goods is received pursuant to sub-Section (3) and address of the deceased is traced out, the District Administration Office shall transmit a notice according to law to the successors of the deceased to receive deceased's property within a period of three months.

(5) If the successor of the deceased does not appear within the period specified pursuant to sub-Section (4) or the

successor of such a deceased is not traced out, the District Administration Office shall publish a notice on a newspaper of national level inviting his/her successor, if any, to make a claim over the deceased's property.

(6) If the successor of the deceased appears within the period of time under sub-Section (5) or (6), the property remained after deducting cost incurred for funereal act of the deceased, which shall be given to the concerned person, and after recovering ten percent of such property, to the concerned successor.

(7) If no successor of the deceased appears within the time period specified in sub-Section (5) or his/her address is not traced out, the property remained after giving the cost incurred for funereal act to the concerned person, shall be received by the local body.

(8) The property received by the local body pursuant to sub-Section (1) or (7) shall be required to be deposited by the concerned successor or the District Administration Office to the fund of the local body.

(9) The property received by a local body pursuant to this Section shall have to use by such body for public interest.

268. Property of a foreigner died in Nepal: (1) In case a foreigner dies in Nepal and he/she has no successor at that place and there is his/her property, the person performing his/her funeral rites

and or maintaining his/her accounts shall immediately inform about the matter to the local body.

(b) In case the information referred to in sub-Section (1) is received, the local body shall prepare a statement of the property of the deceased in presence of at least two local gentlemen and furnish one copy of the statement to the concerned District Administration Office along with a public deed of inquiry executed to that effect.

(3) In case a deed of public inquiry along with the statement of property is received pursuant to sub-Section (2), the District Administration shall immediately inform about it to the Ministry of Home Affairs and the Ministry shall have to send notice to the concerned country of the deceased according to law to receive the property of the deceased within three months.

(4) In case any successor of the deceased is present within the time limit referred to in sub-Section (3), the expenses incurred for funeral rites of the deceased shall be deducted and given to the concerned person and a fee of 10% shall be charged on the property and the remaining property shall be handed over to the successor of the deceased.

(5) In case no successor of the deceased is present within the time limit referred to in sub-Section (3), the expenses incurred for funeral rites of the deceased shall be deducted and given to the concerned person and the remaining property shall devolve on the local body.

(6) The property acquired by the local body pursuant to sub-Section (5) shall be recorded in a fund of the local body.

(6) The local body shall use the property acquired by it pursuant to sub-Section (5) for public interest.

269. Limitation: In case where separate statutory limitation to file a complaint is provided for in this Chapter, it shall be accordingly and in other cases, a person aggrieved by an act carried out under this Chapter may file a complaint within a period of two years from the date on which the succession is opened.

Part 4

LAW CONCERNING PROPERTY

Chapter-1

General Provisions Concerning Property

270. Deemed to be property: Any cash, goods or action shall be deemed to be a property if such cash, goods or action can be used or transacted in or the title thereto can be transferred by way of purchase, sale or otherwise or any benefit can be derived therefrom.

Explanation: For the purposes of this Code, "goods" means any movable or immovable property.

271. Property deemed to be in either movable or immovable form: A property shall be deemed to be in either movable or immovable form irrespective of its material or non-material, tangible or intangible form.

272. Property deemed to be immovable: (1) The following property shall be deemed to be an immovable property:

Building or land or structure fixed thereto,

Any goods attached to a building or land permanently,

Mines, stones or minerals embedded in land,

Natural water, surface water and underground water,

Building or other structure made permanently in such a manner that it can float over a river, lake or pond,

A standing tree, plant or fruit tree or fruits or flowers growing on such a tree, plant or fruit tree, crops in land, or

Any movable property attached to an immovable property.

(2) Notwithstanding anything contained in sub-section (1), if any structure, goods or any part thereof, fixed or attached to any immovable property gets or is detached or unfixed, the structure,

goods or part so detached or unfixd shall be deemed to be a movable property.

273. Property deemed to be movable: The following property shall be deemed to be a movable property:

- (a) Goods that can be moved from one place to another,
- (b) Bond, security, promissory note, bill of exchange, letter of credit or other negotiable instrument or benefits therefrom,
- (c) Intellectual property,
- (d) Right in security,
- (e) Trade good-will or franchise,
- (f) Property other than the immovable property.

274. Classification of property according to ownership: The property shall be classified as follows according to the ownership and the form of use thereof:

- (a) Private property,
- (b) Property in common,
- (c) Joint property,
- (d) Community property,
- (e) Public property,
- (f) Government property,
- (g) Trust property.

275. Property deemed to be private property: (1) Any of the following properties owned by any person or properties accrued therefrom shall be deemed to be the private property of that person:

- (a) Property earned by way of his/her knowledge, skills or effort,

- (b) Property acquired by way of donation, bequeath, will or inheritance,
- (c) Property acquired by way of a lottery or gift,
- (d) Property acquired by way of remuneration, gratuity, pension, treatment allowance, provident fund, insurance or other social security,
- (e) Property acquired by way of intellectual property or royalty,
- (f) Property acquired in any manner whatsoever while living apart upon separation of board and bread in accordance with law or while managing own accommodation at own cost despite not so living apart,
- (g) Property earned or acquired by a woman prior to marriage or acquired from her parental side at the time of marriage or accrued therefrom, or
- (h) Property which, according to law, is considered to be the exclusive private property of a person.

(2) Any person shall be entitled to exclusively deal with his/her private property, subject to this Code.

276. Property deemed to be property in common: (1) Any of the following properties being owned by any co-owner, out of the co-owners, subject to Section 275 or property accrued therefrom shall be deemed to be the property in common:

- (a) Property inherited from ancestors,
- (b) Property owned by the co-owners,

(c) Property earned by the co-owners from the farming, industry, trade or business in common or property accrued therefrom.

(2) Except where separated in accordance with law, any property earned by the spouses or property accrued therefrom shall also be deemed to be the property in common of the spouses.

(3) Notwithstanding anything contained in clause (a) of subsection (1), any property earned by parents for the purpose of partition between the parents and their children shall also be considered to be the property in common.

(4) The use of, and transfer of right in, and other provisions on, the property in common shall be as set forth in the other Chapters of this Code.

277. Property deemed to be joint property: (1) Any property owned by two or more persons except members in of the undivided family or property accrued therefrom shall be deemed to be a joint property.

(2) The entitlement to and share of a joint holder in the joint property shall be as set forth in a deed setting out such entitlement and share, and failing such a deed, the joint holders of that property shall be deemed to have equal entitlement and share.

(3) The use and management of, transfer of title to, and other provisions of, the joint property shall be governed by this Chapter and the other Chapters of this Code.

278. Prohibition on alteration in joint property without consent: Any alteration in a joint property or any change in its form may not be made without consent of all the owners of the joint property.

279. Trees, plants on boundary to be deemed common: Unless otherwise proved, trees or plants lying on the boundary of two owners of adjoining lands shall be deemed to be their common property.

280. Management, protection and maintenance of joint property: (1) The management, protection and maintenance of the joint property shall be made as per the consent of the owners of that property.

(2) Failing consent between the owners in relation to the management, protection and maintenance of the joint property pursuant to sub-section (1), the management, protection and maintenance of the joint property shall be made according to the decision of majority members.

(3) Failing a majority opinion between the owners in relation to the management, protection and maintenance of the joint property pursuant to sub-section (2), the owner who has the largest entitlement or share in that property shall make its management, protection and maintenance.

(4) Expenses incurred in the management, protection and maintenance of the joint property, if any, made by any owner pursuant to sub-section (2) or (3) shall be borne by all owners in proportion to their respective entitlement or share.

(5) The owner failing to manage, protect and maintain the joint property in accordance with sub-section (4) shall pay the expense incurred in the management, protection and maintenance of that property to the person making management, protection and maintenance thereof no later than one year.

(6) Where any owner fails to pay the expenses incurred in the management, protection and maintenance of the joint property within the period referred to in sub-section (5), the person making management, protection and maintenance thereof shall be entitled to purchase the entitlement and share of that owner in that property at the prevailing price.

Provided that the person so purchasing the joint property may deduct the expenses of management and maintenance of his/her portion.

281. Legal action or defense by owner of joint property: (1) In the event of a need to institute a legal action against any person or defend a case in relation to the protection of the joint property, all owners have to make such institution or defense.

(2) Where all owners are not available as referred to in sub-section (1), any or some of the owners may, on behalf of him/her or the other owners, institute a legal action against any person or defend a case.

282. Separation of share from joint property: (1) Any owner of the joint property may separate his/her entitlement or share therein from the other owners at any time.

(2) The separation of the joint property as referred to in sub-section (1) has to be effected in accordance with the consent of all owners.

(3) Notwithstanding anything contained in sub-section (1) or (2), where the separation of any joint property results either in a

significant loss to the other owners or in the form of that property, such separation thereof may not be made.

(4) Where any joint property cannot be separated in the circumstance referred to in sub-section (3), the owners of that property shall sell such property and divide the proceeds of sale between them in proportion to their respective entitlement and share therein.

(5) Where any joint property cannot be sold in accordance with sub-section (4) or all owners do not agree to sell it and any owner intends to buy such property, such owner may exclusively own it by paying the price of that property to the other owners in the same proportion.

(6) Where two or more owners intend to buy the joint property pursuant to sub-section (5), the owner who agrees to pay the highest price shall be entitled to purchase such property.

283. Provisions Concerning community, public, government and trust properties: The provisions of community, public, government and trust properties, the ownership, use, management thereof, and transfer of right therein, and other provisions shall be as set forth in the other Chapters of this Code.

284. Limitation: A person aggrieved from any act done or action taken under this Chapter may file a complaint within a period of six months from the date on which such an act or action is done or taken.

Chapter-2
Provisions Concerning Ownership and Possession

- 285. Ownership to be deemed:** Where any person acquires the right in any property in accordance with law, his/her ownership in that property shall be deemed.
- 286. Right of an owner:** Subject to laws, a person, in capacity of the owner of any property, shall have the following right in that property:
- (a) To use the property,
 - (b) To sell or otherwise transfer the title to the property,
 - (c) To mortgage or pledge the property in any manner,
 - (d) To deal in the property,
 - (e) To take the profits of the property in any manner whatsoever,
 - (f) To make any kind of physical construction, wall or fence or delimit boundary, in his/her land, or change the form of any property or otherwise protect it,
 - (g) To use his/her land or part below its surface or goods therein or sky above its surface, or
 - (h) To institute legal action in any manner in relation to the acquisition or security of the property.
- 287. Possessory right to be deemed:** Where a person holds any property with him/her with intention to possess the property in accordance with law, he/she shall be deemed to have possessory right over the property.
- 288. Acquisition of possessory right:** (1) A person may acquire the possessory right over any property in the following circumstance:
- (a) In the capacity of the owner thereof,

(b) Acquiring the property owned by another person in accordance with law,

(c) Obtaining consent of the possessor of such property.

(2) Only the possessory right acquired peaceably, openly or in bona fide shall be deemed to have been acquired lawfully.

289. Person competent to acquire possessory right: (1) A person may acquire the possessory right either in person or through his/her agent.

(2) A person who is incompetent and semi-competent may acquire the possessory right through his/her guardian.

290. Rights of possessor: (1) Any person, in capacity of the possessor, shall be entitled to the following rights, subject to the laws:

(a) To uninterruptedly possess the property in his/her possession, subject to the laws in force, or the contract, if any, entered into in relation to that property,

(b) To use any benefits of the property in his/her possession.

(2) In the event of acquisition by a person of the possessory right in bona fide over any goods owned by any one else, the person shall be entitled to reimbursement from the other person who has the possessory right over the property for necessary expenses incurred in the management, maintenance or care of such goods.

(3) Notwithstanding anything contained in sub-section (2), the former possessor shall be entitled to retain such property with him/her unless and until the expenses referred to in that sub-section are reimbursed.

(4) Where a bona fide possessor of any property not in his/her ownership has attached any goods to such a property, the

possessor shall be entitled to detach or take out the goods attached by him/her from the property without tempering with such a property.

291. Circumstances where possessory right is lost: The possessory right of a person over any property shall be deemed as lost in any of the following circumstances:

- (a) If the person abandons the property,
- (b) If the person transfer the property, or
- (c) If the property is totally destroyed or become useless.

292. Adverse possessory right to be deemed: (1) Notwithstanding any thing contained elsewhere in this Chapter, where any person has possessed any property or land owned by any one else since more than three years ago in the case of movable property and thirty years ago in the case of land as if the property or land were owned by him/her, that person shall be deemed to have adverse possessory right over such a property or land.

Provided that:

- (1) No adverse possessory right may be acquired over a government, public, community or trust land despite the length of the period of possession.
- (2) Where a contract or other law provides for separate provisions in relation to any property or land, such provisions shall be applicable to such a property or land.

(2) Notwithstanding anything contained in sub-section (1), where possession is acquired forcefully or by doing any action secretly or without knowledge of the possessor of any property or land, this Section shall not be applicable.

293. Compensation for damage: (1) Where any person has acquired the possessory right over any property forcefully, with malafide intention or secretly, the person shall return the benefits derived from that possessory right and such property to the concerned person and pay compensation for the benefits which he/she has already used or for any loss caused to the property due to his/her negligence in the course of using the property.

(2) Where any property owned by any one else is lost or damaged during the continuance of the possessory right of a person over the property, the person shall pay compensation for such a property to the concerned person.

294 Limitation: A person who is aggrieved from any act done or action taken pursuant to this Chapter may file a complaint within a period of three months from the date of knowledge of such an act or action.

Chapter-3

Provisions Concerning Uses of Property

295. Prohibition on use or acquisition of other's property: (1) No person may use other's property without consent of that other person.

(2) No person may acquire other's property without consent of that other person.

Provided that the Government of Nepal may, in accordance with law, acquire any property owned by a person for public interest.

(3) No person may temper with other's property by closing the road or exit of the other person or doing any work or construction on the border of his/her land or otherwise.

(4) No person may enter other's house and compound without consent of that other person except in accordance with law.

296. Property to be inviolable: (1) No person may encroach or trespass other's property by way of overlapping, pressing or otherwise.

(2) Where any person takes possession of other's property by way of any act referred to in sub-section (1), that person shall be deemed to have encroached or trespassed such a property.

297. Security measures to be adopted: A person shall, while doing any work on his/her house or land, adopt security measures in order to avoid any loss or damage or effect to the neighbor's house or land in any manner.

Provided that matters such as gas, smell, smoke or noise emitted or produced from the use by any neighbor of his/her house or land, except where a business transaction is carried on by the neighbor,

shall not be deemed to cause a loss or damage or effect to a house or land.

298. Prohibition on building house in other's land without consent: (1)

No person shall build a house in a land without obtaining a written consent of the owner of the land.

(2) If any person builds a house in the land without obtaining a written consent of the owner of the land, the landowner may, if he/she so desires, purchase of the house on payment of the price that is less by twenty five percent of the market value of that house.

(3) If the landowner does not purchase such a house pursuant to sub-section (2), the house owner may, if the owner so consents, purchase the land on payment of the price that is higher by twenty five percent of the land where the house is located.

(4) If both parties do not agree to purchase and sell the house or land pursuant to sub-section (2) or (3), the person who has built the house shall demolish the house and take away his/her materials within six months of the date on which the house is so built.

(5) If the house is not demolished within the period referred to in sub-section (4), it shall belong to the landowner.

299. To maintain distance while putting windows: If a person or government body has to build a house by putting a window towards the neighbor's land, the person or body shall have to maintain a distance by leaving at least five feet land.

300. Prohibition on channeling water of house or roof: No person shall channel the water of his/her house or roof to other's house or land or a public road.

301. Prohibition on making safety tank adjoining to neighbor's land:

(1) No person shall make a safety tank by adjoining it to the neighbor's land.

(2) If a person has to make a safety tank in his/her land, he/she shall have to leave at least three feet land towards the neighbor's land except with the neighbor's consent.

302. To leave land while digging a well: In digging a well in one's land, one shall have to leave the land so that the distance of at least three feet can be maintained.

303. Prohibition on planting trees or plants causing effect: (1) No person shall plant trees or plants in such a way so that it causes effects to other's house, land or property.

(2) If the trees or plants planted by a person in his/her land cause any effect to other's house, land or property, the person who has planted such trees or plants shall cut the branches or roots of the trees or plants in such a manner as not to cause loss or damage to that other person's house, land or property.

(3) If a person who has planted such trees or plants fails to cut the branches or roots of the trees or plants pursuant to sub-section (2), the person who is affected therefrom may cut the branches or roots of such trees or plants on his/her own.

(4) The person who has planted trees or plants shall bear the amount for the loss or damage, if any, caused to other's land, house or property while cutting the branches or roots of trees or plants pursuant to sub-section (2) or (3), the expenses incurred by the affected person in cutting the branches or roots of trees or plants or amount for the

property damaged therefrom on the failure of the person who has planted such trees or plants to cut the branches or roots thereof.

304. Right to compensation: If any loss or damage is caused to any person from any act done or action taken by any person in accordance with this Chapter, the loss or damage sustaining person shall be entitled to recover a reasonable compensation from the doer such act.

305. Limitation: A person who is aggrieved from any act done or action taken in accordance with this Chapter may file a complaint within a period of six months from the date of knowledge of such act or action.

Chapter-4

Provisions Concerning Cultivation, Use and Registration of Land

- 306. Prohibition on use of other's land:** No person shall cultivate or use, or cause to be cultivated or used, any land in which another person has the title, possession and ownership without consent of that other person.
- 307. Requirement to allow land to be used for ditch:** (1) If a person who needs to make a ditch through other's land to cultivate his/her land makes a request for land, the owner of concerned land shall have to provide the land to make the ditch through the place where the owner considers appropriate.
- (2) In consideration for the land provided for making a ditch through it pursuant to sub-section (1), the person making the ditch shall provide a substitute land, amount according to the prevailing price of the land used in the making of ditch or reasonable compensation to the owner of land concerned.
- (3) Notwithstanding anything contained in sub-section (2), if a ditch is made in a public or government land, it is not required to provide a substitute land, price of land or compensation for the land used in the making of ditch.
- 308. Prohibition on using whole water of river or stream:** No owner of a land shall so use the whole water of the river or stream which originates or flows from the land as to prevent the owner of downstream land from using the same or as to endanger the life of aquatic animals in the river or stream or as to adversely affect the ecological balance.

- 309. Prohibition on making ditch affecting irrigated field:** No person shall make a new ditch above a land irrigated by a ditch already made and in operation in a manner to significantly lessen the volume of water in that land.
- 310. Use and allocation of ditch water:** (1) A person who spends labor or money in the making of a ditch shall have the first priority to the ditch water for the cultivation of land.
- (2) Notwithstanding anything contained in sub-section (1), in a place where people have been using the water according to agreed division between them from the time immemorial, all people shall be entitled to use the ditch water according to the division.
- (3) If the water is sufficient for or is no longer required for a person who uses the water pursuant to sub-section (1), another person shall be entitled to use the ditch water for cultivating the land irrespective of the person whom the ditch belongs to.
- (4) The water flows over the land of a person to the land of another, such water may be used even without the consent of the concerned land-owner, and no claim shall lie for the same.
- 311. Prohibition on alteration in ditch without consent:** If any ditch is made only in the land of a person and other persons have also been using the ditch, the owner of land where such a ditch is situated shall not be allowed to alter the ditch without consent of the other persons.
- 312. Prohibition on use of water by one who does not make labor or expenses in making ditch:** (1) While making a new ditch or repairing an old ditch, all persons who use the water of such ditch

have to make necessary labor or expenses in proportion to their respective land.

(2) A person who does not make labor or expenses in making a new ditch or repairing an old ditch pursuant to sub-section (1) shall not be entitled to use the water of such ditch.

313. Making ditch or using of water with mutual consent:

Notwithstanding anything contained elsewhere in this Chapter, if there is a separate agreement between the concerned landowners or those who make a ditch or users of water in relation to the making of ditch or using of water for the cultivation of land, the ditch may be made or water used according to the agreement.

314. Cultivation of land adjacent to river bank: If a river or stream enters in a land and divides it or cuts a land, the land shall belong to its owner and may be cultivated by the owner after the river or stream changes its course and leaves the land.

315. Prohibition on registration: No person shall register in his/her name any land that belongs to other person.

316. Transfer and transmission to be made: (1) If a person needs to have transfer of a land on the death of its registration holder or to have transmission of a land in which the person has got right in any manner, the concerned person has to make an application to the Land Revenue Office and obtain transfer and transmission within thirty five days of the occurrence of such event.

(2) If a person makes an application for transfer and transmission after the expiry of the time limit referred to in sub-section (1), the Land Revenue Office shall execute the transfer and

transmission of such land in the applicant's name by collecting the fee of one hundred rupees irrespective of the length of post-expiry period.

317. Limitation: A person who is aggrieved from any activity done pursuant to this Chapter may file a complaint within a period of six months from the date of knowledge of the commission of such an act.

Chapter-5

Provisions Concerning Government, Public and Community Properties

318. Property to be deemed as government property: The following property title to which belongs to, or which is owned, controlled by, or subject to, the Government of Nepal shall be deemed to be the government property:

Government houses, buildings or lands,
Roads, paths or railways,
Forests, or trees and bushes in forests,
Rivers, elevated parts of rivers, streams, rivulets, lakes, ponds
and banks thereof,
Canals, ditches or uncultivated, barren lands,
Terrains, mountains, rocks, sandy lands, gardens, or
Property other than the public, community, trust or any one's
private property.

319. Property to be deemed as public property: (1) The following property which is for public purpose shall be deemed to be the public property:

- (a) Houses, lands, sewerage or roads having been used since ancient times,
- (b) Wells, water conduits, shores, wells, ponds and banks thereof,
- (c) Exits for chattels, pasture lands, graveyards and lands where these are located,
- (d) Inns, rest houses, monuments, religious meditation sites, memorials, temples, shrines, *Chaitya*, monasteries,

Stupas, churches, courtyards, open parts of markets, platforms or lands where these are located,

- (e) Lands where fairs, markets and public entertainment or sports sites are located, or
- (f) Such other property as prescribed to be the public property by the Government of Nepal, upon a notification in the Nepal Gazette.

(2) The ownership of the public property shall vest in a public organization or the Government of Nepal.

320. Property deemed to be community property: Any land held by a community for its use, any structure built in such land or other property owned and possessed by it shall be deemed to be the community property.

321. Details to be updated: (1) The Land Revenue Office shall prepare and update the following details in relation to the government and public properties situated within the district:

- (a) The location where the government or public properties are situated, plot number and area, in the case of a land, and situation of the house, if any,
- (b) If the government or public properties are possessed by, or subjected to, any body or organization, details thereof,
- (c) Other necessary details.

(2) The Local Body shall render necessary assistance to the Land Revenue Office in preparing the details as referred to in subsection (1).

(3) After the preparation of the details pursuant to sub-section (1), the Land Revenue Office shall forward a copy thereof each to the District Administration Office and the concerned Local Body.

(4) The Local Body shall prepare and update the details as referred to in sub-section (1) in relation to the community properties situated within its jurisdiction.

322. Land ownership registration certificate to be provided: (1) If any government land is held in the name of a government body or public organization, the Land Revenue Office shall prepare the land ownership registration certificate of such land in the name of such a body or organization and provide it to such a body or organization.

(2) If any land is held in the name of a community in accordance with laws, the Land Revenue Office shall prepare the land ownership registration certificate of such land in the name of such community and provide it to that community.

323. Obligation to protect government, public or community properties: (1) The Government of Nepal, public organization or community holding the right in, possession of, and control over, the government, public or community properties shall itself protect such properties.

(2) The District Administration Office and the concerned Local Body shall be responsible for the protection of government and public properties.

(3) The concerned community and Local Body shall be responsible for the protection of the community property.

324. Prohibition on registration of government, public or community properties in individual's name: (1) No person shall register, or cause to be registered, any government, public or community property in his/her name.

(2) If a person registers, or causes to be registered, any government, public or community property in his/her name, such registration shall, *ipso facto*, be void.

(3) If a complaint is filed as to the registration of any government, public or community property in any person's name, the Land Revenue Office shall also summon the presence of the registration-holder and inquire into the manner and make necessary decision within six months after the date of filing the complaint.

(4) If the registration of any government, public or community property in any person's name is revoked pursuant to this Section, the Land Revenue Officer shall make necessary entries in the records maintained in his/her Office and give information thereof to the District Administration Office and the concerned Local Body.

(5) A person who registers, or causes to be registered, any government, public or community property in contravention of this Section shall be liable to the punishment by the Land Revenue Office with a fine of ten thousand rupees to fifty thousand rupees.

325. Prohibition on possession or cultivation of government, public and community land: (1) No person shall, except with the approval of the Government of Nepal, concerned public organization or community, cultivate, or cause to be cultivated, any government, public or community land.

(2) No person shall possess any government, public or community land by way of overlapping, encroachment, surrounding or otherwise.

(3) If any person possesses or cultivates any government, public or community land in contravention of sub-section (1) or (2), the concerned Land Revenue Office, in the case of the government or public land, and the concerned Local Body, in the case of the community land, shall separate such land, recover the crops yielded in the land from that person and let it uncultivated.

(4) The Land Revenue Office or concerned Local Body, as the case may be, shall punish any person, who possesses or cultivates any government, public or community land in contravention of this Section, with a fine not exceeding ten thousand rupees.

326. Prohibition on making construction in government, public or community land: (1) No person shall build any structure in any government, public or community land, for personal or public purposes.

Provided that such structure may be made as considered appropriate by the Government of Nepal, in the case of a government or public land, and by the concerned community, in the case of a community land.

(2) If any person proceeds to make any structure in any government, public or community land in contravention of sub-section (1), the concerned Chief District Officer or Local Body shall have to stop such work immediately.

(3) If any person has already made any structure in any government, public or community land in contravention of sub-section (1), the concerned Chief District Officer or Local Body shall have to give a time limit of fifteen days to the main person having made the structure to demolish such structure.

(4) The person having made such structure shall have to demolish the structure at his/her own expense within the time limit given pursuant to sub-section (3).

(5) If the main person having made such structure fails to demolish the structure within the time limit given pursuant to sub-section (3), the concerned Chief District Officer shall have to demolish such structure.

(6) If the Chief District Officer demolishes any structure pursuant to sub-section (5), the Chief District Officer shall recover the expenses incurred in such demolition from the person and punish the main person having made the structure with a fine not exceeding twenty five thousand rupees.

(7) It shall be the duty of the concerned Police Office to render necessary assistance, if any, sought by the Local Body in stopping the making of any structure or in demolishing any already made structure pursuant to this Section.

327. Power to transfer government property: The Government of Nepal may transfer any government property which is owned and possessed by, or subjected to, some body or organization to any other body or organization, with the approval of such owning body or organization.

328. Conversion of community property into public property: (1) If any community holding any community property does not use it or makes an application, signed by the main persons of all families of such community, setting out that it is not necessary to use such community property in its purpose, to the concerned Land Revenue Office, the concerned Land Revenue Officer may make necessary inquiry into the matter and convert such property into the public property.

(2) In the event of conversion of any community property into the public property pursuant to sub-section (1), the concerned Land Revenue Officer shall have to make necessary entries in the records maintained in his/her Office and give information thereof to the concerned District Administration Office and Local Body.

329. To reward complainant: (1) Any person may make a complaint with the concerned body on the matters of registration, or aiding to the registration, of a government, public or community property, or possession, use or cultivation of a land under such property or construction work done in such land, in contravention of this Chapter.

(2) If, on inquiring into a complaint made pursuant to sub-section (1), the complaint is held to be true, the concerned body shall have to provide the complainant with a reward in a sum that is half the fine imposed on the wrongdoer pursuant to this Chapter.

(3) The concerned body may keep confidential a complaint made pursuant to sub-section (1).

320. Departmental action to be taken: If any employee, either knowingly or recklessly, registers, or causes to be registered, any government,

public or community property in the name of any person or if any employee with the duty to render assistance pursuant to this Chapter does not render any assistance, such employee shall be liable to departmental action in accordance with law relating to the terms and conditions of his/her service.

321. Government attorney empowered to file or make case, petition or appeal: (1) The concerned government attorney shall have power to file or make a case, petition or appeal against any decision made by some body or authority, adversely affecting any government, public or community property.

(2) The concerned office or authority shall have to provide the government attorney with such documents and other assistance as may be necessary in relation to the filing or making of a case, petition or appeal pursuant to sub-section (1).

322. Limitation: A person may file a lawsuit at any time in the cases of Sections 324, 325 and 326 of this Chapter, and a person who is aggrieved from any act done in accordance with the other Sections of this Chapter may file a complaint within a period of six months from the date on which such an act is done.

Chapter-6
Provisions Concerning Trusts

333. Trust deemed to be established: If a person makes necessary arrangements for the operation and management of a property in which the person has right, ownership and possession by another for the benefit of beneficiary, a trust shall be deemed to be established.

Explanation: For the purposes of this Chapter, the term "beneficiary" means persons, groups, general public, incorporated or unincorporated bodies corporate or communities who get the benefit from the trust property.

324. Trust may be public or private: (1) A trust may be either public or private.

(2) A trust established for the accomplishment of the following object shall be deemed to be a public trust:

- (a) To establish, operate and use a fund for economic development infrastructures or other development works,
- (b) To establish and operate a fund necessary for the development of skills, generation of employment opportunity and development of the people with low income,
- (c) To operate social welfare programs,
- (d) To establish and operate such educational and academic institutes like schools, colleges and universities as may be useful for the general public,
- (e) To establish and operate dispensaries such as hospitals and health posts for public purposes,

- (f) To protect natural, historical or cultural heritages or promote such protection,
- (g) To operate wildlife, aquatic animals or environment protection programs,
- (h) To operate programs relating to the upliftment or welfare of women, children, indigenous/nationalities, down-trodden or backward classes or communities,
- (i) To operate programs relating to sports,
- (j) To carry out service-oriented welfare programs,
- (k) To operate rescue works,
- (l) To establish shrines, temples, monasteries, domes, mosques, churches or carry out similar other religious activities,
- (m) To operate other public programs for public interest.

(3) A trust which is established with object to render benefit, advantage or facility to any particular person or group shall be deemed to be a private trust.

(4) If a trust is established to accomplish both public and private objects, such a trust shall be deemed to be a public trust.

335. Application to be made for establishment of trust: (1) A person or organization who intends to establish a trust shall make an application, setting out the following matters, to the Registrar:

- (a) Value and details of the property held for the trust,
- (b) Beneficiaries, and benefit and facility to them, details of the terms and extent thereof,

- (c) If the trust is to be established for any particular period, matters relating thereto,
 - (d) Other necessary details.
- (2) In making an application pursuant to sub-section (1), the following documents have also to be submitted along with the application:
- (a) Instrument of the trust,
 - (b) Trustee's name and photocopy of the deed relating to his/her consent,
 - (c) Photocopy of the deed, if any, executed for the establishment of the trust,
 - (d) Photocopy of a reliable deed relating to the trust settler's identity, and, in the case of the trust settler being a body corporate, certified copies of the documents relating to the incorporation of the body corporate and of the decision by such body corporate in relation to the establishment of trust,
 - (e) Receipt of payment of the fees chargeable by law for the registration of trust.

Explanation: For the purposes of this Chapter:

- (1) "Person" means a natural person or a body corporate is competent to conclude a contract pursuant to this Code.
- (2) "Registrar" means the authority provided for by law for the registration, supervision and liquidation of trusts, and this term also includes the Land Revenue Officer in the concerned district if such authority is not so provided for.

(3) "Trustee" means the person who is responsible for the operation and management of a trust property.

(3) Notwithstanding anything contained in sub-section (1), where a person has, by way of his/her oral behavior, conduct or a testamentary gift or will, provided for the operation and management of a property in which he/she has right, ownership and possession as a trust, the trust shall be deemed to have been established by such behavior, conduct or will.

Provided that in the case of a property requiring registration pass for the transfer of its title in accordance with law, a deed pertaining to such transfer has to be registered.

(4) If a foreign person or body corporate intends to establish a trust, the person or body has to make an application upon fulfilling the procedures as referred to in sub-sections (1) and (2). A foreign person or body corporate may be the founder of the trust to be so established.

Provided that at least one trustee of the trustees of such a trust has to have permanent residence in Nepal.

336. Details to be set out in instrument: The following matters have to be set out in the instrument of a trust:

- (a) Names, surnames and addresses and founders of the trust, and, if a body corporate is the founder, names, surnames and addresses of the directors of such a body,
- (b) Objects and nature of the trust,
- (c) Names, surnames and addresses of the trustees, description of work to be performed by them, and, if a

body corporate is a trustee, name, surname and address of the person designated by the body to act as the trustee,

- (d) Details of the beneficiaries,
- (e) Method of use of the trust property,
- (f) Details of the tenure of the trustee, if any, so specified,
- (g) If the trustees are entitled to remuneration or other facilities, details thereof and limitation,
- (h) If the trust is intended to be established for a certain period, such a period,
- (i) In the event of termination of the trust, consequences thereof,
- (j) Provisions relating to the operation, management and monitoring of the trust property,
- (k) Other necessary matters.

337. Registration of a trust: (1) If an application is made for the establishment of a trust pursuant to Section 335, the Registrar shall make necessary inquiry into the objects of the trust and the details of the property proposed for the establishment of the trust, and, if it seems reasonable to register the trust, register the trust and issue the trust registration certificate, within a period of thirty five days of the making of such an application.

(2) If a trust is registered pursuant to sub-section (1), the trust is deemed to have been established.

(3) Notwithstanding anything contained elsewhere in this Section, a private trust may be operated even without registration.

338. Power to refuse registration of a trust: (1) Notwithstanding any thing contained in Section 337, the Registrar may refuse to register a trust in any of the following circumstances:

- (a) If the details, documents or fees as referred to in Section 335 are not mentioned or paid,
- (b) If the name of the trust resembles with the name of any other trust which has already been registered before the registration of the trust applied for,
- (c) If the objects or terms of the trust appear to be inappropriate or undesirable for reasons of public interest, decency, courtesy or public order, are not lawful or are not possible to be implemented owing to their uncertainty or vagueness.

(2) If a trust is not capable of being registered pursuant to sub-section (1), the Registrar shall give information, along with the reason for refusal, to the applicant within thirty five days.

(3) If, upon receipt of information pursuant to sub-section (2), the applicant, upon making necessary corrections, makes an application again for the registration of the trust, the Registrar shall register the trust and issue the registration certificate pursuant to sub-section (1) of Section 337, within fifteen days of the making of such an application.

339. Transfer of property to be made for incorporation of trust: (1) The trust founder shall have to transfer the property settled for the trust to the trustee within a period of three months of the establishment of the trust.

(2) If the property to be transferred pursuant to sub-section (1) is an immovable property, such property shall be deemed to have been duly transferred only when it is transferred in accordance with law.

(3) A foreign person or body corporate that establishes a trust in Nepal shall have to remit into Nepal a movable property equal to at least one hundred thousand American dollars through regular banking channel and hand over the same to the trustee within three months.

(4) The information of the handover of the movable property pursuant to sub-section (3) has to be given to the Registrar.

340. Dissolution of a trust on failure of transfer of property: In the event of failure to transfer property within the time-limit referred to in Section 339, the registration of such a trust shall *ipso facto* be void and the trust shall deemed to be dissolved.

341. Administration and use of trust property according to the instrument: (1) The trustee shall have to administer and manage the trust property subject to the terms and restrictions set forth in the instrument.

(2) Except as otherwise provided for in the instrument, the trustee shall, in administering and managing the property pursuant to sub-section (1), not sell, mortgage, or otherwise transfer title to, the immovable property or any part thereof without prior approval of the concerned Registrar.

(3) In asking for prior approval of the Registrar pursuant to sub-section (2), the reason for the sale, mortgage of, or transfer of title

to, such property, and the reasons and grounds that it may result in more benefit to the beneficiary have to be set out.

342. Duty to administer and manage trust property properly: (1) The trustee shall have to administer and manage the trust property properly, by exercising his/her capacity and diligence honestly.

(2) In the administration and management of the trust property pursuant to sub-section (1), the trustee shall have to make arrangement to avoid any loss and damage to, and maintain sustainability of, such a property.

(3) Except as otherwise provided for in the instrument, in the administration and management of the trust property pursuant to sub-sections (1) and (2), income earned from the trust property which is not required immediately to accomplish the objects of the trust may be invested in the accomplishment of the objects of trust.

(4) Except as otherwise mentioned in the instrument, in making investment pursuant to sub-section (3), it may be invested as follows in the following proportion of the total sum:

- (a) At least twenty five percent in the purchase of bonds or treasury bills issued by the Government of Nepal or the Nepal Rastra Bank or bonds guaranteed by the Government of Nepal,
- (b) Deposit of a maximum of twenty five percent in a fixed account with a commercial bank,
- (c) Deposit of a maximum of ten percent in a fixed account with a development bank,

- (d) A maximum of five percent in the subscription of ordinary shares of a commercial bank,
- (e) Deposit of a maximum of ten percent in a fixed account with a finance company,
- (f) A maximum of five percent in the subscription of such ordinary shares of an enlisted public limited company as are dealt openly.

(5) The trustee shall have to carry out updated monitoring as to the investment made pursuant to sub-section (4); and if the returns of investment made in one sector be lesser, such investment has to be withdrawn immediately and made in another sector yielding more returns, subject to the terms and restrictions of the investment.

(6) In making monitoring or investment pursuant to sub-section (5), opinion of an expert in the concerned sector may, as required, be obtained.

(7) The opinion obtained pursuant to sub-section (6) may be taken as the basis for monitoring or investment.

(8) The trustee shall have to maintain his/her personal property and the trust property separately and administer and manage the trust property accordingly; and in the event of a need to operate an account, separate accounts have to be maintained.

343. Trustee to be appointed: (1) A trustee shall be appointed for the administration, management, protection, care of the trust property and use of benefits of such property to the benefit of the beneficiary or making proper arrangements for the same.

(2) Except as otherwise provided for in the instrument, the founder of trust shall appoint the trustee.

(3) In the event of the failure to appoint or inability to appoint a trustee pursuant to sub-section (1) or (2), the founder of trust himself or herself shall be deemed to be the trustee.

344. Disqualification of trustee: The following person shall not be qualified to be a trustee:

- (a) A person who is not competent to make a contract,
- (b) A person who has embezzled property in his/her custody,
- (c) A person who is convicted by a court of the offense of corruption,
- (d) A person who has been sentenced on a criminal offense involving moral turpitude,
- (e) A person who is the sole beneficiary of the trust property.

345. Number of beneficiary: Except as otherwise provided for in the instrument, the number of beneficiaries shall be one in minimum and seven in maximum.

346. Body corporate being eligible to be a trustee: (1) A body corporate which is established in accordance with law may be appointed as a trustee.

(2) In the event of appointment of a body corporate as referred to in sub-section (1), the person working as the chief of such body or a person to whom the power is delegated by a decision of the board of directors of such body shall have to act on behalf of such body.

Explanation: For the purposes of this Section, the term "the person working as the chief" means the chairperson, director, managing director, general manager, executive director of such a body or a person empowered by such a body to work as its chief.

347. Provisions concerning vacancy in office of a trustee: (1) The office of the trustee shall be vacant in any of the following circumstances:

- (a) If the person is not qualified to be a trustee,
- (b) If the person resigns from the office of a trustee,
- (c) If the person dies or is dissolved or liquidated or insolvent in accordance with law,
- (d) If the trust is established for a certain period, the period is completed,
- (e) If the trustee is appointed for certain tenure, the tenure is completed,
- (f) If the trustee is removed by the trust founder or court on the ground that he/she has embezzled the trust property or has not taken a reasonable care of such property.

(2) If the office of trustee is vacant pursuant to sub-section (1), the office has to be filled in accordance with the procedures set forth in the instrument.

(3) In the event of failure to fill the office of trustee pursuant to sub-section (2), the beneficiary, if available, and the concerned Local Body, if there is no beneficiary or beneficiary cannot be identified, shall make an application, accompanied by a list of

possible candidates, to the concerned District Court for the appointment of a trustee.

(4) If an application is made for the appointment of trustee pursuant to sub-section (3), the concerned District Court shall, in tune with the spirit of the instrument, appoint to the office of trustee an appropriate person from the list of candidates provided by the applicant.

(5) If any trustee is relieved of his/her office by virtue of the circumstance referred to in sub-section (1), he/she shall, as promptly as possible, hand over the trust property in his/her custody, control or use to other trustee; and he/she shall not get immunity from any kind of liability or legal action for any act or action done or taken by him/her while in office of trustee by the reason only that he/she has been so relieved of office.

(6) If the office of trustee of a public trust which has only one trustee falls vacant or is fulfilled pursuant to this Section, the information thereof has to be given to the Registrar.

348. To specify roll of succession of trustees: (1) Except as otherwise mentioned as to the roll of succession of trustees in the instrument, after the death of a trustee, his/her eldest son, daughter-in-law or daughter shall succeed the office of trustee according to the roll of succession; and if there is no one out of them, the person who is entitled to inherit him/her shall inherit the office of trustee.

(2) If a person who becomes the trustee pursuant to sub-section (1) is not qualified to be the trustee, his/her guardian or person

taking care of him/her shall perform the obligation of the trustee on his/her behalf until such person is disqualified.

(3) Except as otherwise provided for in the instrument, if there is a provision that one's descendants are entitled to be the trustee, the descendants of such person shall succeed the office of trustee according to the limit of their respective rights; and in such a case, the provisions contained in Section 345 shall not be applicable.

349. Requirement to perform obligation of trustee in special circumstance: If there exists a situation that the office of a trustee falls vacant in entirety and the office cannot be filled immediately pursuant to sub-section (2) of Section 347, the Local Body shall have to function as the trustee until the office is so filled.

350. Requirement to operate trust by unanimity: (1) Except as otherwise provided for in the instrument, the trust containing two or more trustees has to be operated by unanimous decision of all the trustees as far as possible.

(2) In the event of failure to reach unanimity pursuant to sub-section (1), the trust may be operated by a majority decision of the then existing trustees, and if that is not possible, by the decision of the eldest trustee.

351. To carry out object of trust: The trustee shall have to carry out the object of a trust as set forth in the instrument of the trust, and in so carrying out the object, the trustee shall have to discharge functions honestly and according to his/her capacity and diligence.

352. To maintain records of trust property: (1) The trustee shall have to prepare an inventory of the trust property and update the records

thereof, and, in the case of a public trust, a copy of such records has to be submitted to the Registrar each year.

(2) The inventory as referred to in sub-section (1) has to reflect the movable and immovable property, loans, assets, or if such property has been invested in any business, principal, interest or other returns of such investment.

353. Protection of trust property: (1) The trustee shall have to maintain and protect the trust property, and may make any kind of such legal action or complete any kind of such formality with any public authority as may be required for this purpose.

(2) In maintaining or protecting the trust property, the trustee shall take proper and reasonable care of, and do act conducive to the enhancement of, the trustee property as if the property were his/her own.

354. Prohibition on possession and use of trust property in manner to prejudice benefit of beneficiary: No trustee shall so possess or use the trust property for himself or herself or other person as may be prejudicial to the benefit of the beneficiary.

355. Duty to prevent loss to trust property: (1) It shall be the duty of the trustee to prevent destruction, termination of, or otherwise loss to, the trust property in a manner prejudicial to the benefit of the beneficiary or contrary to the object of the trust.

(2) If the trust property is not managed properly or is made subject to cheating or fraud or is embezzled or used for other purposes, any trustee or beneficiary may, subject to the provisions set forth in

the instrument, file a petition in the court for the prevention of such embezzlement.

Provided that any person may file a petition in the cases of a public trust.

(3) If, upon a petition filed pursuant to sub-section (2), it is held that the trust property has not been managed properly or has been made subject to cheating or fraud or embezzled or used for other purposes, the court shall recover the amount in question from the embezzler and may also order compensation to be paid by a trustee if the trustee has committed such an embezzlement.

356. To maintain accounts of a trust: (1) The trustee shall have to maintain accounts in a manner to reflect clearly and actually the accounts of the trust property, and provide statements thereof if the Registrar, trust founder or beneficiary, if any identified, intends to inspect the same.

(2) In the case of a public trust, the trustee shall have its accounts audited by a recognized auditor each year and submit a copy of the audit report to the Registrar.

357. Breach of trust: (1) If a trustee fails to fulfill the duties required to be fulfilled pursuant to this Chapter, the trustee shall be deemed to have committed a breach of trust.

(2) In the event of the breach of trust pursuant to sub-section (1), the trustee so breaching trust shall be responsible for the loss and damage caused to the beneficiary from such breach and bear liability for the same.

(3) In bearing the liability pursuant to sub-section (2), the trustee breaching trust shall bear such profits as may be equal to the income or profits which the trust or beneficiary would have made or earned if the trust had not been breached.

(4) If a trust has two or more trustees, all trustees who commit a breach of trust shall collectively bear the liability for the loss and damage caused from such breach of trust.

(5) If, in relation to one portion of any trust, the trust is breached, and, in relation to another portion of the trust, benefit is derived, the trustee shall not use the benefit in the fulfillment of his/her liability.

(6) Notwithstanding anything contained elsewhere in this Section, the trustee shall not bear the liability for the loss and damage caused from the breach of trust committed by the trustee, in the following circumstance:

- (a) If the loss and damage is caused by operation of law,
- (b) If the loss and damage is a result of the breach of trust by any act done by the previous trustee or the consequence thereof.

358. Deed of trust property to remain with trustee: (1) Except as otherwise provided for in the instrument of a trust, the deeds, documents of the ownership and possession of the trust property and other proofs and evidences pertaining thereto shall all be in the custody of the trustee, and in the case of a public trust, copies of such deeds and documents shall be submitted to the Registrar.

Provided that in the case of the deeds, documents or evidences required to be approved by the Registrar, it is not required to submit the copies of such deeds, documents or evidences.

(2) The trustee and the Registrar shall safely retain the deeds, documents and evidences as referred to in sub-section (1).

359. Entitlement to reimbursement from trust property:

Notwithstanding anything contained elsewhere in this Chapter, if the trustee has used his/her personal property or other's property in the course of the protection of the trust property, accomplishment of the object of trust or protection of the benefit of the beneficiary, the trustee shall be entitled to have reimbursement of the amount for such property from the trust property.

360. Other powers, duties and liabilities deemed to be vested with trustee:

Except as otherwise provided for in the instrument, in addition to the powers, duties and liabilities clearly set forth in this Chapter, such other reasonable powers and duties as may be required for the implementation and accomplishment of the object of trust, care and protection of the trust property and protection of the rights and benefits of the beneficiary shall be deemed to be vested with the trustee.

361. Prohibited acts by trustee: (1) Except as otherwise provided for in the instrument, no trustee shall do, or cause to be done, any of the following acts:

(a) To use the trust property in any manner other than in the accomplishment of the object of trust,

- (b) To use, or caused to be used, the trust property in any act yielding profit to the trustee himself or herself or any one else, except in the accomplishment of the object of trust,
- (c) To delegate or hand over the responsibility or obligation of trustee to another trustee or other person,

Provided that nothing shall bar the appointing of his/her agent or attorney in the course of ordinary transaction or assigning of any responsibility or obligation if such responsibility or obligation is to be assigned in view of the nature of such transaction or assigning of any responsibility to another person with the consent of the beneficiary, if any, identified.

- (d) To carry out any act relating to the trust solely contrary to Section 350 if there are two or more trustees,
- (e) To obtain any remuneration, allowance or facility in consideration for being the trustee,

Provided that nothing shall bar the receiving of reasonable remuneration, allowance or facility for any work done whole-time or part-time after establishing the office or with the prior approval of the Registrar, without prejudicing the object of the trust or benefit of the beneficiary,

- (f) To purchase or otherwise pledge, mortgage, lease or rent the property of the trust for which he/she is trustee before at least three years of his/her assumption of, or retirement from, the office of trustee.

(2) The trustee shall not make any economic transaction between his/her private property and the trust property. He/she has to make compensation for the loss, if any, to the trust property from such act.

(3) The trustee shall not merge his/her property with the trust property.

362. To give direction to transfer trust property: Except as otherwise provided for in the instrument, in the case of only one beneficiary, after he/she becomes competent to enter into contract, and in the case of two or more beneficiaries, after each of them becomes competent to enter into contract and reach consensus, such beneficiary or beneficiaries may direct the trustee to hand over the trust property to him/her or them; and if any direction is so given, it shall be the duty of the trustee to abide by such direction.

Provided that this provision shall not apply to the public trust.

363. Power to relinquish benefit of trust property: (1) In the case of a private trust, the beneficiary who is competent to enter into contract may, by a notice in writing to the trustee and the Registrar, relinquish any or all of his/her entitlement, benefit, facility or interest from the trust property.

(2) If each and every beneficiary wholly relinquishes the entitlement, benefit, facility or interest from the trust property pursuant to sub-section (1), such trust shall be deemed to have been dissolved.

364. Duty to maintain ownership of trust property: (1) The trust property shall be entered as such in the records of trust and held in the

name of the person mentioned in the instrument or in the name of the beneficiary if any such person is not mentioned in the instrument.

(2) If, in the case of a public trust, the instrument provides for the establishment of a separate body corporate for the administration and management of the trust property, such property shall be held in the name of the body corporate so established.

365. Alteration in object of trust: (1) Notwithstanding anything contained elsewhere in this Chapter, if the trust founder considers appropriate to make any amendment or alteration in the object set forth in the instrument at the time of the creation of trust, he/she may make an application, accompanied by the reason for such amendment or alteration, to the Registrar.

(2) If, on an inquiry into an application made pursuant to sub-section (1), the reason for the amendment or alteration in the object set forth in the instrument seems to be reasonable, the Registrar may issue an order to or alter such object, and, if any order is so made, the object set forth in the instrument shall be deemed to have been amended or altered accordingly.

366. Trust property not to be counted: Any trust property administered and managed by the trustee shall not be counted as the property of the trustee for the purpose of assessment of tax or for any other purpose.

Provided that in the case of a person who derives any benefit, facility or interest from such property, such benefit, facility or interest shall be counted.

367. Consequence of dissolution of trust: (1) If a trust once established is dissolved or become void for any reason, such dissolution or voidance shall not affect any act already done.

(2) In the event of dissolution or voidance of a trust pursuant to sub-section (1), in the case of a public trust, except as otherwise provided for in the instrument, the trustee may, by order of the Registrar, hand over the trust property to any other trust with the identical object or to any public organization with similar objects if such other trust is not available; and in the case of a private trust, the trustee shall hand over the trust property to the beneficiary, if he/she is identified or to the nearest heir to the beneficiary if the beneficiary is not available or to the trust founder if such heir is not available or to the heir to the trust founder if even the trust founder is not available.

(3) If the organization or person as referred to in sub-section (2) is not available, the property of the dissolved or voided trust shall devolve on the Government of Nepal.

368. Power to make appeal: A party who is not satisfied with any order or decision made by the Registrar pursuant to this Chapter may make an appeal to the concerned Appellate Court within a period of thirty five days from the date of knowledge of such an order or a decision.

369. Not to affect other trust: Nothing contained in this Chapter shall affect any trust which has been established and in operation at the time of the commencement of this Code and enjoyment of any residue upon carrying out the activity set forth in the memorandum of donation of the concerned trust or as per the usages and customs.

Provided that such a trust has to be administered and managed upon having it registered within three years of the commencement of this Code.

370. Limitation: (1) There shall be no limitation in relation to the following matters where a person who is aggrieved from any activity carried out pursuant to this Chapter is to make a lawsuit:

- (a) Embezzlement of the trust property,
- (b) Fraud or forgery in any deed relating to the trust property,
- (c) Embezzlement or misappropriation of the trust property,
- (d) Derivation of benefit by the trustee in contravention of the terms of the instrument of the trust,
- (e) Restitution of the trust property or its value or income from the trustee or other person.

(2) A lawsuit may be file within a period of six months from the date of cause of action in relation to any matters other than those set forth in sub-section (1).

Chapter-7
Provisions Concerning Usufruct

371. Usufruct deemed to be constituted: (1) When a person gives free a property in which he/she has right and ownership and fruits, benefit, income or facility of the property to another person entitling that other person to enjoy such property and fruits, benefit, income or facility thereof, usufruct shall be deemed to be constituted.

(2) The provisions of usufruct shall be as set forth in a will or a contract entered into between the concerned persons.

Provided that in giving usufruct with effect from testament, it may be given by way of a will.

372. Usufruct to be effective: (1) The provision of usufruct constituted by a contract shall become effective on the date of the commencement of the contract unless otherwise set forth in the contract.

(2) The provision of usufruct constituted by a will shall become effective in accordance with the term of effectiveness of the will, and failing such terms, on the date of the effectiveness or the date of conclusion of the will.

(3) The provision of usufruct so given as to be effective on testament shall become effective after the death of the person executing such will.

373. Deed to be executed: (1) In giving an immovable property in usufruct, its owner has to execute a deed to that effect in accordance with law.

(2) In giving a property in common in usufruct, consent of the coparceners has to be obtained.

374. Entitlement of usufructuary to enjoy property as if it belongs to him/her: (1) If a person gives another person his/her property in usufruct, the usufructuary of such property shall be entitled to enjoy the property, fruits, benefit, income or facility to be yielded or earned from the property and fruits, benefit, income or facility accrued from the property as if it were his/her own property.

(2) If there are two or more usufructuaries obtaining a property pursuant to sub-section (1), each usufructuary shall be entitled to enjoy that property jointly or severally.

(3) If a property obtained under the provision of usufruct is partitioned, each coparcener who is entitled to enjoy the property in usufruct shall be entitled to enjoy the property pursuant to sub-section (1).

(4) A usufructuary may make a lawsuit in the court, as required, for the protection or enjoyment of the property obtained under the provision of usufruct.

375. Property which usufructuary is not entitled to enjoy: Notwithstanding anything contained in Section 374, a usufructuary shall not be entitled to enjoy the following properties relating to the property obtained under the provision of usufruct:

(a) Mines and minerals related with the property,

Provided that where the mines are the subject of usufruct, the mines may be enjoyed.

(b) Grown trees.

Provided that fruits, flowers or other products obtained from trees may be enjoyed.

376. Prohibition on alteration in structure of property without consent: The usufructuary shall not be entitled to significantly alter the substance or form of the property obtained under the provision of usufruct or to destroy such property, except with the prior approval of the owner.

Provided that if the enjoyment of the property given under the provision of usufruct is not possible without an alteration in the form of or destruction of the property, except as otherwise provided for in the contract or will, the property may be enjoyed by altering its form or destroying it, on payment of the price that may be set at the time of returning such property back.

377. Power to rent, lease or mortgage property under provision of usufruct: (1) The usufructuary may, if he/she so desires, rent, lease or mortgage the property obtained under the provision of usufruct, by executing a deed to that effect.

Provided that:

- (1) It is not required to execute a deed for renting a property for a monthly rent not exceeding ten thousand rupees.
- (2) Where a property is so rented, leased or mortgaged, the usufructuary has to give information thereof to the owner.
- (3) The property obtained under the provision of usufruct may not be rented, leased or mortgaged for a period that exceeds the validity period of usufruct.

(2) In renting, leasing or mortgaging the property obtained under the provision of usufruct, the relevant deed shall also indicate that the property is under the provision of usufruct.

(3) Where a rent, lease or mortgage of the property obtained under the provision of usufruct is executed in contravention of the provisions set forth in sub-sections (1) and (2), such transaction shall *ipso facto* be void.

(4) A person who obtains a property on rent, lease or mortgage pursuant to sub-section (1) shall be entitled to enjoy the property as if the person were the usufructuary.

378. Duty to maintain and care property under the provision of

usufruct: (1) The usufructuary has to maintain and take care of the property which he/she has obtained under the provision of usufruct properly and reasonably as if it were his/her own property.

(2) If a person obtains a property under the provision of usufruct by way of rent, lease or mortgage, the person has to take care of such property properly and reasonably.

(3) The usufructuary has to maintain the property obtained under the provision of usufruct at his/her cost.

Provided that in the event of a need to maintain such property by spending a substantial amount in consequence of a natural calamity, the usufructuary has to give information thereof to the owner, and the owner has to bear such maintenance expenses.

379. Prohibition on damaging property obtained under the provision

of usufruct: (1) The usufructuary shall not damage, or cause to be damaged, the property obtained under the provision of usufruct.

(2) If such property is damaged in any manner in the course of its enjoyment by the usufructuary or a person who obtains it on rent,

lease or mortgage pursuant to Section 377, the usufructuary shall be liable for it.

Provided that the usufructuary shall not be liable for any damage caused to such property by a natural calamity.

(3) The usufructuary may make or adopt insurance or other necessary preventive measures for the protection of the property obtained under the provision of usufruct against possible damage in the course of its enjoyment pursuant to sub-section (2).

380. Usufructuary to bear annual tax or fees: The usufructuary has to pay such tax or fees as may be leviable by law in relation to the property obtained under the provision of usufruct.

Provided that the owner shall bear the property tax payable for the property given under the provision of usufruct.

381. Information of claim or interference by any one to be given to owner: (1) If any one makes encroachment, claim or interference on or with the property under the provision of usufruct, the usufructuary has to give information thereof to the owner within fifteen days of such encroachment, claim or interference.

(2) The usufructuary who does not give information pursuant to sub-section (1) shall be liable to any consequence thereof.

382. Validity period of provision of usufruct: (1) The provision of usufruct shall remain valid for the period set forth in the contract or will.

(2) Notwithstanding anything contained in sub-section (1), the provision of usufruct shall not remain valid beyond the following period except as otherwise provided for in the contract or will:

- (a) Where the usufructuary is a natural person, the death of the usufructuary or the expiration of a period of forty nine years since the execution of the provision of usufruct, whichever occurs earlier,
- (b) Where the usufructuary is a legal person, the dissolution of the usufructuary or the expiration of a period of twenty nine years since the execution of the provision of usufruct, whichever occurs earlier.

Explanation: For the purposes of this Section, the term "dissolution" includes the termination, liquidation, revocation of registration or insolvency of a legal person.

(3) In the case of more than one usufructuary, the property in usufruct shall devolve on the owner in proportion to the death or dissolution of any usufructuary, except as otherwise provided for in the contract or will.

383. Power to cancel provision of usufruct: (1) Notwithstanding anything contained in Section 382, if the usufructuary damages or misuses the property obtained under the provision of usufruct or does not enjoy it for the purpose for which it has been given in usufruct or otherwise does any act that prejudices the right of the owner in such property, the concerned owner may cancel the provision of usufruct at any time.

(2) In the event of cancellation of the provision of usufruct pursuant to sub-section (1), the usufructuary has to return the property obtained under the provision of usufruct.

384. Power to return property by usufructuary: Notwithstanding anything contained in Section 382 or 383, if the usufructuary does not wish to enjoy the property obtained under the provision of usufruct, the usufructuary may return such property to the owner at any time, by giving a notice of at least forty five days.

385. Usufruct deemed to be extinguished: (1) The provision of usufruct shall be deemed to be extinguished in any of the following circumstances:

- (a) If the validity period of usufruct expires pursuant to Section 382,

Explanation: For the purposes of this Chapter, the term “usufruct expires” means:

If two or more natural persons are usufructuary, the usufruct shall be deemed to lapse on the date on which the last survivor usufructuary dies.

If two or more legal persons are usufructuary, the usufruct shall be deemed to lapse on the date on which the last usufructuary is dissolved.

- (b) If the property is returned on the cancellation of usufruct pursuant to Section 383,
- (c) If the usufructuary returns the property in usufruct pursuant to Section 384,
- (d) If, except for a reasonable ground, the usufructuary fails to enjoy the property in usufruct until six months after the date on which the provision of usufruct becomes effective,

- (e) If the specific purpose for the accomplishment of which the provision of usufruct has been made is accomplished,
- (f) If the property obtained under the provision of usufruct is not capable of being transferred to the usufructuary in accordance with law,
- (g) If the property obtained under the provision of usufruct is lost totally.

(2) In the event of the extinguishment of the provision of usufruct pursuant to sub-section (1), the property given to any person in usufruct shall *ipso facto* devolve on the owner except in the circumstance set forth in clause (f) or (g).

(3) Notwithstanding anything contained in sub-section (1) or (2), where a property is given in usufruct on the condition that it shall remain valid until a person attains a certain age, the provision of usufruct shall remain valid until the date on which the person attains that age even if the person dies before the date of attainment of such age.

386. Limitation: A person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of three months from the date of knowledge of the commission of such act.

Chapter-8
Provisions Concerning Servitudes

387. Servitude to be deemed: (1) If there is a provision entitling the owner of an immovable property to enjoy or use any immovable property or any part thereof in which another person has title, ownership or possession, a servitude shall be deemed to have been created.

(2) A servitude shall be in existence in accordance with the contract, nature, customs and usages of the place where the immovable property is located.

388. Servitude to be allowed: (1) If there is a provision of servitude pursuant to Section 387, the owner of the concerned immovable property shall allow another person to enjoy or use the immovable property in accordance with the provision of servitude.

(2) Notwithstanding anything contained in sub-section (1), if there is a provision of servitude for public purposes, such a servitude may also be used for personal purpose as well.

(3) Notwithstanding anything contained elsewhere in this Section, a servitude created by operation of law may be used in accordance with law.

389. Servitude not to be adversely affected by transfer of immovable property: (1) A servitude in a servient immovable property shall continue to exist even if the owner of such immovable property transfers all or any of such property in which he/she has right and ownership to another person in any manner.

(2) Even if the servient immovable property is partitioned, each coparcener shall be deemed to have provided such servitude.

(3) Notwithstanding anything contained in sub-section (1) or (2), if, while transferring or partitioning a servient immovable property, there is a provision of servitude elsewhere in such property and servitude is not thus required to be provided in the immovable property in which a person acquires right by way of such transfer or partition, the servitude shall be deemed to extinguish to that extent.

390. To allow enjoyment or use: (1) If any land in which a person has title, ownership or possession has been in use since ancient time as a public or community road, cattle exit, pasture land, ditch, canal, quay, pond, public road, track road or main road, inn, tomb, graveyard, shrine, temple, monastery, dome, mosque or church, community school, hospital or similar other public site, the land has to be allowed to be used accordingly for the particular purpose.

(2) The owner or possessor of the servient land shall not cultivate or use, make any structure in or otherwise own or possess it in such a manner as to adversely affect the provision set forth in sub-section (1).

391. Use of neighbor's house or land at time of natural calamity: If, at the time of natural calamity such as fire, earthquake, volcano and flood, it is not possible to rescue victims of such calamity without entering or using the house or land of a person, the victims may be rescued, or cause to be rescued, by entering the house or land with the consent of the owner of the house or land if the owner is available and

even without consent of the owner of the house or land if the owner is not available for the time being or refuses to give consent.

Provided that compensation for any loss or damage caused from such entry shall be provided to the owner of house or land concerned.

Explanation: For the purposes of this Section, "the owner of house or land" means the person who is using, possessing or controlling the concerned house or land for the time being.

392. Acquisition of servitude of passage: (1) If the passage originally available to have access to and from a house or land is destroyed due to a natural calamity, a person who has been using the passage to and from such house or land from the past shall have the servitude of a reasonable passage to the public road.

(2) A person who uses the passage to be maintained pursuant to sub-section (1) shall provide a reasonable compensation to the owner of house or land concerned.

(3) A person shall not be entitled to demand the servitude of passage from the owners of all houses or land pursuant to sub-section (1); and he/she may demand such servitude from the owner of the house or land through which the distance to the public road is the shortest.

393. Prohibition on transfer of house or land without provision of passage or exit: (1) In setting aside and transferring any part of the house or land with the provision of passage or exit, such house or land shall not transferred without making provision of passage or exit to both purchaser and seller.

(2) Notwithstanding anything contained in sub-section (1), if there is another passage or exit to and from such house or land, it is not required to make provision of passage or exit.

394. Power to extent basic services: If it is not possible to provide basic services such as sewerage, water supply, electricity, gas and telephone service to the house of a person through his/her own land or public, government or community land, the person shall be entitled to lay pipe or line in such a manner as not to cause any loss or damage to the owner of such land.

Provided that in so providing the basic services through the land of another person, the recipient of the services shall provide a reasonable compensation to the owner of the land concerned.

395. Power to use river or stream or river or stream bank: Any person may carry out movement, navigation, boating or fishing in the river or stream which is situated in, or originated from, the personal property of any person or within the zone of a maximum of three meters in either side of such river or stream.

Provided that such activity is not allowed in small rivulets that do not have perennial flow of water.

396. Power to use exit road: (1) If a river or stream is diverted or a reservoir is built or a dam is made for any reason in the river or stream, the owner of land concerned shall provide a reasonable exit for the general public and livestock to have access to and from such diversion, reservoir or dam.

Provided that an appropriate compensation has to be provided to the owner of land concerned for the land used in the provision of such access.

(2) If, in maintaining the provision of exit passage as referred to in sub-section (1), it is possible to maintain such exit passage through the land of two or more persons, the exit passage shall, unless provided otherwise, be maintained through the nearest land that is technically feasible for the access to the diversion, reservoir or dam.

397. Prohibition on prevention of natural flow of water: (1) The owner of each house or land shall himself or herself manage the rain water flowing from his/her house or land.

(2) If there is no provision as referred to in sub-section (1), the rain water has to be allowed to make its natural course.

Provided that no water has to be let to so flow as to cause adverse effect on the downstream land by making a ditch, controlling floods or otherwise diverting the flow or through human intervention.

398. Right to use stream, river or pond water: Any person may use the stream or river which is originated from or flows through or the pond water which is situated in the land of another person.

399. Requirement to allow passage or exit for farming: (1) If a person does not have a passage or exit for people or livestock to have access to and from his/her farm land and needs such passage or exit, the owner of land concerned shall provide the facility of passage or exit to such person.

Provided that no person shall be compelled to provide such passage or exit through the house and compound land.

(2) A person who uses the passage or exit pursuant to sub-section (1) shall use in such a way that no loss or damage is caused to the crops or other property of the person providing such passage or exit.

(3) If any loss or damage is caused to any crops or property by the use of the passage or exit pursuant to sub-section (2), the person using the passage or exit shall provide compensation to the owner of land concerned for the crops or other property so lost or damaged.

400. Limitation: A person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of three months from the date of knowledge of the commission of such act.

Chapter-9

Provisions Concerning House Rent

401. House deemed to be rented: If a person who has title, possession or ownership in a house lends the house to another person to use it for a certain period of time, the rent shall be deemed to be created.

Explanation: For the purposes of this Chapter, the term "house" means any house, storey, unit or room of the house or land or cartilage occupied by the land.

402. Prohibition on renting unsafe house: No person shall rent a house which is not safe for human habitation from health and security perspectives.

Provided that the standards of house for non-residential purposes such as a warehouse, livestock farming, storage and cold storage shall be as specified in the house rent agreement.

403. Period of house rent: (1) The period of house rent shall be as set forth in the agreement, with a maximum period of rent being five years.

(2) Notwithstanding anything contained in sub-section (1), after the expiration of the period of house rent, the period may be extended at times with the consent of the house owner and the tenant.

404. Agreement to be made while renting: (1) While renting a house, its owner shall enter into an agreement in writing with the tenant, setting out the following matters:

- (a) Full names and addresses of the owner and the tenant, their citizenship number, and passport or identification certificate, in the case of a foreigner,
- (b) Place and plot number of land where the house is located,
- (c) Purpose for rent,
- (d) Date of commencement of rent,
- (e) Validity period of rent,
- (f) Monthly rent,
- (g) Time and mode of payment of rent amount,
- (h) Liability to pay tariffs of electricity, water supply, telephone etc. used in the house,
- (i) If the house rent tax is chargeable, matter on payment of the tax,
- (j) If the rented house is to be insured, matter relating to the insurance,
- (k) Matter on leaving the rented house and eviction of the tenant from it,
- (l) Matter as to whether the rented house can be sublet to another, and
- (m) Other necessary matters.

(2) Notwithstanding anything contained in sub-section (1), it is not necessary to enter into an agreement in writing with the tenant if the monthly house rent does not exceed ten thousand rupees.

(3) A photograph of tenant has also to be affixed to the agreement referred to in sub-section (1).

(4) The agreement referred to in sub-section (1) has also to be signed by at least two witnesses of each side, namely the house

owner and the tenant, and a copy thereof has to be retained by each of the owner and the tenant.

(5) After the completion of the procedures as referred to in sub-section (4), an agreement shall be deemed to have been entered into between the house owner and the tenant.

405. Details of house to be provided: In renting a house, the owner shall, at the time of entering into agreement, disclose defect or fault, if any, in the structure of the house to the tenant.

406. Preparation of description of goods or chattels: (1) The house owner shall, prior to renting his/her house, prepare a description of goods or chattels in the house to be rented.

(2) If the tenant is to use the goods or chattels set forth in the description prepared pursuant to sub-section (1), he/she has to receive such goods or chattels and give a receipt thereof to the house owner.

407. Obligation of house owner: The obligations of the house owner shall be as follows:

- (a) To allow the tenant to use the house in accordance with the agreement,
- (b) To arrange for such water and electricity supply, sewerage and sanitation in the rented house as may be required, except as otherwise provided for in the agreement,
- (c) To prevent the tenant from insecurity, harassment or unrest from other persons dwelling in the house,
- (d) To abide by the other matters set forth in the agreement.

408. Obligation of tenant: The obligations of the tenant shall be as follows:

- (a) To pay the rent to the house owner within the specified period,
- (b) To maintain sanitation in, and take care of, protect and safeguard, the house rented as if it were his/her own,
- (c) Not to do any act such a causing unrest, harassment or insecurity to the other dwellers in the house or neighbors,
- (d) To abide by the other matters set forth in the agreement.

409. Mode and procedures of payment of rent: (1) The tenant has to pay the rent to the house owner in accordance with the mode and procedures set forth in the agreement.

(2) If the agreement does not provide for the mode and procedures of the payment of rent pursuant to sub-section (1), the tenant shall pay the rent to the house owner within seven days of the expiry of each month.

(3) The rent may be paid by way of cheque or in cash pursuant to sub-section (2).

(4) If the owner has received the rent in cash pursuant to this Section, he/she has to give a receipt thereof to the tenant.

410. Obligation to pay tax and other charge: (1) Except as otherwise set forth in the agreement, it shall be the obligation of the land owner to pay the tax and other charge leviable by law in relation to the house rented.

(2) If it is the obligation of the land owner to pay tax or charge pursuant to sub-section (1) and the land owner fails to pay the tax or charge in time, the tenant may pay such tax or charge.

(3) If the tenant pays the tax or charge pursuant to sub-section (2), he/she shall be entitled to deduct such amount from the rent payable to the land owner.

411. Insurance of house to be made: (1) A tenant who rents a house for industrial or business purpose has to procure the insurance of the house for its security.

Explanation: For the purposes of this Section, the term "industrial or business purpose" means the operation of an industry or carrying on a business or trade by a departmental store or one or more than one shop.

(2) If the person obliged to procure insurance pursuant to sub-section (1) fails to procure insurance of the house and the house is damaged by such cause as natural calamity, unrest, riot or fire, the tenant shall be liable for such damage.

412. Repair and maintenance of house rented: (1) Except as otherwise set forth in the agreement, the tenant shall be obliged to repair and maintain the house rented, as required.

(2) If the agreement provides that the land owner is obliged to repair and maintain the house rented and it is necessary to carry out any repair and maintenance of the house, the tenant shall give a notice in writing to the land owner in time.

(3) If the land owner fails to repair and maintain the house rented despite the notice given pursuant to sub-section (2), the tenant himself or herself may repair and maintain such house.

(4) The tenant shall be entitled to deduct the amount of expenses incurred in the repair and maintenance carried out pursuant to sub-section (3) from the rent payable to the land owner.

(5) Notwithstanding anything contained in sub-section (4), the land owner shall not be bound to pay such expenses incurred in the repair and maintenance of the house as may be unusual or unnecessary.

413. Subletting house rented to other person: (1) If the agreement entered into with the land owner provides that the tenant may sublet the whole or any portion of the house rented by him/her to another person, the tenant may, subject to the agreement, sublet the whole or any portion of such house to another person.

(2) If the tenant sublets the whole or any portion of the house rented to another person pursuant to sub-section (1), the tenant shall give information in writing indicating the name and address of the sub-tenant to the house owner within fifteen days.

(3) A sub-tenant who rents the house pursuant to sub-section (1) has to pay the rent of the house or its portion to the tenant who has so sublet.

(4) The sub-tenant who rents the house pursuant to sub-section (1) shall, while dwelling in the rented house, abide by all such terms and provisions as required to be abided by the tenant pursuant to this Chapter.

(5) If the sub-tenant who rents the house pursuant to sub-section (1) fails to act in accordance with the terms while dwelling in the rented house or fails to maintain sanitation in the house or fails to

protect or safeguard it or carries out any act such as causing harassment, pain or unrest to the other dwellers of the house or neighbors, the tenant or the house owner may evict the sub-tenant from the house at any time.

414. Prohibition on alteration in structure without consent: (1) Except as otherwise provided for in the agreement, the tenant shall not be allowed to demolish, remove or disorder any structure of the house rented or add any part to the house or otherwise alter it without the house owner's consent in writing.

(2) If the tenant does any act in contravention of sub-section (1) and causes any loss to the house owner, then the house owner shall be entitled to compensation for the loss caused to him/her from the tenant.

415. Prohibition on the use of house contrary to agreement: The tenant shall not be allowed to use the house for any purpose other than that for which he/she has rented the house, without prior consent of the house owner.

416. Alteration in agreement: The house owner and the tenant may with mutual consent make necessary alteration in the house rent agreement.

Provided that if such agreement is registered pursuant to this Code, alteration has to be made upon making an application to the concerned body.

417. Power to inspect: (1) The house owner may, by an advance notice to the tenant, inspect the rented house from time to time.

(2) If the house owner intends to inspect the rented house pursuant to sub-section (1), it shall be the duty of the tenant to allow the house owner to inspect the house.

418. Leaving rented house: (1) A tenant may leave the rented house prior to the expiration of the period of rent in the following circumstance:

- (a) If the house owner fails to perform his/her duties pursuant to Section 407,
- (b) If the tenant does not require the house for the purpose for which he/she has rented the house, or
- (c) If the house owner commits any act in contravention of the agreement or this Chapter.

(2) If the tenant has to leave the house in the circumstance referred to in clause (b) of sub-section (1), except as otherwise provided for in the agreement, the tenant has to give a notice in writing to the house owner in advance of at least thirty five days.

(3) If the tenant leaves the house without giving a notice pursuant to sub-section (2), the house owner shall be entitled to deduct the rent for that period from the rent, if any, paid in advance by the tenant and to recover the same from the tenant, failing such advance payment.

419. Power to evict tenant: (1) The house owner may evict the tenant from the house in the following circumstance:

- (a) If the tenant fails to perform his/her duties pursuant to Section 408,
- (b) If the tenant commits within the rented house any offense related activity prohibited by law,

- (c) If the house owner needs the house for himself or herself,
- (d) If it is necessary to repair and maintain the house by removing inhabitants from the house,
- (e) If it is not appropriate for human habitation in the rented house from technical and health perspectives,
- (f) If the period of house rent expires,
- (g) If the tenant commits any act in contravention of the agreement or this Chapter, or
- (h) If the circumstance as referred to in sub-section (5) of Section 413.

(2) If it is necessary to evict the tenant from the house in the circumstance referred to in clause (c) of sub-section (1), the land owner has to give a notice in writing to the tenant in advance of at least thirty five days.

(3) If the house owner evicts the tenant from the house pursuant to sub-section (2), the house owner is not entitled to rent such house to another person before three months, without using the same on his/her own.

(4) If the house owner is to rent such house to another person pursuant to sub-section (3) and the previous tenant intends to rent such house, he/she shall get priority.

420. House rent agreement deemed to be terminated: A house rent agreement entered into pursuant to Section 404 shall be deemed to be terminated in the following circumstance:

- (a) If the tenant leaves the house,
- (b) If the house owner evicts the tenant from the house,

(c) If the house owner and the tenant cancel the agreement with mutual consent, or

(d) If the period of house rent expires.

421. Obligation to hand over goods or chattels in good condition: (1)

The tenant shall, while leaving the rented house, count the goods or chattels in his/her custody and clean and color the house, if required, and hand over the same in good condition to the house owner.

(2) If the tenant loses or damages any goods or chattels in his/her custody, the tenant has to hand over similar goods or chattels or pay a sum of money as per the prevailing price of such goods or chattels to the house owner.

(3) Notwithstanding anything contained in sub-section (2), the tenant shall not be bound to reimburse for such goods or chattels which are depreciable or destroyable in the course of daily use or to pay price of such goods or chattels.

422. Power to rent house to another person: (1) Notwithstanding anything contained elsewhere in this Chapter, if a tenant disappears without paying the rent for three months or more without notice and the tenant is not found despite a public notice or correspondence with his/her address or the tenant or his/her heir or agent does not show up despite that he/she has been found, the house owner may count the belongings of the tenant and hand over the custody of such belongings to himself or herself or another person, in witness of a representative of the Local Body, police employee and two local gentlemen if such employee is not available, and rent such house to another person.

(2) If the tenant who has disappeared as mentioned in sub-section (1) shows up or send his/her agent within six months, the house owner shall collect the remaining rent and return such belongings to the tenant.

(3) If the tenant does not show up or send any agent even within the time limit referred to in sub-section (2), the house owner may, by giving information to the Local Body and the nearest police employee, exclusively deal with such belongings.

423. Limitation: A person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of three months from the date of commission of such an act.

Chapter-10

Provisions Concerning Donation and Gift

424. Donation or gift deemed to be effected: (1) Provision gratuitously by a person of a property in which the person has title and ownership to another person or organization for any religious, social, public or community purpose or for the benefit of any person shall be deemed to be a donation.

Provided that no donation may be made to the heir.

(2) Provision gratuitously by a person of a property in which the person has title and ownership to another person as a reward or prize in consideration on account of merits to him/her by other person by way of fostering him/her or otherwise or for family love and affection shall be deemed to be a gift.

- 425. Prohibition on donating or gifting other's property:** No person shall donate or gift a property in which another person has title and ownership.
- 426. Prohibition on donation or gift in duplication:** No one shall donate or gift the same property to another person that one has already donated or gifted to someone else.
- (2) In the event of execution of donation or gift by one in duplication in contravention of sub-section (1), in the case of the donation or gift of an immovable property, the latter donation or gift shall not be legally valid, and in the case of the donation or gift of a movable property, the donation or gift to one who obtains the property earlier shall be valid.
- 427. Donation or gift within immediate or testamentary effect:** A person may donate or gift his/her property to another person, with the immediate or testamentary effect.
- 428. Execution of donation or gift jointly:** (1) A person may donate or gift his/her property jointly to more than one person or organization.
- (2) If a person donates or gifts his/her property jointly to more than one person or organization, the receivers of such donation or gift shall be deemed to have received the donation or gift in proportion to that received by them each.
- (3) In the absence of a deed on donation or gift specifying the portion of entitlement of receivers to the donated or gifted property, all receivers of donation or gift shall be deemed to have equal share in such donation or gift.

429. Person competent to make donation or gift: (1) A person who is competent to enter into a contract and has the power to transfer a property may donate or gift his/her property.

(2) The competency of a person to enter into a contract pursuant to sub-section (1) shall be determined as of the time of the making of donation or gift of a property.

430. Guardian not entitled to make donation or gift: No guardian shall be entitled to donate or gift the property of a person who is under his/her guardianship or custody to any one, on behalf of that person.

431. Acceptance of donation or gift on behalf of incompetent and quasi-competent person or unborn baby: The father, mother or guardian may, on behalf of an incompetent and quasi-competent person or unborn baby, accept a donation or gift of a property.

432. Execution of deed on donation or gift: In making a donation or gift of one's property to another, one has to execute a deed to that effect in accordance with law.

Provided that in donating or gifting cash or any movable property not exceeding one hundred thousand rupees, such donation or gift may be made orally instead of executing a deed.

433. Estoppel to be made on announcement to make donation: Where, in a public ceremony organized for any purpose, one makes a deed or public announcement to donate a certain amount or property for that purpose, one shall be estopped from subsequently refusing to make such donation.

434. Entitlement to compensation: If the receiver of donation or gift is aggrieved by being unable to enjoy such property in consequence of

any act done pursuant to Section 425, 426 or 433, the receiver shall be entitled to have a reasonable compensation from the person making donation or gift.

Provided that if a person accepts the donation or gift of such property despite the knowledge of the circumstance as referred to in Section 425 or 426, the person shall not be entitled to compensation.

435. Donation or gift to be void: Any donation or gift made shall *ipso facto* be void, in any of the following circumstances:

- (a) If the person or organization entitling to donation or gift does not accept the donated or gifted property oneself or through own agent,
- (b) If a property is donated or gifted to a person with entitlement after testament and the receiver of donation or gift dies before the person making such donation or gift,
- (c) If a property is donated or gifted to an unborn baby and the baby is not born alive.

436. Power to have donation or gift voided: (1) Notwithstanding anything contained elsewhere in this Chapter, one who donates or gifts may cause the donation or gift to be void in any of the following circumstances:

- (a) If he/she donates or gifts a property in which another person has title and ownership,
- (b) If any property is donated or gifted without obtaining the consent of another person where such consent is needed pursuant to law,

(c) If one who donates or gifts of any property is an incompetent or quasi-competent person, or

(d) If the donation or gift of any property is made without fulfilling the legal requirements.

(2) In the case of a donation or gift made without the consent of another person pursuant to clause (b) of sub-section (1) where such consent is required, the property shall be void to the extent of such consent being not taken.

437. Right to revoke gift: (1) Notwithstanding anything contained elsewhere in this Chapter, one who gifts with testamentary effect may revoke the gift at any time in any of the following circumstances:

(a) If the receiver of gift commits or attempts to commit any criminal offense against the person who gifts or his/her family,

(b) If the receiver of a gift makes a false allegation or accusation against the person who gifts or his/her family,

(c) If a deed of gift provides that the receiver of gift shall perform any function, duty or liability and the receiver of gift fails to perform such a function, duty or liability.

438. Application to be made for revocation of gift with testament: (1) If, for any circumstance set forth in Section 437, a person intends to have revocation of a gift with testament, the person shall have to make an application, accompanied by the fee of one hundred rupees, to the office where the deed of gift was executed.

(2) If an application is made pursuant to sub-section (1), the concerned office shall revoke the gift if, on necessary inquiry made

into whether the gift is liable to be revoked as per the application, such gift appears to be revocable, and make entries thereof in the records maintained in the office and give information thereof to the receiver of gift within fifteen days.

439. Acquisition of right in property of donation or gift: The receiver person or organization of donation or gift shall acquire the following right in the property of donation or gift:

- (a) If the donation or gift is to be effective with testament of the person who donates or gifts, after the death of such a person who donates or gifts,
- (b) If the deed of donation or gift does not specify any time for it to be effective, from the date of the execution of the deed.

440. Limitation: Except as specified a limitation by this Chapter in relation to file a complaint, a person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of following time limit after the date of the commission of that act:

- (a) Three months in the case of the matters set forth in Section 433,
- (b) Within two years after the date of maturation of the right of that person, in the case of acquisition of donation or gift, and after the date of possession and enjoyment upon maturing the right of the receiver on the matters of donation or gift not allowed to be made.

Chapter-11
Provisions Concerning Transfer and Acquisition of Property

- 441. Property deemed to be transferred:** If a person sells or otherwise transfers a property in which he/she has title or ownership to another person, the property shall be deemed to have been transferred to that person.
- 442. Right to transfer property with immediate or testamentary effect:** A person may, subject to this Chapter, transfer the title in his/her property to another person within immediate or testamentary effect.
- 443. Ownership devolving on transferee of property:** (1) In the event of transfer by a person of his/her property to another person pursuant to Section 442, his/her ownership in that property shall cease to exist from the date of such transfer and the transferee shall have ownership in such property.
- (2) Notwithstanding anything contained in sub-section (1), where a person transfers the right in his/her property to be effective with testament, the transferee shall have ownership in such property only after the death of the transferor.
- 444. Power to transfer personal property:** A person may transfer his/her personal property to another person without other's consent.
- 445. Power to transfer joint property:** (1) A joint property may be transferred with the consent of all owners of such property.
- (2) If all owners do not agree to transfer the joint property pursuant to sub-section (1), any owner may transfer the property of his/her right or portion.

(3) If, in making a transfer pursuant to sub-section (1), it is technically not possible to set aside the title or portion of any owner from the joint property, and another owner intends to acquire such property, he/she shall be entitled to acquire it at the price mutually agreed upon between them.

(4) If more than two or more owners intend to acquire the joint property, the owner who agrees to pay the highest price shall be entitled to acquire such property.

(5) Notwithstanding anything contained in sub-section (3), if the other owners do not intend to acquire the title or portion of any owner and it is not possible technically to set aside such property and sell it, the whole of the joint property has to be sold and the proceeds of sale divided between the owners according to their respective title or portion in that property.

(6) If a person transfers the joint property in contravention of sub-section (1), only the transfer of the extent of his/her title or portion in such property shall be valid; and the concerned person shall be entitled to get return of the property transferred in excess of the right or portion of the transferor.

446. Prohibition on transfer of property in common without consent:

(1) No person shall transfer a property in common to another person without obtaining written consent of the coparceners.

(2) Notwithstanding anything contained in sub-section (1), if the coparceners witness the deed of transfer of the property in common, such coparceners shall be deemed to have given consent.

(3) If a person transfers a property in common in contravention of sub-section (1), the transfer of only the right or share of such person in the property shall be valid. The concerned coparcener shall be entitled to redeem the property transferred in excess of the right or share of the transferor.

447. Power to transfer property in common for household purpose:

Notwithstanding anything contained in Section 446, the head of house may, for the household purpose, sell whole of the property in common, in the case of a movable property, and the half of such property, in the case of an immovable property, without consent of others.

448. Prohibition on transferring other's property: (1) No person shall transfer a property in which another person has title and ownership.

(2) In the event of transfer of a property by a person in contravention of sub-section (1), such deed or transaction shall be void.

(3) If the real owner makes a claim in the property transferred pursuant to sub-section (1), the transferee of such property has to return it to the concerned owner.

(4) If a person finds any lost or stolen property of another person, the owner of such property may make a claim, accompanied by the evidence of his/her ownership in that property, within three years after the date when the property was so lost or stolen.

(5) If any person claims such property pursuant to sub-section (4), such property shall have to be returned to the owner by collecting the expenses, if any, incurred in the protection and maintenance of such property.

(6) Notwithstanding anything contained in sub-section (4), if a person has acquired any stolen or lost property by way of purchase at a public market or auction or *Dutch* auction made publicly by any person or body, the person shall not be bound to return such property to the real owner unless and until he/she obtains the real value of such property and the fees or amount, if any, paid by him/her in the acquisition of such property.

449. Prohibition on transfer of property in duplication: (1) No person shall re-transfer a property to another person which he/she has already transferred to some other person.

(2) In the event of transfer of a property by a person in contravention of such-section (1), the deed of transfer executed at a later date shall not be valid where an immovable property has been transferred, and the earlier acquisition of property shall be valid where a movable property has been transferred.

450. Entitlement to amount or compensation in event of deprivation of enjoyment of property: (1) If a person sells and transfers a property pursuant to this Chapter and the purchaser is deprived of enjoying the property wholly or partly because of such transfer being invalid for any reason, the purchaser shall be entitled to recover the amount paid by him/her for the property that he/she is so deprived of enjoying, an interest to be set by yearly ten percent of the amount and the registration fees or other amounts, if any, he/she has paid for the transfer of that property as if it were an unsecured bond (*Kapali*).

(2) If any person makes any structure in a property purchased pursuant to this Chapter and is not able to enjoy that

property because of such transfer being invalid for any reason, that person shall be entitled to demolish and take away the structure made by him/her.

(3) If any person is aggrieved in consequence of the transfer of a property in contravention of Sections 446, 448 and 449 or failure to demolish and take away any structure pursuant to sub-section (2), such person shall also be entitled to a reasonable compensation of actual loss from such transferor, in addition to the amount referred to in sub-section (1).

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the purchaser of property shall not be entitled to recover the amount as set forth in those sub-sections in the following circumstance:

(a) If he/she has purchased the property despite the knowledge that it was other's property or a theft property,

(b) If he/she has purchased the property despite the knowledge that it was already transferred to any one else.

451. Person competent to transfer property: Any person except an incompetent and quasi-competent person may, subject to this Chapter, transfer a property in which he/she has right and ownership to another person.

452. Right of guardian to transfer property: (1) A person may, subject to this Chapter, transfer a property of an incompetent or quasi-competent person who is under his/her guardianship, for the right and interest of that incompetent or quasi-competent person.

(2) Notwithstanding anything contained in sub-section (1), a guardian shall not purchase in the name of him/her or of his/her relative any immovable property of an incompetent or quasi-competent person who is under his/her guardianship, except with the order of court.

453. Power of attorney to transfer right in property: (1) If a person appoints another person who is competent to be an attorney in accordance with law as his/her authorized attorney indicating the reason that he/she is not able to appear personally in the concerned office in order to sell and transfer his/her immovable property, such an authorized attorney may, on behalf of the donor of power of attorney, sell and transfer the property of the donor to another person.

(2) A person may sell his/her movable property through his/her attorney or agent.

454. Procedures to be followed while purchasing and transferring property by a body corporate: (1) If, in transferring an immovable property held in the name of a body corporate established in accordance with law, the board of directors of the body corporate gives power by a decision to any member of the board of directors or an employee of the body corporate to transfer the property, such a person may transfer the property on behalf of the body corporate.

(2) If the procedures referred to in sub-section (1) are fulfilled while purchasing an immovable property in the name of any body corporate, such person may purchase the property in the name of the body corporate.

- 455. Purchase of property by other person in one's behalf:** (1) If, except the circumstance set forth in Section 454, the purchaser of a property in accordance with this Chapter is, for any reason, unable to appear personally in the concerned office and gives a power of attorney, accompanied by his/her citizenship certificate, to a person who is competent to be an attorney by law in relation to the purchase of the property, such attorney may purchase the property in the name of that person.
- 456. Power to purchase property in the name of incompetent or quasi-competent person:** A guardian may purchase any property in the name of the incompetent or quasi-competent person under his/her guardianship.
- 457. Procedures to be fulfilled in the event of transfer of right in property in testament:** (1) If a person transfers his/her title in a property to another person with testamentary effect and such transferor of property dies, one who acquires the property shall have to make an application to the concerned office for the transmission of the property to him/her, within six months after the date of the transferor's death.
- (2) If an application is made pursuant to sub-section (1), the concerned office shall examine the deed maintained in it and make necessary inquiry as to whether the deed executor has died or not and the deed is void or not.
- (3) If, upon an inquiry made pursuant to sub-section (2), it appears that the transferor of property has died and has not got the deed voided, such property has to be transmitted to the applicant.

(4) If any person makes an application to the office for the transmission after the expiration of the time limit as referred to in sub-section (1), the office shall transmit the property to the applicant in accordance with such a deed, by collecting the fees by five hundred rupees for each year after the expiration of the time limit.

458. Not to claim for damage, destroy or low quality: A person who has once purchased a property from another person shall not be entitled to make a claim that such property is damaged, destroyed or low quality.

Provided that where the seller has sold the property by misrepresentation or with deviation for the particulars set forth in the deed, the purchaser shall be entitled to compensation for the same.

459. Exchange of immovable property: A person may exchange his/her property with that of other person with or without adding any amount.

460. Restriction on transfer or mortgage of immovable property to foreigner: (1) No person shall, without obtaining prior approval of the Government of Nepal, transfer or mortgage any immovable property to a foreigner.

(2) If any person transfers or mortgages any immovable property to a foreigner in contravention of sub-section (1), the relevant deed shall, *ipso facto*, be void, and such a property shall devolve on the Government of Nepal.

(3) The amount invested by the creditor in the acquisition of transfer or mortgage of the immovable property pursuant to sub-section (1) shall be equivalent to an unsecured bond/money.

461. Transfer in the case of acquisition by foreigner of partition share or inheritance: (1) If any foreigner obtains partition share or

inheritance in any immovable property within Nepal, the property shall not be eligible to be transferred to or registered in the name of him/her nor shall he/she be entitled to enjoy the income of that property, except where so permitted by the Government of Nepal.

(2) If any foreigner obtains any partition share or inheritance pursuant to sub-section (1), such a foreigner shall have to transfer such property to a citizen of Nepal in any manner.

(3) In the event of failure to transfer the property of partition share or inheritance obtained by a foreigner pursuant to sub-section (1) to a citizen of Nepal pursuant to sub-section (2) within three years of the acquisition of such partition or inheritance, the Government of Nepal shall have right in such property after the expiration of that time limit.

462. Deed to be executed: In transferring or exchanging an immovable property pursuant to this Chapter, a deed shall have to be executed to that effect.

463. Limitation: Where this Chapter provides for a separate limitation for filling a complaint, such provision shall be applicable, and in the other cases, a person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of three months from the date of knowledge of the commission of such an act.

Chapter-12

Provisions Concerning Mortgage of Immovable Property

464. Mortgage deemed to be created: (1) If a debtor gives the whole or any portion of an immovable property in which the debtor has title, ownership or possession to a creditor in consideration of a loan which the debtor borrows from the creditor, by executing a deed entitling the creditor to possess that property with effect from the date of execution of the deed or after a certain period, such property shall be deemed to be given in mortgage.

(2) Where the deed provides that the creditor shall be entitled to possess the property mortgaged pursuant to sub-section (1) with immediate effect at the time of lending or after a certain period, such a mortgage shall be deemed to be usufructuary mortgage, and where the deed provides that the creditor shall be entitled to possess the property in the event of the debtor's default to make repayment of the loan within the deadline set by the creditor and the debtor for repayment, such a mortgage shall be deemed to be a mortgage without possession.

(3) A property to be mortgaged has to be of such nature as may be capable of being enjoyed by the mortgagee.

(4) A person shall not mortgage a property in which he/she has not title, ownership or possession or which he/she will acquire in the future.

465. Deed to be executed: (1) A deed has to be executed in accordance with law for mortgaging any property pursuant to this Chapter.

(2) A person executing the deed of mortgage has to be competent in accordance with law.

466. Mortgaged property to be possessed and enjoyed: (1) The creditor has to possess and enjoy the property in usufructuary mortgage from the date of execution of the deed thereon or from a particular date, if any, specified in the deed and the property in sight mortgage within two years of the expiration of the date of repayment by the debtor.

(2) If, for any reason, the creditor is not able to possess and enjoy such property within the period referred to in sub-section (1) or if the debtor does not allow, by any means, the creditor to possess and enjoy it, the creditor may make a lawsuit in accordance with law for an order enabling the possession and enjoyment of such property.

(3) If the creditor fails to possess and enjoy the property pursuant to sub-section (1) or to make a lawsuit for the possession and enjoyment pursuant to sub-section (2), such mortgage shall *ipso facto* be inoperative.

(4) In the event that the deed of mortgage is inoperative pursuant to sub-section (3), the deed shall be equivalent to an unsecured bond.

467. Possessory right in mortgaged property to be deemed as transferred: If any person mortgages any property, the possessory right in the property shall be deemed to have been transferred to the creditor from the date of its possession and enjoyment by the creditor.

468. Entitlement to possess as if it belonged to oneself: (1) The creditor shall be entitled to possess and enjoy the property mortgaged to

him/her and fruit, benefit and facility brought out from such property as if the same were his/her own property.

(2) If the creditor is not able to possess and enjoy the property mortgaged to him/her in consequence of that property being incapable of transfer or of any hindrance by the debtor, the debtor has to pay a reasonable compensation to the creditor for the same.

469. Duty to take reasonable care of mortgaged property: (1) After acquiring possessory right in the mortgaged property, the creditor shall have to take a reasonable care and protection of that property as if it were his/her own.

(2) The creditor has to pay the tax or charge, if any, payable by law for the possession and enjoyment of the mortgaged property.

Provided that the debtor has to pay the land revenue payable by law.

(3) If the creditor is not allowed to possess and enjoy the mortgaged property as a result of any obstruction by any person other than the debtor, the creditor may make a lawsuit in accordance with law.

470. Prohibition on collecting interest, charge or fee: (1) Notwithstanding anything contained elsewhere in this Code, no creditor who has lent money against the security of usufructuray mortgage in a property shall collect any kind of interest, charge or fee in consideration of such loan from the debtor.

(2) After the creditor acquires possession in the property of mortgage without possession, the creditor shall collect any kind of interest, charge or fee in consideration of such loan.

471. Period for possession and enjoyment of property in usufructuary mortgage: (1) Except as otherwise provided for in the mortgage deed, no property in usufructuary mortgage shall be possessed and enjoyed for a period exceeding ten years.

(2) If the property in usufructuary mortgage is not taken back within the period as referred to in sub-section (1), the deed of mortgage shall be equivalent to an unsecured bond (*kapali*).

472. Maximum term of mortgage without possession: (1) No term of a mortgage without possession in a property shall exceed five years.

(2) No creditor shall be entitled to take action to have possession in the property in mortgage without possession or to have recovery of the related loan from the debtor prior to the completion of the period referred to in sub-section (1).

(3) After the expiry of the period referred to in sub-section (1), the property may be possessed for a period not exceeding ten years.

(4) If the property given in usufructuary mortgage is not redeemed within the period of ten years after the possession pursuant to sub-section (3), the relevant deed shall be equivalent to an unsecured bond (*kapali*).

473. Redemption of mortgaged property at any time: (1) Except as otherwise provided for in the mortgage deed, the debtor shall be entitled to redeem his/her property at any time from the creditor by repaying the loan, in the case of a property given in usufructuary mortgage, and the interest, if any, payable on the loan, in the case of a property given in mortgage without possession, to the creditor.

(2) Notwithstanding anything contained in sub-section (1), if the property in mortgage is a cultivable land and the creditor has already planted crops in such land at the time of redemption, the creditor shall be entitled to possess and enjoy such crops except as otherwise agreed upon between the creditor and the debtor.

474. Remortgaging a property in mortgage: (1) A person who has acquired a property in mortgage shall be entitled to remortgage such property or any part thereof to another person in consideration for an amount which is equivalent to, or lesser than, the amount mentioned in the mortgage deed, and in such a case, a re-mortgage is deemed to be created.

Provided that a mortgaged property shall not be the subject of remortgage prior to the existence of the possessory right in such property.

(2) The term of possession and enjoyment of the remortgage given pursuant to sub-section (1) shall not exceed the term of possession and enjoyment under the mortgage.

(3) If the debtor who has right and ownership in the property intends to redeem the property remortgaged pursuant to sub-section (1), the debtor shall be entitled to redeem the property upon payment of the price/loan directly from the re-mortgagee if the price of the remortgage is equivalent to the original price and through the mortgage such price is less than the original one.

(4) Notwithstanding anything contained elsewhere in this Section, the transaction of remortgage made inconsistent with the

terms of the mortgage shall *ipso facto* be void to the extent of such inconsistency.

(5) If the creditor is not entitled to possess the property re-mortgaged pursuant to this Chapter, the deed of such remortgage shall be equivalent to an unsecured bond (*kapali*).

475. Mortgaging benefits of property in mortgage: Notwithstanding anything contained in Section 474, a creditor who has acquired a property in mortgage may, instead of remortgaging the whole property, remortgage only the fruits, benefit or facility of such property or any crops, products, trees, bamboo trees, reaped or to be reaped fruits, vegetables or any other kinds of products to be yielded or exploited from such land.

476. Mortgaging by third party on behalf of debtor: (1) A third party may, in consideration for a loan borrowed by debtor, mortgage a property in which the third party has title, ownership or possession to the creditor on behalf of the debtor.

(2) The creditor shall, pursuant to this Chapter, be entitled to possess and enjoy the property mortgaged pursuant to sub-section (1) as if it were the property mortgaged by the debtor to the creditor.

(3) In the event that a property is mortgaged by a third party pursuant to sub-section (1), the relationship between the debtor and the third party shall be governed by the mortgage deed or other separate contract, and failing such provision, it shall be equivalent to an unsecured bond (*kapali*).

477. Property in mortgage to be indivisible: (1) A property mortgaged by a debtor to a creditor shall remain indivisible notwithstanding the

creation of more than one creditor in virtue of the partition or succession between the creditor's coparceners or the division between creditor's partners, and the debtor shall not be entitled to redeem the whole or any part of the mortgaged property until the loan borrowed by the debtor is repaid in full in accordance with the mortgage deed.

(2) If two or more debtors are created in virtue of the partition, succession between the debtor's coparceners or the division between the debtor's partners, the mortgaged property is not redeemable until each debtor repays his/her respective portion of the loan in full.

478. Liability of a creditor for loss and damage of property in mortgage: (1) After the creation of the creditor's possessory right in the property in mortgage, the creditor shall be liable for any kind of loss or damage, if any, caused to the property in mortgage.

(2) In the event of any loss or damage to the property in mortgage pursuant to sub-section (1), the creditor shall so maintain such property, at his/her cost, as to restore it into its original form.

(3) Notwithstanding anything contained in sub-section (1), the creditor shall not be liable for any loss or damage caused to the property in mortgage by a natural calamity, and the creditor has to maintain such loss or damage with the consent of the debtor.

(4) While redeeming the property in mortgage, the debtor has also to pay the expenses incurred in the maintenance pursuant to sub-section (3), in addition to the loan borrowed from the creditor.

479. Not to create trouble on property in mortgage: After the creation of the possessory right in the property in mortgage, the creditor shall

not so trouble the debtor by saying that such property is inappropriate or is more or less as to be inconsistent with the terms of the deed.

Provided that nothing shall bar the making of a claim for the repayment of loan in accordance with the mortgage deed if the creditor is not allowed to possess the property in mortgage for any reason or if the property is held to be imperfect for any reason whatsoever.

480. Prohibition on mortgage in duplication: (1) No property which has already been mortgaged shall be mortgaged, in duplication, again to other person.

(2) If a person mortgages a property in duplication in contravention of sub-section (1), the second deed shall *ipso facto* be void.

(3) In the case a deed becomes void pursuant to sub-section (2), the amount of a creditor who knowingly executes a deed in duplication shall lapse, and that of a creditor who executes it without knowledge of duplication shall be equivalent to unsecured bond (*kapali*).

(4) Notwithstanding anything contained in sub-section (1), in the event of the execution of deeds in duplication, and the first deed providing for any kind of mortgage and the second deed providing for the transfer of title, the transferee shall be entitled to establish the title by making repayment of loan in accordance with the first deed.

(5) Notwithstanding anything contained elsewhere in this Section, in the event of the execution of deeds in duplication, title is to be established within a period of two years from the date of the first

deed providing for usufructuary mortgage and within the period of two years from the date of entitlement to the possessory right if the first deed provides for mortgage without possessory right.

(6) In the event of failure to establish the title pursuant to sub-section (5) the amount of the creditor shall be equivalent to unsecured bond (*kapali*).

481. Limitation: Where this Chapter provides for a separate limitation for filling a complaint, such provision shall be applicable, and in the other cases, a person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of one year after the date of the commission of such act.

Chapter-13

Provisions Concerning Pre-emption of Immovable Property:

482. Pre-emption deemed to be made: Where a person transfers, in any manner, an immovable property in which that person has title, possession and ownership to another person and any one who is in neighbor of such property redeems it in accordance with this Chapter, pre-emption shall be deemed to be made.

Explanation: For the purposes of this Chapter, the term “in neighbor of” means a situation where one is dependent for ditch, water supply, passage or exit on other’s house or land bordering one’s house or land.

483. Entitlement of heir to pre-emption: (1) If a person sells his/her immovable property, the heir in neighbor of such land shall be entitled to pre-empt such property upon payment of the amount paid by the buyer of that property as well as the fees incurred in the passage of deed to the buyer.

(2) If there are two or more heirs who intend to make pre-emption pursuant to sub-section (1), then the nearest heir, and, where such heirs are two or more, the heir in immediate neighbor, and, where even such heirs are two or more, all heirs in equal proportion shall be entitled to pre-empt such property.

(3) If the nearest heir does not pre-empt such property pursuant to sub-section (2), the heir who is the nearest in order of priority shall be entitled to pre-empt such property.

- 484. Pre-emption by tenant:** If there is no heir in neighbor of or even if there is an heir, but he/she does not intend to make pre-emption pursuant to Section 483, the tenant, if any, in such property in accordance with law shall be entitled to pre-empt such property.
- 485. Pre-emption of sold house:** Notwithstanding anything contained elsewhere in Section 483, where there are different owners of the different parts of same house and the owner of a part sells his/her part to another person, the owner of another part may, if he/she intends to pre-empt that part, preempt the house by paying the house on payment of the amount paid by the buyer and the fees incurred in the registration of the deed to the buyer. If the owner of such other part is the heir, he/she shall get the first priority.
- 486. Pre-emption of house donated or gifted:** (1) Notwithstanding anything contained in Sections 483, 484 or 485, if any person relinquishes in any manner his/her title and donates or gifts the half part of the same house or any portion thereof or a land occupied by or appurtenant to the house and the donee has transferred the right in the house or land in any manner to another person, the donor or his/her heir residing in the same place may, if he/she so intends, pre-empt such house or any portion thereof or the land occupied by or appurtenant to the house upon payment of the amount of the price, if any, set out.
- (2) Notwithstanding anything contained elsewhere in subsection (1), if a person gets a donation or gift of the half part or any portion of the same house or the land accompanied by or appurtenant to the house from another person and the Section and the donor or

gifter of such house or land donates or gifts the remaining part or portion of that house or land to another person, the former donee or giftee or his/her heir may preempt the remaining part or portion.

(3) In making preemption pursuant to sub-section (1) or (2), the figure of price, if any, indicated in the donation or gift, and amount equivalent to the prevailing market price, if such figure is not so indicated, and the fees incurred in the registration of the deed have to be paid to the creditor.

(4) If, there are two or more heirs intending to make pre-emption pursuant to sub-section (1) or (2), the nearest heir, and the most aggrieved heir, where even the nearest heirs are two or more, shall be entitled to make pre-emption.

487. Pre-emption not to be allowed: Notwithstanding anything contained elsewhere in this Sections 485 and 486, a house built under the provision of joint housing or any part of such house shall not be subject to pre-emption.

488. Payment of money by pre-emptor: (1) A person who makes pre-emption pursuant to this Chapter shall make a petition in the office making registration of the relevant deed, and such petition has to be accompanied by the price of the property to be pre-empted, if any, indicated in the deed registered for the transfer of such property and the fees charged in the registration of such deed.

(2) If a petition is received pursuant to sub-section (1), the office making registration of deed shall hold the petitioner on recognizance and summon the person obliged to allow preemption to

appear in the office, within seven days excluding the time required for journey.

(3) If the person obliged to allow preemption appears and consents to preemption within the time limit as referred to in sub-section (1), the office making registration deed shall effect preemption by paying the amount deposited pursuant to sub-section (1).

(4) If, despite that the person obliged to allow preemption does not appear and consent to preemption within the time limit as referred to in sub-section (1), it appears from the received petition, registered deed and records of the office that pre-emption is to be effected, the office making registration of deed shall make decision to effect pre-emption, and if it appears that pre-emption is not be made, that office shall make decision not to effect pre-emption and give information thereof to the petitioner.

(5) If the person obliged to allow preemption does not appear within the time limit as referred to in sub-section (1), and, after the expiration of the time limit, if it appears from the received petition, registered deed and records of the office that pre-emption is to be effected, the office shall make decision to effect pre-emption and give an execution slip to the person entitled to pre-emption to enjoy the property to be pre-empted, and send a notice to the person obliged to allow preemption to receive the amount of deposit made pursuant to sub-section (1).

(6) Notwithstanding anything contained in sub-section (4), if the person obliged to allow preemption appears within the time limit and shows the reason why pre-emption is not to be made, and it is

necessary to decide upon examination of evidence, the office shall inform that the concerned person should make a lawsuit in the court within thirty five days.

(7) In returning the amount to the petitioner on holding that pre-emption cannot be made pursuant to sub-section (4), two and half percent of the amount deposited pursuant to sub-section (1) has to be deducted.

(8) If the person who has petitioned for pre-emption does not intend subsequently to make pre-emption or fails to appear on the appointed dates, the office shall punish that person with a fine of three percent of the amount of deposit furnished by him/her and the amount that remains after deducting that fine from the amount of deposit shall be returned to him/her.

489. To update records upon pre-emption: If it is held by the concerned office or court that pre-emption can be made, entries have to be made and updated accordingly in the records of the pre-empted property maintained in such office.

490. Limitation: A person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of thirty five days of the date of knowledge within six months of the date of the registration of deed.

Provided that a tenant may file a complaint within a period of thirty five days after the date of expiration of the date within which the landowner may make pre-emption.

Chapter-14

Provisions Concerning Registration of Deeds

491. Deed deemed to be registered: If any deed submitted by an person to the concerned office for approval pursuant to this Chapter is approved by such office, such deed shall be deemed to be approved for registration.

Explanation: For the purposes of this Chapter, the term “concerned office” means such an office as may be designated by the Government of Nepal by a notification in the Nepal Gazette.

492. Deeds to be registered: (1) In making any of the following deeds, a person has to get it approved for registration with the concerned office:

- (a) A deed transferring the right in an immovable property in any manner,
- (b) A deed on mortgage with usufructuray possession, mortgage without usufructuray possession or re-mortgage,
- (c) A deed on donation or gift of immovable property in testament,
- (d) A deed on exchange of immovable property,
- (e) A deed on partition or relinquishment of partition on common property,
- (f) A deed on separation of board and bread or unification of board and bread,
- (g) A deed on creation of a trust,
- (h) A deed on house renting with a monthly rent of more than one hundred thousand rupees,

- (i) A deed on usufruct in an immovable property,
- (j) Such other deed required to be registered pursuant to this Code or law.

(2) If a person fails to have registered a deed which is required to be registered pursuant to sub-section (1), such deed shall not have legal recognition.

493. Voluntary registration of other deeds: (1) A person may, if he/she so intends, have registered any deed other than that set forth in Section 492.

(2) If any person makes an application for the registration of a deed pursuant to sub-section (1), the concerned office shall register such deed by fulfilling the legal requirements.

494. Registration of deed by a mission: (1) If a person makes an application to the concerned office for the registration of a deed by a mission deputed by the office and it appears that such a deed can be registered by that office, the chief of office or other employee deputed by him/her shall, on deposit with the office of the fees chargeable for such registration, visit the location referred by the applicant and approve and register such deed by fulfilling the legal requirements.

(2) If the deed is registered by a mission deputed pursuant to sub-section (1), the office shall credit into revenue the deposit made pursuant to that sub-section.

(3) If, for any reason, the deed is not registered by a mission deputed pursuant to sub-section (1), the applicant has to get refund of the deposit within three months.

(4) If the applicant fails to get refund of the deposit within the time limit referred to in sub-section (3), the office shall credit such deposit into revenue.

495. Registration of deeds from other districts: (1) If the parties to a deed intend to get the deed registered in a district other than the district in which they reside or the property is located, they have to make an application, setting out the matter, to the concerned office of that district.

(2) If an application is made for the registration of a deed pursuant to sub-section (1), such an office has to make necessary inquiry into the matter and approve and register such deed by fulfilling the legal requirements.

(3) If a deed of immovable property is registered in another district pursuant to sub-section (1), the office has to send a copy of the registered deed to the relevant office of the concerned district.

496. Fees chargeable for registration of deeds: (1) Fees as specified by law shall be charged for the registration of a deed.

(2) Except where the law provides for the fees of registration of a deed, fees shall be charged according to the amount set forth in the deed dealing with transaction of money.

Provided that if the price of the immovable property referred to in the deed is less than the minimum price specified by the Government of Nepal, the fees shall be charged according to the price specified by the Government of Nepal.

(3) Notwithstanding anything contained in sub-section (1) or (2), in registering a deed in another district, there shall be charged an additional fee by ten percent of the fees set forth in that sub-section.

497. Obligation to pay fees: The following person has to pay the following fees chargeable for the registration of a deed:

- (a) In the case of a deed transferring a property or relating to mortgage, the transferee or mortgagee,
- (b) In the case of a deed on partition or relinquishment of partition share, separation of board and bread or unification of board and bread, all co-parceners in equal portion,
- (c) In the case of a deed on exchange of property, both parties to the deed,
- (d) In the case of a deed on donation or gift in testament, the donor,
- (e) In the case of a deed on house renting, the giver,
- (f) In the case of any other deed, both parties to the deed.

498. Provisions concerning payment of amount: If any amount is to be paid and received by and to the parties to a deed according to the deed intended to be registered, such payment may be effected either in household or in presence of the concerned employee of the office or by a good for payment cheque.

499. Transfer and transmission to be effected: (1) If any transfer and transmission is to be effected in consequence of a deed registered, the concerned office has to execute the transfer and transmission within seven days of the date of registration of the deed.

(2) If any transfer and transmission is to be made in the records of another office according to the deed registered by one office, the latter shall give a time limit of thirty five days to the transferee, thereby informing him/her to go to the concerned office for the transfer and transmission and also send the deed to the concerned office.

(3) On receipt of a deed sent by another district for the transfer and transmission pursuant to sub-section (2), the concerned office has to enter the matter into its records and effect transfer and transmission according to the deed.

500. Deed registered on earlier date to be valid: In the event of registration of more than one deed in relation to the same matter, the deed registered on the earlier date shall be valid.

501. Limitation: (1) A person who is aggrieved from any act done pursuant to this Chapter may file a complaint within a period of six months from the date of commission of such an act.

(2) Notwithstanding anything contained in sub-section (1), where a deed is registered by an office of another area, a complaint may be made within a period of six months from the date of receipt by the concerned office of a copy of the registered deed.

Chapter-15

Provisions Concerning Transaction

502. Transaction deemed to be made: (1) If there is an exchange of any amount or goods between two or more persons subject to any condition, transaction shall be deemed to have been made between them.

(2) In the event of a transaction made pursuant to sub-section (1), the receiver of amount or goods shall have to return the same to the giver of amount or goods.

Explanation: For the purposes of this Chapter, the term “amount” includes the price of goods.

503. Equivalent to loan: If a person has a liability to give any amount or goods to another person in any manner, such a liability shall be equivalent to a loan borrowed by that person, and such a person shall have to return such an amount or goods to the concerned person, subject to the provisions of this Chapter.

504. Prohibition on transaction without a deed: No one shall carry on transaction without executing a deed in accordance with law.

Explanation: For the purposes of this Section, the term “deed” includes a document including a cheque, bill, voucher and receipt evidencing a transaction.

505. Matters to be set out in a deed: In carrying on a transaction, the following matters have to be set out according to the nature of transaction:

- (a) Name, surname, age, address of each person involved in transaction, and name of his/her father, mother, grandfather and grand-mother,

Provided that in the case of a married person, the name of his/her husband or wife, as the case may be, has also to be mentioned.

- (b) Reason for transaction,
- (c) Volume of transaction,
- (d) In the case of transaction of any goods, price of the goods,
- (e) In the case of exchange of any goods by way of borrowing, loan or otherwise, the matter to that effect,
- (f) Details of the goods, if any, exchanged,
- (g) Date of repayment of money transacted,
- (h) Rate of interest, if any, payable on the transaction,
- (i) Matter that the creditor shall be entitled to recover the amount involved in the transaction from the assets of the borrower in the event of failure to repay such amount within the specified time or to fulfill the other conditions set forth in the deed,
- (j) Place where the deed is executed,
- (k) Date when the deed is executed,
- (l) Such other matters as required to be set out by the nature of transaction.

506. Entitlement of creditor to interest from debtor: (1) If a deed on transaction provides about the payment of interest, the creditor shall

be entitled to collect the interest from the debtor as set forth in the deed.

(2) The amount of interest which the creditor is entitled to collect from the debtor pursuant to sub-section (1) shall not exceed annual ten percent of the principal.

(3) If the deed executed pursuant to sub-section (1) does not provide for the rate of interest but only provides for the payment of interest, the creditor shall be entitled to collect interest from the debtor at the rate of annual ten percent of the principal.

(4) If the deed executed pursuant to sub-section (1) provides for the payment of profit instead of interest but does not specify the amount of such profit, the creditor shall be entitled to collect such profit from the debtor as if it were interest.

507. Prohibition on collection of interest by creditor from debtor: If the deed on transaction does not provide for the payment of interest, the creditor shall not be entitled to collect interest from the debtor.

508. Prohibition on collection of compound interest: (1) The creditor shall not be entitled to collect compound interest.

(2) If any creditor collects compound interest from a debtor in contravention of sub-section (1), such an interest shall be deducted from the principal and shall be refunded if the principal has already been repaid.

509. Prohibition on collection of interest in excess of principal: Notwithstanding anything contained elsewhere in this Chapter, the creditor shall not be entitled to charge interest in excess of the principal.

510. Procedures to be followed in paying and charging principal and interest: The following procedures shall be fulfilled in paying and charging interest:

If the debtor repays the whole of the principal and interest, the creditor has to sign and return the deed on transaction to the debtor by tearing out the deed or indicating on its reverse side that the loan has been repaid,

If the deed is not found at the time of repayment of the principal and interest pursuant to clause (a), the creditor shall have to give the debtor a receipt indicating the receipt of the particular amount on the particular date,

In repaying some amount out of the principal and interest, the creditor shall have to indicate on the reverse side of the deed how much he/she has received from the debtor on which date, and get the debtor to sign the deed and issue a separate receipt of amount accordingly if the deed is not found immediately or it is not with the creditor for the time being.

511. Interest accruable as of the recovery of amount: If the court passes a judgment entitling the creditor to recover interest as well, the creditor shall be entitle to the interest as of the date of recovery according to the judgment.

512. Period of a deed executed on household: (1) The period of a deed executed on household pursuant to this Chapter shall not exceed ten years except as otherwise provided in the deed.

(2) Notwithstanding anything contained in sub-section (1), if the debtor repays some of the principal or interest thereon to the

creditor or the term of a deed is extended for the repayment of principal or interest within the period of ten years, the period of another ten years shall be extended from the date of such repayment of principal or interest or extension of the period, as the case may be.

513. Transaction carried on with incompetent or quasi-competent person not to be recognized: A transaction carried on with an incompetent or quasi-competent person shall not have legal recognition.

514. Recovery not available from property in common: (1) If any person carries on transaction with another person and the deed of such transaction does not bear the signature of the head of family, the creditor shall not be entitled to recover his/her amount from such property until the debtor's right in the property in common is established.

(2) Notwithstanding anything contained in sub-section (1), if the head of family repays the amount, the creditor shall be entitled to recover the same.

(3) If any person is not able to recover the amount from the debtor on the occurrence of the circumstance referred to in sub-section (1), the creditor shall have to make a complaint against the debtor and maintain his/her right within a period of ten years.

(4) In the event of the maintenance of the right with the debtor pursuant to sub-section (3), the creditor shall be entitled to recover his/her amount from the debtor pursuant to law after his/her right in the property in common has been established.

(5) The limitation for filling a complaint shall, for the recovery of the amount pursuant to sub-section (4), commence from the date of establishment of the debtor's right.

515. Exchange of movable property not allowed without consent: (1) A major member in a common family is not entitled to exchange any movable property in common without consent of the head of family.

Provided that the consent of the head of family shall not be required to exchange one's personal property.

(2) If a person exchanges a movable property in contravention of sub-section (1), the exchange of such property shall not be valid if the head of family does not consent to such exchange.

(3) If there is no consent of the head of family to the exchange of movable property made in contravention of sub-section (1), the property so exchanged can be taken within a period of thirty five days.

516. Recovery of amount if transaction appears: Even though any person does not execute a deed by fulfilling the procedures referred to in this Chapter, if it appears from any deed, banking transaction, cheque, voucher or book of account that transaction has been carried on with any person, the court may, based on such a deed, banking transaction, cheque, voucher or book of account, order the recovery of such amount from the debtor to the complainant.

517. Procedures to be followed where a deed executed on household is lost or destroyed due to natural calamities: (1) If a deed executed on household is lost or destroyed due to natural calamities, the creditor shall have to make an application, setting out the matter, to

the local body within a period of fifteen days from the date on which such loss or natural calamities are occurred.

(2) If an application is made pursuant to sub-section (1), the local body shall have to draw up a receipt setting out the matter and issue a receipt, sealed with the stamp of the office, to the applicant.

(3) If an application is made pursuant to sub-section (1), the local body shall have to summon the presence of the deed executor, if he/she is alive, and of the nearest heir, if such executor is not alive, within a period seven days, and cause a deed to be prepared as per the original deed, if he/she so consents, and authenticate such a deed and deliver it to the applicant.

(4) If the deed executor does not consent to execute another deed indicating that the deed has been lost or destroyed due to natural calamities pursuant to sub-section (3), the creditor shall have to make a complaint and maintain his/her right, showing the evidence of the loss of a deed or destruction due to natural calamities within a period of thirty five days of the expiry of that time limit.

518. To return Goods transacted in the event of imperfection: (1)

Except as otherwise provided for in the deed, if the receiver of any goods transacted with specification of price is not able to possess the goods due to the fact that the goods do not correspond to that set forth in the deed or are imperfect, he/she shall have to give a notice thereof to the giver of goods within a period of thirty five days of such transaction.

(2) If a notice is received from the receiver of goods pursuant to sub-section (1) and his/her statement appears to be

reasonable, the exchange of goods shall have to be made if the giver has similar other goods; and if the giver does not have such goods, he/she shall have to get back his/her goods and cancel the deed executed in relation to such transaction.

(3) If the giver of goods refuses to exchange or to take back the goods pursuant to sub-section (2), the receiver of goods shall be entitled to make a complaint to have recover of an amount equivalent to the price of such goods and a reasonable compensation from the concerned person or get such transaction to be void.

519. To return goods in original condition: (1) If any person acquires or borrows for any specific purpose any goods owned by another person whether for rent or not or on any other terms and conditions, the person shall, after the completion of the purpose, have to return the goods that are the same in kind, quantity and quality as have been so acquired or borrowed.

(2) If the goods acquired or borrowed pursuant to sub-section (1) are lost, broken, destroyed, out of order or otherwise damaged, except as otherwise provided for in the deed, the person who acquires or borrows of the goods shall have to return similar other goods to the owner or pay to the owner an amount equivalent to the prevailing market price of such goods if similar other goods are not available.

(3) Except as otherwise provided in the deed in relation to the return of goods or payment of rent for the same pursuant to sub-section (1) or (2), such goods or rent have to be returned or paid to the

owner within a period of fifteen days after the completion of the purpose for which the goods have been acquired or borrowed.

(4) If the person who acquires or borrower the goods fails to return or pay the goods or amount to the owner within the time limit set forth in sub-section (3), the aggrieved person may make a complaint for the recovery of the amount of such goods and a reasonable compensation for the loss caused to him/her.

520. Limitation: (1) There shall be no limitation for filling a complaint in the matter of transaction carried on with intent to misappropriate or prejudice the wealth of an incompetent and quasi-competent person, collection of interest on interest or provision of interest in excess of ten percent.

(2) Except as provided for in sub-section (1), a person who is aggrieved by any act done in accordance with this Chapter may file a complaint as follows from the date of commission of such an act:

- (a) Where this Chapter provides for a separate limitation for filling a complaint, such provision shall be applicable,
- (b) Within a period of one year from the date of expiration of the period, if any, specified in any deed, and failing such a deed, or in the other cases, within a period of one year from the occurrence of the cause of action.

Part 5

LAW CONCERNING CONTRACT AND OTHER OBLIGATIONS

Chapter-1

General Provisions Concerning Obligations

521. Obligation to Arise: (1) In case there is a compulsion in law to carry out or forbear to carry out any act, an obligation arises if one does not carry out or does carry out such act.

(2) The obligation to be created pursuant to sub-Section (1) shall arise and be maintained and determined under this Chapter.

522. Circumstances on which obligation is created: (1) The obligation referred to in Section 1 shall be created and maintained as follows:-

- (a) By a law;
- (b) By a contract;
- (c) By an indirect contract or a quasi-contract;
- (d) By an unjust enrichment;
- (e) By a unilateral commitment of any person to assume an obligation;
- (f) By an act to be treated as tort under law;
- (g) By an act to be treated as a quasi-tort under law.

(2) In regard to sub-Section (1),-

- a) The obligation referred to in clause (a) shall be created under this Code or other laws.
- b) The obligation referred to in clause (b) shall be created under a contract entered into between the parties.

- c) The obligation referred to in clause (c) shall be created under an indirect or a quasi-contact as defined in Chapter 15 of this Part.
- d) The obligation referred to in clause (d) shall be created under an unjust enrichment as defined in Chapter 16 of this Part.
- e) The obligation referred to in clause (e) shall be determined under provision for creating an obligation under the law through a unilateral commitment.
- f) The obligation referred to in clause (f) shall be created under the tort as defined in Chapter 17 of this Part.
- g) The obligation referred to in clause (g) shall be created from the defective product as defined in Chapter 18 of this Part or from other act to be deemed as quasi-tort according to law.

523. Obligation to be fulfilled: (1) While fulfilling an obligation, the obligation of a matter which has been created or maintained as to be fulfilled by a person or the person who has undertaken to fulfill an obligation, such a person shall have to fulfill the obligation of such a matter.

(2) In case the person who has to fulfill an obligation pursuant to sub-Section(1) dies or becomes an insane, the successor who succeeds his/her property shall have to fulfill such an obligation.

524. Obligation to be fulfilled within the prescribed time: (1) If a fixed duration has been specified for fulfilling any obligation, the obligation shall be fulfilled within the same duration.

(2) If a particular day or duration has been specified for fulfilling any obligation, the obligation shall be fulfilled on the same day or within the same duration.

Provided that if there is a stipulation that the obligation shall be fulfilled within certain day or duration, the obligation may be fulfilled even prior to such day or duration as well.

(3) In case no day or duration has been specified as referred to in sub-Section (1) or (2), the duration, day or time to fulfill the obligation shall be determined on the basis of nature of the obligation and the obligation shall be fulfilled within a reasonable time.

(4) In case no obligation is fulfilled pursuant to sub-Section (1), (2) or (3), it shall be deemed that the person who has required fulfilling the obligation has not fulfilled or could not be fulfilled.

525. Each of obligators has to fulfill obligation: (1) In case more than one person have undertaken to fulfill an obligation or such obligation has been created in his case, unless provided otherwise, each of them has to fulfill the obligation equally.

(2) In case of a stipulation that a person has to fulfill an obligation towards more than one person, unless provided otherwise, the obligation towards each of them has to be fulfilled equally.

526. Obligation may be divisible: (1) In cases where an obligation has to be fulfilled towards more than one persons or more than one persons have to fulfill an obligation, if the obligation towards such persons or to be fulfilled by such persons could be divided or fragmented having regard to its nature, such an obligation may be divided and every person shall have to fulfill the obligation or the obligation towards every person shall be fulfilled accordingly.

(2) In the cases referred to in sub-Section (1), each person or all persons may require to get the obligation fulfilled from each or all persons requiring to fulfill such an obligation.

527. Obligation to be fulfilled in good faith: The obligation created pursuant to Section 522 shall have to be fulfilled in good faith by the person who has to fulfill it.

528. Compensation to be borne if no obligation has been fulfilled:

(1) In case the person required to fulfill an obligation makes delay to fulfill obligation and thereby a loss is incurred to any other persons in any manner whatsoever, such a person shall have to bear compensation for the actual loss so caused.

(2) In case the person required to fulfill an obligation does not fulfill it by fraud and a loss is incurred thereby, he/she shall be liable to pay compensation for the loss so caused.

529. Obligation contrary to law not to be fulfilled:

Notwithstanding anything contained elsewhere in this Chapter, if fulfillment of an obligation would be contrary to a law, public

order or public morality, such an obligation shall not need to be fulfilled.

530. Impossible Obligation not to be fulfilled: (1) If, at the time of occurrence of an obligation, the obligation of impossible nature that could not be fulfilled has been arisen, such an obligation shall not need to be fulfilled.

(2) If an obligation was, at the time of its occurrence, possible to be fulfilled, however, it becomes subsequently impossible to be fulfilled, the consequence of such obligation shall be determined according to the law.

(3) Notwithstanding anything contained in sub-sections (1) or (2), if a portion of an obligation could be fulfilled and the rest portion could be fulfilled, the obligation shall be fulfilled to the extent it could be fulfilled.

531. Limitation: A person aggrieved from an act carried out under this Chapter may file a case within a period of one year from the date on which the cause of action arises.

Chapter-2

Provisions Concerning Formation of a Contract

532. Contract is deemed to be concluded: (1) In case an agreement enforceable by law is concluded between two or more persons to do or forbear to do any act, it shall be deemed to be a contract.

(2) For the purpose of sub-Section (1), a Contract shall be deemed to have been concluded once the person to whom an offer has been made by another person communicates his/her acceptance.

(3) Once a contract is concluded, a binding legal relationship shall be created between the parties to it.

Explanation: For the purpose of this Chapter,-

(a) “Offer” means an offer made by one person to another person with the intent of obtaining his/her acceptance to do or forbear to do any act.

(b) “Acceptance” means the acceptance given by the person to whom the offer has been made in the same meaning in which the offer is made.

533. A Contract Enforceable by Law: (1) A contract concluded having fulfilled the following conditions shall be deemed to be a contract enforceable according to law:-

(a) The consent expressed by a person to a contract to bind him/herself;

- (b) Capacity or qualification of a party to a contract to conclude a contract;
- (c) Certain matter for creation of an obligation; and
- (d) Lawful obligation.

(2) A contract may be concluded in written or verbal form or by conduct of the parties concluding the contract.

(3) Notwithstanding anything contained in sub-Section (2), in case there is a requirement for conclusion of any particular contract having completed particular procedure or formality, the contract having not completed such procedures or formality may not be enforceable.

534. Person Competent to Conclude a Contract: (1) Every person other than the ones referred to herein below shall be competent for concluding a contract:-

- (a) One who has not attained the age of eighteen years,
- (b) One who is of unsound mind.

Explanation:

(1) A person who is usually of unsound mind, but occasionally of sound mind, may conclude a contract when he is of sound mind.

(2) A person who is usually of sound mind, but occasionally of unsound mind, may not conclude a contract when he is of unsound mind.

(2) Notwithstanding anything contained in sub-Section (1), any person not competent to enter into a particular contract under the law in force shall not be deemed to be a competent person to conclude such a contract.

(3) While entering into a contract on behalf of the person who is not competent to conclude a contract, his/her guardian may conclude a contract.

(4) While entering into a contract on behalf of a legal person, it shall be concluded by a decision of the director or directors who is/are authorized for management and operation of the legal person or by authority of such a director or directors, as the case may be.

(5) Notwithstanding anything contained elsewhere in this Section, in case there is a legal provision that even a person deemed to be incompetent for concluding a particular type of contract under this Chapter is competent to conclude a contract on such a matter, such a person shall be deemed to be competent to conclude a contract on such a matter.

535. Parties to be Autonomous: Subject to this Code, the parties to a contract shall be free to choose the form and content of contract, to determine the terms and conditions of the contract and the nature of the remedy as well as to determine the measures for resolving disputes arising out under the contract.

536. Offer and Acceptance deemed to be completed: (1) Once the offeree comes to know about an offer, the act of making the offer shall be deemed to have been completed.

(2) The act of giving acceptance shall be deemed to have been completed, in case of the offerer, if the offerer receives the acceptance forwarded by the offeree to the offerer having indicated his/her acceptance to the offer, and in case of the offeree, if the offerer comes to know that the offeree has accepted the offer.

(3) Even though there is no expression of acceptance to the offer directly, in case the offeree abides by any terms referred to in the offer by way of his/her conduct or accepts the advantage or service referred to in the offer or indicates acceptance in any other manner, the offeree shall be deemed to have accepted the offer.

(4) In case the offerer makes an offer having stipulated certain time duration and specifies that the offer is regarded to have been accepted if a notice of rejection of the offer is not sent within such duration, and if the offeree does not send a notice of acceptance of the offer within such duration, the said offer shall not be deemed to have been accepted.

537. Offer or Acceptance may be revoked: (1) The offerer may cancel his/her offer through a notice.

Provided that, in case the offerer has received from the offeree a notice to the effect that he/she has approved the offer before receiving a notice of the revocation of the offer, the offer shall not be deemed to be revoked.

(2) The offeree may revoke his/her acceptance through a notice.

Provided that the acceptance shall not be revoked in case the offerer has already received the notice of acceptance before receiving the notice of revocation of the acceptance.

(3) The person who has sent a notice expressing his/her refusal of the offer may again send a notice expressing his/her acceptance to the offer.

Provided that, in case the notice of refusal out of the notices of refusal or acceptance reaches first, the contract shall not be deemed to have been formed and in case the notice of acceptance reaches first, the contract shall be deemed to have been concluded.

(4) In case the notice referred to in sub-Section (1) has been sent after sending the offer, the notice referred to in sub-Section (2) has been sent after sending a notice of acceptance, or in case a notice has been sent under sub-Section (3) after sending a notice of refusal and the concerned person receives such notices at the same time, the contract shall not be deemed to have been concluded.

(5) In case the offeree sends an acceptance with conditions or with alteration to the offer sent by the offeror, it shall be deemed that the offeree offers as counter offer.

538. Offer to be deemed revoked: An offer shall be deemed to have been revoked in any of the following circumstances: -

(a) In case the offerer proposes an offer with a condition that

notice of acceptance to the offer be given within a specified period, and the offerer does not receive a notice of acceptance by the offeree within that period;

(b) In case the period for sending a notice of acceptance as referred to in clause (a) is not specified and the offeree has been made does not furnish a notice of acceptance to the offerer within a reasonable period;

(c) In case the offerer, after presenting the offer, dies or becomes insane before receiving the acceptance;

(d) In case the offer is revoked as referred to in Section 537;

(e) In case the acceptance was given but the offeree dies or becomes insane before he/she receives the acceptance.

(f) In case the offeree sends a counter offer as referred to in sub-Section (5) of Section 537;

(g) In case an offer make a condition that the offeree has to do any act or fulfill any condition before accepting the offer, acceptance is made without doing such an act or fulfilling such a condition.

539. A contract according to offer presented before the public in general: (1) In case a person makes an offer publicly by means of an advertisement that he/she will reward any person for doing any act specified in the advertisement, and in case any person does the act as specified in the advertisement, the advertiser shall have to reward such a person as stated in the advertisement.

Provided that in case the person does such an act referred to in the advertisement without having knowledge about such advertisement, such a person shall not be entitled to the reward.

(2) In case the act referred to in sub-Section (2) is done by more than one person, only the person who does the act first shall be entitled to the reward.

Provided that, in case two or more persons do the work referred to in the offer at the same time, all of them shall be entitled to the equal share of the reward and in case the reward could not be shared, the proceeds of the sale of the same shall be equally divided among them.

(3) In case a specific period is prescribed to do the act according to the advertisement published under sub-Section (1), the offer made according to the advertisement shall be deemed to have been revoked immediately after the expiry of that period.

(4) An offer made under sub-Section (2) may be revoked through the same medium through which it was published.

(5) Notwithstanding anything contained in sub-Section (4), in case anyone does the act referred to in the advertisement published under sub-Section (1) before publication of the notice of revocation of the offer, he/she shall be entitled to the reward as referred to in the advertisement.

Provided that, the person who does the act as referred to in the advertisement shall have to notify the advertiser about the completion of the act as soon as possible.

(6) In case any person begins to do the act according to the advertisement published under sub-Section (1) having furnished notification thereof to the advertiser, the person does the act in such a manner shall be paid an appropriate remuneration for the act done by him/her until the revocation of the advertisement.

540. Place of Formation of Contract: (1) The place where the offerer sends an offer expecting to receive acceptance shall be deemed to be the place where the contract is formed.

(2) In case the place is not specified under sub-Section (1), the place where the offerer receives acceptance shall be deemed to be the place where the contract is formed.

(3) Notwithstanding anything contained in sub-Sections (1) and (2), in case the parties specify the place of formation of the contract in the contract itself, such a place shall be regarded as the place of formation of the contract.

541. Contingent Contract: (1) In case a contract is concluded to do or forbear to do any act if any event happens in the future, such a contract shall not create any obligation until such an event happens.

(2) In case a contract is concluded on the condition that the contract shall be deemed to be concluded if any person does a particular act, no obligation shall be created if such a person does any act in such a manner as not to do or not to be able to do any act.

(3) In case a contract is concluded on the condition to do or

forbear to do any uncertain event in the future, the obligation under such a contract shall arise only after such an event becomes impossible to happen.

(4) In case a contract is concluded to do or forbear to do any act if any uncertain event does happen in the future, the contract shall be deemed to have become void after becoming the happening of that event impossible within the specified period or after the expiring of the specified period.

(5) In case a contract is concluded on the condition to do or forbear to do any act in case any event does not happen within a specified period in the future, the obligation according to the contract shall arise if such an event does not happen within such a period or it is certain that such an event shall not happen within such a period.

542. General provisions of Contract to Apply: The provisions of this Chapter and Chapters 3, 4 and 5 of this Part shall, normally, be applicable with regard to a contract or to other contracts to be concluded according to this Code or a law.

543. Interpretation of Contract: (1) Interpretation of a contract shall be made according to the common intention of its parties.

(2) In case the intention referred to in sub-Section (1) could not be established, a contract shall be interpreted according to the meaning of general understanding that a reasonable person of the same prudence as a party to the contract would give to it in normal circumstance.

(3) In case a party of a contract knows or is informed about a statement or conduct of another party of the contract, the contract shall be interpreted according to the intention of such party.

(4) Interpretation of terms and expressions used in a contract shall be made in the light of the entire contract or the context of the statement in which such terms and expressions have been used.

(5) A contract shall be interpreted so as to giving effect to all the terms used in a contract and it shall not be interpreted giving effect to deprive some terms from other terms.

544. Limitation: A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action has been occurred.

Chapter - 3

Validity of Contracts

545. Void Contract: (1) A contract which is not valid according to law shall be deemed to be a void contract.

(2) The following contracts shall be void:-

(a) A contract that restrains anyone from exercising any profession, trade or business which is not prohibited by a law;

Provided that a contract shall not be deemed to have been concluded restraining from exercising any profession, trade or business in any of the following circumstances:-

(1) In case a contract is concluded between the buyer and the seller on selling and buying of the goodwill of any trade, the contract prohibiting the seller from carrying out a trade or business under such goodwill at the time and place as referred to in such contract;

(2) A contract concluded among partners to restrain their involvement in any profession, trade or business, other than those of the partnership firm, similar to those of the partnership firm or any other profession, trade or business together with other competitors belonging to the same type of profession, trade or business so long as the partnership exists.

- (3) A contract concluded among the partners in restraining them from exercising a profession, trade or business under the partnership firm for the specified time or place after being separated from the partnership;
- (4) A contract restraining any individual from receiving the service of any such an agency, company, firm, individual or competitor of such agency, company, firm, or individual for the specified period of time after the retirement from service or during the service of such an agency, company, firm or individual pursuant to a contract concluded by any individual with any such agency, company, firm or individual.
- (b) A contract restraining a marriage other than those prohibited by the law;
- (c) A contract restraining any one from enjoying the facilities already being enjoyed by the general public;
- (d) A contract restraining legal rights of any person from being enforced by a court;
- (e) A contract concluded on a matter contrary to or prohibited by the law in force;
- (f) A contract concluded for immoral purpose or against public order or public interest;

- (g) A contract which cannot be performed because the parties thereto do not exactly ascertain or know about the matter in relation to which it has been concluded;
- (h) A contract which is impossible to fulfill at the time of its conclusion or a fictitious contract;
- (i) A contract the subject matter of which does not give a reasonable meaning and is vague;
- (j) A contract concluded by a person who is not competent to conclude a contract;
- (k) A contract that has an illegal purpose
- (l) A contract concluded by mistake of both parties as to the essential fact of the contract at the time of conclusion of contract.

(3) A void contract is invalid from the very beginning and it shall not create any legal consequence and rights and obligations of the parties.

(4) In case any part of the contract becomes void, remaining parts of the contract shall be enforceable according to law.

546. Voidable Contracts: (1) A contract which, at initiation of the party to the contract, may be declared to be void by the court, shall be deemed to be a voidable contract.

(2) The person aggrieved by any of following contracts may get the contract declared to be void by a court:-

- (a) A contract entered into by way of coercion;

Explanation: One is said to be subjected to coercion in cases where property of such person has been detained or threatened to detain or where he/she is threatened to put his/her body, life or prestige in peril or where any other act against law has been committed or threatened to commit against him/her with an intention of causing him/her to enter into a contract.

(b) A contract entered into by way of undue influence;

Explanation: (1) Influence exercised over a person who is in one's influence or who may be employed in work according to one's will with the intention of taking any unfair advantage for the purpose of one's concerns or interests shall be regarded as undue influence.

(2) Without prejudice to the generality of clause (1), any of the following persons shall be regarded as persons who is under one's influence or who may be employed in works according to one's will:-

- a) A person who is under one's guardianship, protection or responsibility;
- b) A person who is incapable to represent his/her interests for the time being or forever because of old age, illness or physical or mental infirmity;
- c) A person who may be subjected to financial or official influence.

(b) A contract entered into by way of fraud

Explanation: A contract is said to be entered into by way of fraud in cases where a party to a contract does, with the intention to deceive the other party of the contract or his/her agent, any act that is likely to create an assurance that any matter, which he/she has the knowledge that the matter is not true, is true; or though he/she has the information about a fact but he/she knowingly conceals such fact or commits any other act that is a fraud under the prevailing law.

(d) A contract entered into by way of misrepresentation;

Explanation: Any of the following acts shall be considered as misrepresentation:-

- 1) Presentation of false description on any matter without reasonable basis;
- 2) Caused emotional disturbance to any party to his/her detriment;
- 3) Causing any mistake on any matter of the contract;
- 4) Assured to have concluded a contract in one matter and but caused to enter into a contract in any other matter.

(3) In a case of a voidable contract under this Section, the following matters shall be applied to the followings:-

- (a) The party caused to enter into a contract may, instead of making the contract to be void, demand his/her position to be remained the same, as it was prior to conclusion of the contract.
- (b) Onus of proof of innocence or undue influence shall be vested upon the party who claims that such a contract is not concluded under an undue influence in case a contract is concluded with the person who is under one's influence and amenable to his/her wishes.
- (4) A voidable contract shall, before it is declared to be void, be enforceable as if it were a lawful contract.
- (5) In case a voidable contract under this Section is declared to be void by a court, it shall not affect on the act done before the contract is declared to be void.
- (6) In case any contract is declared to be void under this Section, there shall be no adverse effect on a legitimate right or interest of a third person merely because of such a contract is declared to be void.

547.Unenforceable Contracts: (1) A contract that cannot be enforced from a court shall be regarded as a unenforceable contract.

(2) The following contracts shall not be enforced from a court even though they were concluded having followed the process referred to in Chapter 2 of this Part:-

- a) A contract required to be in written form according to law is not concluded in written form;
- b) A contract required to be concluded having fulfilled any particular formality or procedure but not concluded having fulfilled such formality or procedure;
- c) In case a contract is entered into on behalf of another person, a contract concluded on the matter not authorized by such a person or beyond the limitation of such authority

548. Limitation: A person aggrieved from an act carried out under this Chapter may file a case at any time in case of a contract to be void and within a period of one year from the date on which the cause of action arises in case of a voidable contract and in case of other contracts, within a period of two years from the date on which the cause of action arises.

Chapter- 4

Provisions Concerning Performance of Contracts

549. Obligation under contract to be fulfilled: Each party to a contract shall have to fulfill his/her obligation under the contract.

550. Reciprocal performance of contract: (1) In case a contract is concluded with a condition that both parties to the contract shall have to fulfill their respective obligations simultaneously, and in case either party demonstrates a conduct or intention of not fulfilling his/her obligation materially, the other party may not need to fulfill his/her promise.

(2) In case an order of priority concerning fulfillment of any promise has been specified in the contract itself, it shall be fulfilled accordingly, and in case no such an order of priority has been specified, the party who is required to do so first according to the nature of the contract shall have to fulfill it first.

(3) In a contract containing reciprocal promises, in case one promise cannot be fulfilled without fulfilling another promise, the party which cannot perform the contract because of the failure of the other party to fulfill its promise may recover the loss and damage caused by the failure of the other party to perform the contract.

(4) In case a contract is concluded pursuant to sub-Section (1), if any party restrains the other party rendering it to be unable to perform the contract, the party which is unable to perform the

contract may initiate to get the contract revoked and also to recover any loss suffered by him/her due to its revocation in that manner.

551. Time and Manner for performance of a contract: (1) In case time and manner for performance of a contract has been stipulated in the contract, it shall be performed within the stipulated time according to the specified manner.

(2) In case no time or manner for performance of the act under the contract has been specified in the contract, however, the act under the contract is such that it could be performed only at any specific time or according to any specific manner, the contract shall be deemed to have been concluded to perform the act at that time and according to that manner.

(3) Except in the circumstances referred to in sub-Section (2), in case the time and manner for performance of the contract has not been referred to in the contract, the contract shall be performed within a reasonable time having followed reasonable manner.

552. Place for performance of a contract: (1) In case any particular place has been specified in the contract for performance of any act under the contract, such an act shall be performed at the same place.

(2) In case any party has to hand over or deliver goods to the other party under the contract and the place to hand over or deliver the goods has not been specified in the contract, the

contract shall be deemed to have been concluded with a condition that the goods has to be delivered or handed over at the place where such goods are located.

(3) In case a particular place for performing an act has not been stipulated in the contract, however, the act may be done only at a specific place or it has to be done in any particular place having regard to practice or usage or nature of the act, it shall be deemed that the contract has been concluded to perform it in that place.

(4) In the events other than those referred to in sub-sections (2) and (3), in case the place for performance of the act is not referred to in the contract, the party performing the act according to the contract shall ask the other party to specify a reasonable place for performing the act, and the other party shall have to specify a reasonable place to perform the act.

553. Performance of Contract deemed to be delayed: (1) In case of a contract concluded to perform at or within any particular time has not been performed within such time, performance of contract shall be deemed to have been delayed.

(2) In case the contract referred to in sub-Section (1) could be performed even after such a period of time, either party of the contract may notify the other party to perform the contract having given a reasonable time.

(3) Upon giving a notice pursuant to sub-Section (2), the other party shall have to perform the contract accordingly and may

claim for compensation for the loss caused due to the delayed performance of the contract.

(4) In case the contract is not performed pursuant to sub-Section (3), the party notifying in such manner may revoke the contract.

554. Time to be regarded as Essence of Contract: (1) In case the purpose or objective of the contract cannot be achieved if the contract is not performed within particular date, time or period having regard to the nature of the contract or intention of the parties to the contract, the time for performance of such a contract shall be regarded as the essence of the contract.

(2) In case either party of the contract does not perform the contract referred to in sub-Section (1) within such a date, time or period, such a contract shall be deemed to be breached and the other party may rescind the contract forthwith.

555. Circumstances in which contracts need not be performed: In any of the following circumstances, there would be no need to perform an act under the contract or to perform the contract:-

- (a) In case either party to the contract absolves the other party from fulfilling the obligations under the contract;
- (b) In case a voidable contract is declared to be void by the party concerned;
- (c) In case the contract cannot be performed for the reason of breach of the contract by the other party;

(d) In case it becomes not necessary to perform the act referred to in the contract according to any provision of this Part;

(e) In case of a contract which is unenforceable according to Section 559.

556. Devolution of rights and obligation of contract: In case a party to a contract dies or becomes insane, the rights accruing from the contract shall devolve on the successor to his/her property, and the successor shall also have to bear the obligation to the extent covered by the property succeeded by him/her.

Provided that, the rights and obligation accruing on the basis of personal skills and qualification shall not devolve on such successor.

557 Transfer of Right or Obligation under Contract: (1) Except in cases where a contract has to be performed by the person entering into the contract, the contract may be performed by his/her agent, or by a person appointed by him/her or any other person on his/her behalf or right or obligation under the contract may be transferred.

Provided that, no party to a contract may transfer the obligation under the contract to any other person without consent of the other party.

(2) The following terms and conditions shall be met in order to transfer rights and obligation pursuant to sub-Section (1):-

- (a) Unless otherwise provided for in the contract, the transfer shall be in written form;
- (b) The transfer shall be without any condition;
- (c) No law or the contract has prohibited the transfer of rights and obligation;
- (d) In case of transfer of rights and obligation, information thereof have to be provided to the other party.

(3) Once a party accepts an act done by the third person, he/she may not claim later on that the act has to be done by the party entering into the contract, except otherwise provided for in the contract.

(4) In case two or more persons jointly enter into a contract with any other party, any of the persons or all persons jointly entering into the contract shall fulfill or cause to be fulfilled the obligation under the contract, except otherwise provided for in the contract.

(5) In case any person has fulfilled the obligation under sub-Section (4), the person so fulfilling the obligations may recover compensation or loss on a *pro rata* basis from other persons jointly entering into the contract.

(6) In the contract concluded pursuant to in sub-Section (4), in case any party gives concession to any person belonging to the other party from the obligation of his/her share, the other

persons shall not be free from the remaining obligation of the contract.

558. Only the party to have right to perform the contract: (1) Only the person who is a party to a contract may demand for performance of the contract from other party.

Provided that in case the contract is concluded for the benefit of any person, such a person may demand for the performance of that contract even though he/she is not a party to such contract.

(2) In case two or more persons jointly promise to do or forbear to do any act, all persons concluding the contract may demand for performance of that contract, except otherwise provided for in the contract.

559. Contracts need not be performed in the event of fundamental changes in circumstances: (1) In case it becomes impossible to perform a contract as a result of fundamental change in the circumstances existed at the time of formation of the contract, the act according to the contract need not be performed.

(2) Without prejudice to the generality of sub-Section (1), emergence of any of the following circumstances shall be deemed to have been occurred fundamental change in the circumstance of formation of the contract:-

(a) In case the contract becomes illegal and thereby it cannot be performed;

(b) In case it becomes not possible to perform the contract due to emergence of the situations such as war, floods, landslides, fire, earthquakes, volcanic eruptions, which are beyond human control;

(c) In case an element essential for performance of the contract is destroyed or damaged, or exists no longer, or such an element could not be obtained;

(d) In case of the contract concluded with a condition to provide services on the basis of personal efficiency, skill or talent, the person providing such service dies or becomes insane or is incapable of performing the contract because of physical or mental disability.

(3) Notwithstanding anything contained in sub-Section (2), none of the following situations shall be deemed to be the fundamental changes in the circumstance in the formation of the contract:-

(a) In case it becomes difficult to perform the contract;

(b) In case profit margin is low or it causes loss;

(c) In case any party to the contract is dependent upon any third party who is not a party to the main contract for performing the contract and the third party commits a default or becomes incompetent;

(d) In the event of strikes or lockouts;

(e) In case additional tax, fee or other revenue is required to be paid;

(f) In case the contract is concluded with more than one objective and some of them could not be fulfilled.

(4) In case of emergence of any of the circumstances referred to in sub-Section (3), the parties may, except otherwise is provided for in the contract, review or negotiate to alter the terms and conditions of the contract.

(5) In case it becomes impossible to perform a contract because of fundamental changes in the circumstances as referred to in sub-Section (2), it shall be as follows in the following matters:-

(a) The amount paid by one party to the other prior to occurrence of such change in the circumstances shall be refunded to the other party.

(b) Payment to be made or due from one party to the other according to the contract shall not payable after such a change in the circumstance.

(c) In case any party has performed any act or paid any amount before such a change in the circumstance, such act or amount shall be calculated and the amount to be paid to each other shall be determined, and reasonable expenses incurred by one party according to the contract may be recovered from the other party.

(6) Notwithstanding anything contained in this Section, the parties to a contract may agree to fulfill their respective obligations by continuing the performance of the contract after the end of the circumstance referred to in clause (b) of sub-Section (2).

560. Facilities to be provided: (1) The parties to a contract shall have to provide facilities to each other that may be needed to perform the contract from their respective sides.

(2) In case the contract could not be performed due to failure in providing such facilities, the party failing to perform the contract shall not be held responsible.

561. Contract may be suspended or altered: (1) In case the parties to a contract agree, all or any of the portion of the act to be performed under the contract may be changed or altered; the time-limit for performing any act under the contract may be extended; the contract may be suspended by not making it obligatory to perform any act to be performed under the contract for some time, the act referred to in the contract may be replaced by another act, or a new contract may be signed as a substitution of the original contract.

(2) In case any alteration or amendment is made in the contract pursuant to Sub Section (1), a new contract shall be deemed to have been signed, and the contract shall become effective accordingly.

(3) In case a new contract is signed pursuant to sub-Section (2), obligation under the initial contract need not be borne except as otherwise provided for in the contract.

562. **Limitation:** A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter- 5

Provisions Concerning Breach of Contract and Remedies

563. Breach of Contract: (1) In case either party to a contract does not fulfill the obligation under the contract, or gives a notice to the other party that he/she will not perform the act to be performed under the contract, or in case his/her action or conduct shows that he/she is incapable of performing the act under the contract, he shall be deemed to have breached the contract.

(2) In case a party has breached the contract as referred to in sub-Section (1), or in case his/her action or conduct shows that he/she has not materially complied with the contract, the other party may revoke the contract by furnishing a notice thereof to the other party.

(3) In case a contract has been revoked pursuant to sub-Section (2), the party revoking the contract shall not be compelled to comply with the contract.

564. Indivisible Nature of the Authority to Revoke Contract: In case there are two or more persons in either party of a contract, the contract may be revoked only if all of them revoke it or if it is revoked in such a manner that revocation would be applicable in case of all of them.

565. Compensation for Breach of Contract: (1) In case a contract is breached pursuant to Section 1, the party aggrieved by it may realize from the party who has breached the contract the actual

loss or damage suffered by him/her as a result of such breach of contract or the loss or damage, which the contracting parties had anticipated at the time of signing of the contract.

(2) In case any specific amount of compensation was estimated in advance at the time of conclusion of the contract for breach of the contract, the aggrieved party may be entitled to recover from the other party a reasonable amount not exceeding that amount.

(3) In case the amount of compensation referred to in sub-Section (2) has not been specified, the party making a claim for such compensation may realize a reasonable amount for the direct and actual loss or damage that has resulted from the breach of contract.

Provided that no compensation may be recovered for any indirect or hypothetical loss or damage.

(4) In case a contract has been concluded for completing any act within a specific period, and in case provision has been made for payment of compensation pursuant to sub-Section (1) for the failure to complete that act within the specific period, the party paying compensation may request for extension of the time for completing the contract in proportion to the amount paid by him/her as compensation.

(5) Payment of an amount of compensation itself shall not be deemed to have caused adverse impact on the rights of the party to seek other legal remedies.

566. Consequence of revocation or void of contract: (1) In cases where a contract has been revoked upon mutual consent of both parties after either party of the contract receives some cash or kind or any other benefit from the other party or fulfillment of the obligations under the contract partially or fully; in cases the contract needs not to be performed under this Part or other laws in force; in cases the contract is void according to a law or declared to be void; in cases the contract becomes invalid or has been revoked under this Part; such cash or kind shall be returned having settled the accounts of the cash or kind given in such a manner until the date of the contract being in force.

(2) In case any service or advantage other than cash or kind has been given pursuant to sub-Section (1), the party receiving such a service or advantage shall pay a reasonable amount to the other party in lieu of such service or benefit.

Provided that no cash, kind or any other benefit received or provided under the contract to be void pursuant to this Part shall be recovered.

(3) In case it becomes necessary to initiate legal action for not returning the amount paid in cash or kind or non-payment of amount under sub-Section (1), the concerned party may also demand to recover reasonable expenses incurred for that purpose.

567. Quantum Meruit: In case any party breaches a contract or a contract is discharged for any other reason, the aggrieved party

may claim for the payment in proportion to which he/she has done the act or performed the contract.

568. Specific Performance of Contract: (1) In case the cash compensation is not reasonable or adequate for the actual loss or damage caused to the aggrieved party because of breach of a contract, the aggrieved party may make a claim for specific performance of the contract instead of making a claim for compensation.

(2) Notwithstanding anything contained in sub-Section (1), the claim of specific performance may not be made in any of the following circumstances:-

- (a) In case the cash is adequate as compensation for breach of a contract;
- (b) In case the court cannot supervise whether the act to be performed under the contract has actually been performed;
- (c) In case the contract has been concluded for providing services concerning personal expertise, skill or knowledge;
- (d) In case the contract cannot specifically be performed;
- (e) In case the party in breach of the contract claims for specific performance of the contract.

569. Court May Issue Order: (1) In case it becomes impossible to perform a contract because either party of the contract is about to take any action or conduct in a manner contrary to the nature of the contract, the party aggrieved by such action or conduct may file a complaint at the Appellate Court requiring for a stay order to prohibit such action or conduct.

(2) In case a complaint is filled pursuant to sub-Section (1), the court may issue an appropriate order to any party to immediately stop his/her particular action or conduct with a provision to settle the dispute resulting from that contract according to the contract or prevailing law.

(3) In case such an order is issued, the aggrieved party may also realize the additional loss or damage resulting from the failure of the other party to comply with the order issued pursuant to sub-Section (1).

570. Compensation to be ascertained in Monetary Value: Except otherwise provided for in the contract, assessment of compensation of the loss shall be ascertained in monetary value.

Provided that in case of remedy referred to in Section 568, it shall be as stipulated therein.

571. Court May Consider: While determining compensation arising out of the reason of breach of a contract, the court shall have to consider whether the party has breached the contract intentionally or it could not be performed due to negligence of the party and also the amount or benefit receivable by the non-

defaulter party to the contract had the contract not been breached.

572. Limitation: A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter-6

Provisions Concerning Sale of Goods Contracts

573. Contract Concerning Sale of Goods: (1) A contract concerning sale of goods shall be deemed to have been concluded in case any seller agrees to hand over immediately or in the future any goods to the buyer having received a price.

Explanation: For the purpose of this Chapter, the term 'goods' means any type of movable or immovable property that may be purchased or sold except the currency in circulation, security, or an actionable claim.

(2) A contract concerning sale of goods may be conditional or unconditional.

(3) A contract may be concluded with a provision to sell goods owned or possessed by the seller for the time being or those to be produced or acquired by him/her in the future.

574. Contract concerning sale of goods to be void: In case a contract has been concluded to sell particular goods, and in case the goods have suffered any loss at the time of, or before concluding, the contract and the seller had no knowledge thereon at the time of concluding the contract, the contract shall be void.

Explanation: For the purpose of this Section, 'specific goods' means the particular goods referred to in the contract at the time of concluding the contract.

575. Fixation of price of goods: (1) Except otherwise provided for in the contract, the price of goods shall be fixed on the basis of the terms and conditions of the contract or according to the procedure agreed upon in the contract or in the process of transaction between the parties.

(2) In case the price of goods has been fixed according to their weight and measurement, the price of goods shall be fixed on the basis of the net weight and measurement of the goods, except otherwise provided for in the contract.

(3) In case the price of goods cannot be fixed under Subsection (1) or (2), the buyer shall pay to the seller a reasonable price taking into account the concerned circumstances.

576. Price of Goods to be Paid: (1) Except otherwise provided for in the contract, the price of goods must be paid as follows in the following circumstances:-

(a) At the time of purchase of goods by the buyer the price of goods shall be paid to the seller; or

(b) At the time of transfer of the goods.

(2) While making payment of the price of the goods, it shall be paid in cash.

Explanation: For the purpose of this Section, 'cash' also includes cheques payable through a bank, traveler's cheques, promissory notes, bills of exchange, letter of credit, bank draft, credit card and telegraphic transfers as well.

577. Description of goods: (1) In case the name, brand, trademark or specification of any goods to be sold are referred to in the contract, the contract shall be deemed to have been concluded to sell goods of the same name, brand, trade mark or specification.

(2) In case the name, brand, trademark or specification and sample goods to be sold have been stipulated, the bulk of the goods shall not be corresponding only to the sample but also to the name, brand, trademark or specification as stipulated in the contract.

578. Title to be deemed to the goods to be sold: (1) Except otherwise provided for in the contract, the seller shall be deemed to have a title over the goods sold if it is sold, or over the goods to be sold, if agreed to sell in future, and that such goods is or shall be free from custody, control or possession of any person.

(2) Except otherwise provided for in the contract, the seller shall be deemed to have the right to sell the goods sold or to be sold by him/her.

579. Goods to be deemed to be of satisfactory quality: (1) Except otherwise provided for in the contract, goods sold or to be sold shall be deemed to be of satisfactory quality.

(2) In case any particular goods sold or to be sold for any particular purpose are appropriate for that purpose, they shall be considered to be of, or are of, satisfactory quality.

(3) Notwithstanding anything contained in sub-Section (2), in case the defect of any goods has been stipulated in the

contract or the buyer has the information of the defect before the contract is concluded or while inspecting the goods, the goods shall not be deemed to be of unsatisfactory or inferior quality.

- (4) In case the quality of any particular goods has been stipulated in the contract, it shall be according to the contract and if not stipulated therein, the goods shall be of the quality according to the prevalent standard.
- (5) Except otherwise provided for in the contract, the seller shall not be deemed to have warranted that the goods sold or to be sold is having a particular quality.

580. Substandard Goods may be accepted or rejected: (1) In case a seller delivers to a buyer the goods of different quality than that of stipulated in the contract, the buyer may accept such entire goods, reject such entire goods or accept any part thereof and reject rest of the goods.

(2) In case any goods has been rejected entirely or in part, the buyer may inform the seller either to deliver another goods instead of such goods or in case the quality of such goods could be improved, to improve the quality of such goods.

(3) In case the information is given pursuant to sub-Section (2), the seller shall, according to the information given by the buyer or the mutual understanding developed between them, deliver another goods instead of such goods or improve the quality of the goods delivered.

581. Sale through Samples to be made: (1) In case provisions have been made in a contract to sell goods upon inspection of their samples directly or indirectly, it shall be deemed that the contract has been concluded to sell goods upon inspecting the samples.

(2) In case a contract has been concluded to sell goods upon inspecting the sample, it shall be deemed to have included the following conditions, except otherwise provided for in the contract:

(a) The bulk of the goods shall correspond to the samples in quality.

(b) The buyer shall have a reasonable opportunity to compare the quality of the bulk of the goods with the sample.

(c) The goods sold or to be sold shall be free from any defect, and that their satisfactory quality shall be apparent while inspecting them at the time of comparing them with the sample.

582. Provisions concerning transfer of ownership of goods: (1) In case a contract has been concluded to sell any particular or certain goods, the transfer of the goods shall be made as provided for in the contract, and if not provided in the contract, it shall be transferred according to the conditions of the contract, the conduct of the parties, and the intention of the parties expressed through the relevant circumstances.

(2) Except otherwise provided for in the contract, in case a contract has been concluded in such a circumstance that any particular goods could be delivered immediately, the parties shall be deemed to have the intention of delivering them upon concluding the contract or upon payment of the price of the goods.

(3) In case a contract has been concluded in such a circumstance that a particular goods may be delivered immediately, and in case the buyer has to weigh, measure and examine the goods or to do any act to determine their price, such goods shall not be delivered until such acts have been done and information thereof is given to the buyer within a reasonable time.

(4) Except otherwise provided for in the contract, a contract shall be deemed to have been concluded with a provisions to transfer the goods at the very place where the goods has been sold or is to be sold.

(5) Except otherwise provided for in the contract, the title or ownership of the buyer shall be deemed to have been established on the goods from the very moment the goods is transferred to him/her.

583. Risk to be borne: (1) Except otherwise provided for in the contract, the seller shall bear the risk of any loss or damage to such goods until they are transferred to the buyer.

(2) In case there has been delay in transfer of goods due to the buyer or the seller, the party who has caused such delay shall bear the risk of loss or damage under sub-Section (1).

(3) In case the seller has agreed to deliver goods from the place of purchase to the place specified by the buyer, the seller shall bear the risk of any loss or damage to goods, except otherwise provided for in the contract.

584. Buyer's right to inspect goods: Upon the sold goods are delivered to the buyer; the buyer shall have a reasonable opportunity to examine and ascertain whether or not the goods is according to the contract and until the buyer ascertains in such a manner, he/she shall not be deemed to have accepted the delivery of the goods.

585. Goods deemed to be delivered: The buyer shall be deemed to have received the goods in any of the following circumstances:-

- (a) In case the buyer or his/her representative receives the goods;
- (b) In case a receipt or memo is issued having acknowledged the delivery of the goods;
- (c) In case the buyer inspects the goods and ascertains that they conform the contract pursuant to Section 584, and accordingly keeps them in his/her store;

- (d) In case the goods reach to the buyer and are retained by him/her, even if he does not send information about his/her refusal to accept them within a reasonable time limit,
- (e) In case he/she does anything to prove his/her ownership of such goods.

586. Time-limit for delivering goods: (1) In case the contract provides that goods must be delivered at any particular time or within any specified period, the seller must deliver the same to buyer at that very time or within that very period.

(2) Notwithstanding anything contained in sub-Section (1), in case the buyer accepts goods delivered by the seller before or after the time or period prescribed in the contract, the seller shall be deemed to have so delivered the goods.

587. Documents concerning sold goods to be handed over: Except otherwise provided for in the contract, the ownership of goods shall not be deemed to have been transferred after sale until basic documents connected with their ownership or required for their use are handed over.

588. Delivery of goods in a quality different from contract quality:

(1) In case the seller delivers goods to the buyer in a quantity less than the quantity referred to in the contract, the buyer may refuse to accept them.

Provided that, in case the buyer accepts goods even in such quantity, he/she shall be required to pay the price of the quantity at the rate referred to in the contract.

(2) In case the seller delivers goods to the buyer in a quantity higher than the quantity referred to in the contract, the buyer may accept the goods only in the quantity referred to in the contract, and reject the rest or the entire quantity.

Provided that, in case the buyer accepts the entire quantity of goods so delivered, he/she shall be required to pay for them at the contract rate.

(3) In case the seller delivers to the buyer the goods mixed with goods of a description different than included in the contract, the buyer may accept the goods stipulated in the contract and reject the rest, or reject the entire lot of goods.

(4) Except otherwise provided for in the contract, the buyer shall not be bound to accept delivery of goods in installments.

(5) Except otherwise provided for in the contract, in case the buyer refuses to accept goods brought by the seller for delivery, the buyer shall not be bound to return them to the seller.

Provided that the buyer shall inform the seller through the quick means of communication about his/her refusal along with the reasons thereof.

589. Special provisions concerning Compensation: Notwithstanding anything contained elsewhere in this Part, action in respect to compensation for contract under this Chapter shall be taken as follows:-

- (a) In case a buyer does not accept or refuses to accept or refuses to pay the price of goods after conclusion of a contract concerning sale of goods, the seller may, subject to the contract, claim compensation from the buyer in consideration of the buyer's failure to accept or refuse to accept the goods.
 - (b) While determining compensation under clause (a), in case goods not accepted or rejected by the buyer are available in the market, compensation shall be determined on the basis of the difference between the price of goods referred to in the contract and the market or current price.
 - (c) In case the seller does not deliver or refuses to deliver goods according to the contract after concluding a contract concerning sale of goods, the buyer may claim compensation from the seller in for his/her failure to deliver the goods.
 - (d) While determining compensation under clause (c), in case the goods which the seller has refused or failed to deliver to the buyer are available in the market, compensation shall be determined on the basis of difference between the price of the goods referred to in the contract and the market or current price.
- 590. Limitation:** A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter-7

Contacts Concerning Guarantee

591. Contract Concerning Guarantee: (1) Where a contract is concluded on the condition that in case a person fails to repay a loan borrowed by him/her or fails to fulfill an obligation promised by him/her, a third party shall repay the loan or fulfill the obligation, a contract concerning guarantee shall be deemed to have been concluded.

(2) Where a third party provides guarantee pursuant to sub-Section (1) and in case the person who has to repay the loan does not repay it or does not fulfill the obligation to be fulfilled, the person providing guarantee to such loan or obligation shall have to repay the loan or fulfill the obligation according to conditions of the contract.

(3) The terms and conditions of guarantee shall be as referred to in the contract.

(4) Contracts concerning guarantee shall have to be concluded in written form.

592. Surety's Obligation: (1) Except otherwise provided for in the contract, the surety's obligation shall be as follows:-

(a) Obligation of the surety shall arise from the very time when the person who has to fulfill the obligation fails to fulfill it.

(b) Obligation of a surety shall be similar to the obligation of the person who has to repay the loan or fulfill any

obligation and the surety shall remain liable until the person becomes free from the obligation of repaying the loan or fulfilling the obligation.

(c) In case a security and guarantee both have been provided for any loan or obligation, the surety shall not be liable to the extent covered by the security so provided.

(d) The obligation of a surety shall not be terminated merely because the person who has to repay the loan or fulfill the obligation becomes free from the obligation by operation of law.

- (2) A contract concerning guarantee shall be effective immediately after the person who has to pay or fulfill the obligation breaches the obligation to be paid or fulfilled and the creditor may cause to fulfill the said obligation from the surety.

Explanation: For the purpose of this Part, the term 'creditor' means a person who has provided a loan and also includes a person who may obtain any benefits from or have any act done by the person who has to repay the loan or fulfill the obligation.

- (3) Notwithstanding anything contained in sub-Section (2), the creditor shall have to furnish a notice to the borrower to perform the contract according to the terms and conditions of the contract before making a claim to the surety under the

guarantee contract for payment of the amount not paid or the obligation not fulfilled according to the contract.

593. Circumstances in which surety to be absolved from obligation: (1) Except otherwise provided for in the contract, the surety shall be free from obligation to the following extent in any of the following circumstances:-

(a) In case the person who has to repay a loan or fulfill an obligation alters the terms and conditions of the contract, without the approval of the surety, in such a way as to have substantial impact on the contract; in respect of transactions to be carried out after such alteration;

(b) In case a contract is concluded to absolve from obligation the person who has to fulfill the obligation in respect to which the guarantee was provided;

(c) In case the person who has to repay a loan or fulfill an obligation is absolved from obligation or in case the loan is written off due to the action of the creditor;

(d) In case the creditor agrees to absolve the borrower from the obligation by recovering a sum less than what is due or to provide additional time limit for repaying the loan or not to initiate a lawsuit;

(e) In case any action of the creditor causes an adverse impact to the surety's right to legal remedy against the person who is under obligation to repay the loan or fulfill the obligation;

(f) In case the creditor loses, damages or returns any security obtained by him from the borrower, to the extent of the value of such a security;

(g) To the extent to which the person who is under obligation to repay a loan or fulfill an obligation has repaid the loan or fulfilled the obligation according to the contract.

(2) Notwithstanding anything contained in sub-Section (1), the surety shall not be deemed to have been absolved from the obligation, except otherwise provided for in the contract, merely because the creditor fails to initiate legal action against the surety or try to realize the amount to be realized by him/her on time.

(3) In case there are two or more sureties and in case the creditor absolves any one of them from the obligation, the other sureties shall not be absolved from their respective share in the obligation.

(4) Notwithstanding anything contained in sub-sections (3) and (4), in case the share in the obligation of the surety/sureties cannot be separated, no surety shall be deemed to have been absolved from his obligation merely because the creditor has absolved him/her from the obligation.

(5) Except otherwise provided for in the contract, the surety shall not be deemed to have been absolved from the

obligation under the contract merely because a dispute arises among the parties in relation to the contract, which has been concluded for fulfillment of an obligation under the contract.

594. Relationship between the Surety and the Borrower: (1) The surety shall cause the person who is under obligation to repay a loan or fulfill the obligation according to the contract.

(2) In case the borrower has supplied any property or security to the surety for the guarantee provided by him/her while borrowing a loan or assuming an obligation, the surety shall not pledge, mortgage, sell, or otherwise transfer the title thereto without the consent of the borrower.

(3) In case a guarantee is provided for any specific purpose, the objective, nature or terms and conditions of that loan or obligation shall not be altered without the consent of the surety.

(4) Notwithstanding anything contained in sub-Section (1), it shall be according to the contract on the matters with regard to the relationship between a surety and a borrower in a contract.

595. Surety to substitute creditor: (1) After the surety repays the loan to be repaid by the borrower or fulfills the obligation to be fulfilled by the borrower under the contract, the surety shall substitute the creditor in regard to that loan or obligation, and may initiate legal action against the borrower as a creditor.

(2) Notwithstanding anything contained elsewhere in this Chapter, the total amount and interest to be accrued on that amount or any other fee or amount payable thereto shall be paid by the borrower to the surety for the loan repaid or the obligation fulfilled by the surety on his/her behalf according to the contract concerning guarantee.

(3) In case it becomes necessary to initiate legal action because of failure of the borrower to pay the amount payable by him/her under sub-Section (2), or in case any other expenses incur in this regard, the surety shall also be entitled to recover such expenses from the borrower.

596. Circumstances on which Contract Concerning Guarantee may be invalidated: In any of the following circumstances, the surety may get the contract concerning guarantee invalidated:-

(a) In case the guarantee was obtained from the surety by the creditor him/herself or by any other person on his/her consent by supplying misleading or false notice or information on the matter of the transaction for which the guarantee was given;

(b) In case the matter of guarantee, property or facts were hidden or not disclosed;

(c) In case the contract has been concluded with the condition that a third person would also become a surety but the third person has not consented to provide the guarantee.

597. Obligation of Co-sureties to be Equal: (1) In case two or more persons provides joint guarantee jointly or separately for any

loan or obligation and in case the borrower fails to repay the loan or fulfill the obligation, the co-sureties shall repay the loan or fulfill the obligation or the requirements of the contract on an equal basis, except otherwise provided for in the contract.

(2) While providing a guarantee jointly pursuant to sub-Section (1), in case the guarantee was provided on a compartment basis, the surety shall be liable to pay or bear the obligation to the part for which he/she has provided the guarantee.

598. Continuous Guarantee: (1) In case a guarantee is provided to be expandable to a series of transaction, it shall be deemed to be a continuous guarantee.

(2) In case a provision of a guarantee as referred to in sub-Section (1) is made, the surety shall be liable to the extent of the amount of guarantee that could not be recovered in the entire period of the guarantee contract irrespective of the number of transaction made thereunder.

(3) The surety may, by giving a notice to the creditor at least three months in advance, revoke the continuous guarantee for the transaction to be made in the future.

(4) Unless otherwise provided for in the contract, in case of death of the surety, the continuous guarantee shall be deemed to have, *ipso facto*, be terminated.

599. Contract concerning Indemnity: (1) In case a contract is concluded with a condition that a party to a contract shall bear any loss or damage that may result from any action while

working under the direction of such a party to the other party or to the third party, it shall be deemed to be a contract concerning indemnity.

(2) In case a contract referred to in sub-Section (1) is concluded, the person may be entitled to recover as compensation all or any of the following amounts subject to that contract:-

- (a) The indemnity amount referred to in the contract;
- (b) In case any loss or damage is caused to a third person, the amount to be paid or borne therefor;
- (c) The amount of expenses on the case filed or defended by him/her in connection with the contract concerning indemnity;
- (d) The amount of expenses involved in litigation, for failure to pay the amounts referred to in clauses (a) to (c).

(3) Notwithstanding anything contained in sub-Section (1), while performing any act under the direction of any party, in case any person acts with the malafide intention to cause any loss or damage negligently to such a party or to a third person, and in case the concerned party or the third person suffers a loss or damage or as a result thereof, he/she shall personally be liable for such loss or damage.

600. Provision concerning Subrogation: (1) In case any person concludes a contract with any other person against any loss or damage that could be caused by a third person to his/her

property, facilities, rights enjoyed by him or benefits that could result from his/her business, the person concluding such a contract shall have to bear the obligation thereof whosoever has caused such loss.

Provided that in case a contract is concluded to recover the loss from any other person, it shall be recovered from such a person.

(2) In case of the loss caused pursuant to sub-Section (1), it shall be according to the contract if stipulated in the contract and in case it is not stipulated in the contract, a reasonable amount or compensation shall be paid or shall cause to be paid to the person affected by the loss or in case of his/her death, to his/her successor.

(3) In case there is any loss or damage as referred to in sub-Section (1), the person paying the amount or compensation under Subsection (2) shall be deemed to have subrogated the person who has sustained the loss or damage, and accordingly, the subrogator may have the amount or compensation for such loss or damage recovered from the person causing such loss or damage.

601. Rights of Subrogator: The rights and liabilities of a subrogator shall be as referred to in the contract, if any, and if not, they shall be as follows:-

(a) All the rights, under the contract, of the person who has sustained loss or damage shall devolve on the subrogator.

(b) The subrogator referred to in clause (a) may recover from the person who has caused the loss or damage, or from the party to a contract concluded in that connection, if any, the amount or reasonable compensation paid by him/her to the person who has suffered the loss or damage, as well as the expenses incurred for litigation, if any.

602. Limitation: A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter- 8

Provisions Concerning Contracts of Bailment

603. Contract Concerning Bailment: (1) In case a person delivers any goods to another person with a condition to return him/her or to hand it over to any other person or to sell it as ordered by him/her, a contract concerning bailment shall be deemed to have been concluded.

Explanation: For the purpose of this Chapter, the term 'goods' means any movable property other than currency in circulation and also the title over such property.

(2) While concluding a contract pursuant to sub-Section (1), a deed shall have to be executed while bailing any property the price of which is more than twenty five thousand rupees.

604. Bailment deemed to be completed: (1) The process of bailment shall be deemed to have been completed once the bailee receives the goods under bailment.

(2) In case any property has already been kept by any person or a person authorized by him/her under his/her custody or control, the concerned property shall be deemed to have been taken as bailment.

605. Details of bailed property to be stated: (1) In case a bailor knows that the bailed property is not usable due to any defect in it, or it may cause any harm or loss or that separate provisions or arrangement must be made for its protection, he/she shall, to the

best of his/her knowledge, inform the bailee about all such matters.

(2) In case the information that has to be supplied under sub-Section (1) is not supplied even having knowledge about it, the bailor shall be liable to the harm or damage caused by that property or because of that goods to the bailee.

(3) Notwithstanding anything contained in sub-Section (2), while utilizing any goods bailed, in case any harm or loss is caused by the goods because of defects of such goods, the bailor shall be liable for the harm or loss so caused even if he/she does not have any information as to the defect in the goods bailed.

606. **Bailee's Obligation:** (1) A bailee shall have to take reasonable care and afford protection of the goods received by him/her as bailed goods as referred to in the terms and conditions of the contract, and as his/her own goods in case nothing has been referred to in the contract.

(2) Except otherwise provided for in the contract, in case any bailed goods is lost, stolen, damaged, depreciated, decreased or destroyed because of a natural calamity despite taking reasonable care and affording protection pursuant to sub-Section (1), the bailee shall not be liable to return such goods.

Provided that, in case the goods is lost, stolen, damaged, depreciated, decreased or destroyed because of negligence or *malfide* intention of the bailee, or of his/her failure to take care or failure to afford protection according to the terms and

conditions of the contract, he/she shall be liable to return the goods or pay an equivalent amount to the bailor.

(3) In case the bailee uses the bailed goods without having the right to do so under the contract or in a manner contrary to the terms and conditions of the contract, and in case such use causes any loss, damage, destruction, depreciation or harm to the goods, the bailee shall have to pay compensation to the bailor.

(4) Except otherwise provided for in the contract, the bailee shall not mix-up the bailor's goods with his/her own goods.

Provided that, in case the bailee mixes up his/her own goods with that of the bailor, both parties shall have title on that goods, as well as to the income accruing therefrom, in proportion to their respective shares.

(5) In case the bailee mixes up his/her own goods with that of the bailor and the goods so mixed-up could be separated, the two parties shall have title to their respective goods so separated, and the costs incurred for separating the goods so mixed up and the loss caused, if any, to the bailor while mixing up such goods in that manner shall be borne by the bailee.

(6) In case the bailee mixes up his/her own goods with that of the bailor without the consent of the bailor and their goods could not be separated as referred to in sub-Section (5), the title of the bailor to the bailee's goods shall be terminated if he/she agrees to obtain his/her share from the goods so mixed-up.

(7) In case the bailor does not agree to take his/her share from such goods pursuant to sub-Section (6), the bailee shall have to pay compensation for his/her goods.

607. Bailed Goods to be returned: (1) After the expiry of the period prescribed while bailing goods or fulfillment of the objectives for which the goods has been bailed, the bailee shall have to return the bailed goods to the bailor.

(2) In case the goods is not returned under sub-Section (1) within the specified period or within a reasonable period according to the nature of the goods where no such period is specified, or in case the bailor does not take it back and the goods is lost, stolen, damaged, destroyed or reduced after that date, or bailor suffers any loss or damage due to such goods after that date the party because of which such loss or damage is resulted shall bear the loss or damage.

(3) Except otherwise provided for in the contract, in the case of a bailed goods owned by several persons, it may be handed over to any one of such owners or to the person ordered by them, and such hand over of the goods shall be deemed to have been duly done.

(4) Except otherwise provided for in the contract, the goods raised or earned through the bailed goods shall also belong to the bailor.

608. Person bailing other's goods to be held responsible: In case any person bails any goods, over which he/she has no title, right

or ownership, to any other person to keep as a bailed goods, and in case the bailee has to bear any claim of a third party or any loss, damage or any cost incurred while accepting that bailment, the bailor shall be liable to pay such costs as well.

609. Goods given for repair and maintenance to be returned: (1)

In case any goods is given for repair, improvement or renovation in any manner whatsoever, the goods shall be returned to the owner having charged the costs incurred or the service charges levied for the service of repair, improvement or renovation.

(2) The goods given under sub-Section (1) shall be returned to the concerned owner having repaired, improved or renovated it within the period specified in the contract. In case the goods is not returned within the specified period, or any additional loss or damage is caused to the goods or the goods is so damaged that it has become unusable in the course of repair, improvement or renovation, it shall be as provided for in the contract, and if no provision has been made in the contract, a reasonable amount of compensation shall be paid to the concerned owner.

(3) Notwithstanding anything contained elsewhere in this Section, the person who repairs, improves or renovates any goods may keep it with him/herself until the cost of repair, improvement or renovation or the service charge levied for that purpose is paid. In case the cost or service charge is not paid within a reasonable period, the person repairing, improving or

renovating the goods may recover his/her expenses or service charges having sold the goods.

610. **Bailment Costs:** While bailing goods, the costs incurred for looking after and affording protection of the bailed goods shall be borne by the bailor, except otherwise provided for in the contract.

611. **Contract concerning bailment to be void:** (1) In case it is proved that any goods is bailed with the intention of avoiding a partition of joint property or payment of any government revenue or any amount involved in any claim to be paid to anybody or for any other unlawful intention, the contract concerning such bailment shall be void.

(2) In case the bailee does not keep the bailed goods according to the term and conditions of the contract, the bailor may get the bailed goods returned at any time.

612. **Limitation:** A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter -9

Provisions Concerning Collateral or Deposit Contracts

613. **Contracts Concerning Collateral or Deposit:** (1) In case any person takes a collateral while providing a credit to anyone as a security for that credit or obtains any property as a deposit in the form of a guarantee for performance of any act, it shall be deemed to have concluded a contract concerning collateral or deposit.

Explanation: For the purpose of this Chapter, the term 'goods' means any movable or immovable property and title or document establishing title to that property.

(2) In case a collateral is taken while providing a credit, the credit and the interest to be accrued thereon and in case any deposit is obtained to perform any work, the other costs concerning that work and the costs incurred for taking care of the collateral or deposit shall also be deemed to have been included in the contract concerning collateral or deposit.

614. **Collateral or deposit to be returned:** (1) Except otherwise provided for in the contract, the collateral obtained for a credit shall be returned upon repayment of the credit or the deposit obtained for an act shall be refunded to the concerned person after the completion of the performance of such an act.

(2) In case the collateral or deposit taken under sub-Section (1) is or may be divided into different parts, the collateral or deposit

may be returned to the extent covered by the portion of the credit repaid or the act performed.

615. **Rights of person accepting collateral or deposit:** (1) In case a credit is obtained having pledged any goods as collateral and the borrower fails to repay the credit or the interest accrued thereon, if any, within the specified period, the person who has taken the collateral may initiate action according to law and recover the amount to be recovered for the credit having sold or auctioned the collateral according to current market price or transfer the ownership of such collateral in his/her name subject to law, in case it cannot be sold or auctioned.

(2) In case the goods pledged as collateral is sold at a price lesser than the amount to be recovered from the borrower by the person who has taken the collateral under sub-Section (1), the shortfall amount may be recovered from other assets of the borrower. In case the collateral is sold at a price higher than the amount to be recovered, the excess amount shall be refunded to the borrower.

(3) Notwithstanding anything containing in sub-sections (1) and (2), in case the goods pledged as collateral has not yet been sold or its ownership has not yet been transferred, the person who has pledged the goods as collateral may clear his goods by repaying the credit and interest thereon and any other amount payable at any time.

Provided that, the person who pledges the goods as collateral shall also be liable to bear additional liability incurred on the goods pledged as collateral owing to his/her failure to repay the amount within the specified period.

(4) In case anyone is entrusted with the responsibility of performing any act having accepted any goods as deposit, and if the concerned person fails to complete the concerned act within the specified period, the goods pledged as deposit may be used to complete the act or to recover the costs incurred thereupon.

(5) In case the act cannot be completed from the goods pledged as deposit, the shortfall amount may be recovered from the other assets of the person who furnishes the deposit.

616. Consequences of pledging goods without title as collateral or

deposit: (1) In case anyone has availed a credit or an act having pledged as collateral or deposited any goods to which he/she has no title or ownership or any goods received under a contract which is void under this Part and the person obtaining such a collateral or deposit has no knowledge of this fact, the person taking the goods on collateral or deposit may demand the goods from the person who has given the collateral or deposit the goods to which he/she has a title and in case the collateral or deposit could not be pledged as demanded, the person taking such a collateral or deposit may get the contract to be void.

(2) In case any goods received under a void contract is pledged as collateral or deposit, and such a contract has already become

void before furnishing such collateral or deposit or the party receiving the collateral or deposit had the knowledge that the concerned goods did not belong to the person pledging it as collateral or deposit, the person obtaining such goods as collateral or deposit shall have no right over such goods and he/she may recover the amount to be recovered by him/her or have the work performed from the other goods of the party pledging the collateral or deposit.

(3) In case the person who pledges the collateral or deposit has a partial or limited title to, or ownership of, the goods pledged as collateral or deposit, the person accepting such goods as collateral or deposit shall also have title to that goods to the same extent.

617. Creditors to be on *pari pasu* Position: (1) In case anyone has availed credit from several creditors in one or several installments having pledged his/her goods as collateral and the goods so pledged as collateral is not sufficient to repay the credit of all the creditors, except otherwise provided for in the contract, all the creditors who have taken the goods as collateral shall be deemed to be on *pari pasu* position in respect to the credit outstanding and all of them may make a proportionate claim on the goods accordingly.

(2) The contract entered into giving priority right in future to a creditor on the goods already pledged as collateral pursuant to sub-Section (1) shall be void. In case the creditor has already

recovered his/her credit from the collateral before the contract becomes void even while having knowledge that there are other creditors in respect to the collateral, he/she shall have to refund the amount to the other creditors and recover his/her credit from the other assets of the person who has pledged the goods as collateral.

618. **Limitation:** A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter- 10

Provisions Concerning Agency Contracts

619. **Contracts Concerning Agency:** Any person may appoint any other person as his/her agent to do anything on his/her behalf, except the matter connected with his/her personal skills, to conduct business as his/her agent or carry on any transaction with a third person on his/her behalf or to represent him to such a person, or to establish any type of legal relation with the person appointing an agent and a third person, and in case an agent is so appointed, a contract concerning agency shall be deemed to have been concluded.

620. **Recognition of transaction carried out by Agent:** (1) A person who may carry out something himself/herself may carry out or cause to be carried out the same through an agent, subject to the law.

Provided that no act may be carried out through an agent for which one has to be present in person.

(2) The contract concluded through an agent appointed pursuant to Section 619 or the act performed by the representative shall be deemed to have been carried out by the concerned person and the obligation arising out of such an act shall be implemented having recognized it as the contract concluded or the act carried out by the principal.

Provided that, the principal shall not be liable for any act carried out by the agent beyond his/her authority except in case he/she has accepted such an act.

(3) Notwithstanding anything contained in sub-Section (1), out of the acts performed beyond the authority, in case some of the acts are within his/her authority and some are beyond it and in case the part performed within his/her authority can be separated, the principal shall be liable for acts performed to the extent of the authority.

621. **Sub-agents May be appointed:** (1) In case it is necessary to appoint a sub-agent according to the nature of any trade, business or transaction or a sub-agent may be appointed having regard to the provision of the contract or usage, the agent may, except otherwise provided for in the contract, appoint a sub-agent with the consent of the principal.

Provided that an agent who has been appointed on the condition that he/she shall personally represent or personally carry out any act may not appoint a sub-agent.

(2) In case a sub-agent is appointed pursuant to sub-Section (1), the principal shall be informed accordingly, and the sub-agent so appointed in that manner shall have right and duty equal to that of the agent appointed by the principal.

(3) In case any agent appoints a sub-agent without the consent of the principal, the principal shall not be liable for any act done or work performed by the sub-agent.

(4) The agent appointing the sub-agent shall be personally liable for the acts referred to in sub-Section (3).

622. Matters to be complied with by Agent: (1) Except otherwise provided for in the contract, an agent shall comply with the following matters:-

(a) Acts to be carried out subject to the conditions of the contract concerning agency and the directives issued by the principal.

(b) In case no condition is stipulated in the contract or the principal does not issue any directive, the agent shall work as entrusted to him/her in the manner in which it has to be performed according to the nature of the business and the laws and usages of the place of transaction, with *bona fide* intention, full dedication and necessary skills and efficiency.

Provided that in case the principal has a knowledge in advance that the agent has no efficiency or capacity on any matter, the agent shall not be liable for any loss or damage resulting from such lack of efficiency or capacity.

(c) An agent who has been removed from his/her position shall not continue to do anything on the same matter as in the capacity of an agent.

(d) The agent shall have to give or show the details of account and records concerning the agency business as and when required by the principal.

(e) In case any obstruction, obstacle or difficulty arises in the course of performing works concerning an agency, the agent shall notify the principal as soon as possible and obtain necessary directives, and the principal shall be liable for any action taken according to the directives so issued.

(2) In case the principal suffers any loss or damage because of the failure of the agent to fulfill his/her duties under clauses (a), (b) and (c), the agent shall personally bear loss or damage so incurred.

623. Agent to be responsible: (1) Except otherwise provided for in the contract, the agent shall be personally liable for transactions made by him/her on behalf of the principal in the following circumstances:-

(a) In case he/she concludes a contract with a third party in relation to any transaction with provision for personal responsibility.

(b) In case any work has been done for or on behalf of an undisclosed principal, in case the principal is not disclosed;

(c) In case the principal cannot be sued for any reason;

- (d) In case the contract is concluded in his/her own name;
- (e) In case anything is done in contravention of the contract concerning the appointment of agent or beyond his/her authority;
- (f) In case any misrepresentation or fraud has been committed in the course of the transaction;
- (g) In case the agent has to bear personal obligation according to the nature of the trade;
- (h) In case the interest of the agent is also involved in the transaction.

(2) Except otherwise provided for in the contract concluded between the agent and a third person, merely the fact that the agent is personally liable under sub-Section (1) shall not be deemed to have prejudiced the right of the third person to make any claim against the principal and legal action may be initiated against the principal as well for arrears due from the agent.

(3) For the purpose of initiating legal action against the principal pursuant to sub-Section (2), the statutory limitation shall be deemed to have commenced from the date of the last payment made by the agent.

624. Principal to be Liable for Inducement to Believe for Having Authority: (1) If the principal has informed or induced to believe a third person that he/she has given authority to any other person to act on his/her behalf, the principal shall be liable

for any act done by the agent on his/her behalf unless the third party has come to know or has reasonable ground to have knowledge that the authority is not given.

(2) In cases referred to in sub-Section (1), the principal may be liable even for the acts done by the agent beyond the authority given, if there is a reasonable ground to believe that the agent is given authority.

625. Termination of Agency: (1) Except otherwise provided for in the contract, the agency shall be deemed to have, *ipso facto*, been terminated in the following circumstances:-

- (a) In case the agent voluntarily informs the Principal not to continue as an agent;
- (b) In case the principal revokes the authority granted or contract concluded with the agent or gives a notice to the agent regarding the impossibility of performance of the contract;
- (c) In case the agent has been appointed for any specific business and that business is completed;
- (d) In case the agent has been appointed for a specific period, such a period is completed;
- (e) In case the principal or the agent dies or becomes a person of unsound mind;
- (f) In case the principal is declared to be a bankrupt;

(g) In case the matter for which the agent has been appointed no longer exists;

(h) In case an agent is appointed by a body corporate if such body corporate is liquidated or dissolved.

(2) All or any of the authority granted by the principal to the agent may be revoked at any time before the agent exercises them and in case the authority is so revoked, information thereof shall immediately be given to the representative.

Provided that, in case the agent has already exercised some of such authority, the work performed regarding to the authority shall not be deemed to have been revoked.

(3) Notwithstanding anything contained elsewhere in this Section, in case the agent has a share in the property connected with the main matter of the agency, the agent may not be removed, in such a manner so as to have an adverse impact on such share.

626. Agent not to be removed: (1) Except otherwise provided for in the contract, in case an agent is appointed for any specific period or work, the principal shall not remove him/her before that period or before the completion of that work without reasonable and sufficient grounds.

(2) An agent who is appointed without specifying any certain period or work may not be removed without a prior notice giving appropriate reasons;

(3) In case the principal removes any agent in a manner in contravention of sub-Section (1) or (2), the principal shall pay a reasonable compensation to the agent.

627. **Agent not to give up agency:** (1) Notwithstanding anything contained elsewhere in this Act, except otherwise provided for in the contract, the agent who is appointed for a specific period or work shall not give up work as an agent before the expiry of the specific period or completion of the specified work without reasonable and sufficient grounds.

(2) An agent who is appointed without specifying the period or work under sub-Section (1) shall not give up that work without informing the principal in advance along with the reasons therefor.

(3) In case any agent gives up the work in that capacity in contravention of sub-Section (1) or (2), the principal may claim a reasonable compensation.

628. **Sub-agent also to leave if agent leaves:** In case an agent no longer remains in that capacity under this Part, the sub-agent appointed by him/her shall also be deemed to have, *ipso facto*, be removed.

629. **Limitation:** A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter-11

Contracts Concerning Transportation of Goods

630. **Contracts Concerning Transportation:** (1) A contract concerning transportation shall be deemed to have been concluded if it provides for the transportation of goods from one place to another.

(2) Except otherwise provided for in the contract, a receipt or a bill to be issued by the transporter to the owner of goods for transportation of the goods at the time of handing over for the purpose of transportation shall be recognized as an evidence of contract concluded between the transporter and owner of the goods.

Explanation: For the purpose of this Chapter, the term 'transporter' means a person operating a transport service other than air or marine transport or a person operating a business of such transportation, and the term also includes a person operating the transport business through internal navigation transport, rope ways or animal or any other means.

Provided that, in case any person employed by the owner of goods on wage basis or his/her agent or a person working under his/her supervision transports goods, such a person shall not be recognized as a transporter for the purpose of this Chapter.

631. **Transporter's obligations:** (1) It shall be the obligation of the transporter to transport the goods received from the owner of the

goods for transportation at the specified destination and in its proper condition.

(2) In case goods received from the owner for transportation is lost, destroyed, broken, defaced, damaged or in case the goods cannot be delivered in proper condition for any manner whatsoever, the transporter shall be liable therefor.

(3) The transporter shall have to transport goods within the time specified in the contract and within a reasonable time in case no period for transporting the goods has been specified in the contract, and transport and hand over the goods to the owner or his/her agent or a person designated by him/her.

632. Transporter Receiving the goods to be liable: In case goods is to be transported by more than one transporter or through more than one means of transportation, except otherwise provided for in the contract, the transporter to whom the owner of goods has handed over the goods shall personally be liable for the purpose of this Chapter.

633. Obligation of transporter to be limited: (1) Except in cases where the owner of goods or his/her agent has clearly declared at the time of concluding a contract or except otherwise provided for in the contract, the compensation for the loss or damage of the goods transported by the transporter shall not exceed ten thousand rupees.

(2) Notwithstanding anything contained in sub-Section (1), the transporter shall not be liable for any loss or damage of gold,

silver, diamond, jewelry or goods made thereof, precious stone, negotiable instruments, securities, documents registered at offices, certificates issued by academic and other institutes, coins, bank notes, postal stamps, fish, meat, fresh fruits and vegetables, insecticide and toxic materials, inflammable materials, petroleum products, precious fine art works, idols, curio goods or glass or goods made of glass or the goods that are highly breakable or fragile, wildlife and domestic animals and avian, handicraft products, arms and ammunition, explosives, radio, television, computer and so on and their spare parts, machinery and the goods specified in the law in force as the goods to be declared by the owner before the transportation, except the owner or his/her agent has clearly declared at the time of conclusion of a contract or at the time of handing over the goods to the transporter for transportation.

(3) For the purpose of bearing the risk involved in the transportation of the goods referred to in sub-Section (2), the transporter may insure the goods through the owner of the goods or his/her representative or insure the goods on his/her own having charged separate fee to the owner or the transporter may make other necessary provisions for mitigation of the risks.

634. **Transporter to be Liable:** In case of loss or damage of the goods which has been declared at the time of concluding a contract under this Chapter or at the time of handing over the goods to the transporter for transportation or to the goods that needs not be declared, the transporter shall pay in case anything

stipulated in the contract and if nothing is stipulated therein, reimburse the goods transported with the consent of the owner of the goods or in case there is no consent or the consent cannot be determined, the price of such goods and even the price of the goods cannot be determined, a reasonable amount of price and also compensation for the damage or loss to the owner of the goods shall have to pay to the owner, subject to Chapter 5.

635. Termination of Transporter's Obligation: Except otherwise provided for in the contract, the obligation of a transporter shall be deemed to have terminated in any of the following circumstances:-

- (a) In case the transporter or his/her representative transports and hands over the goods to the owner or his/her agent, or a person designated by him/her;
- (b) In case the goods handed over to the transporter is received back by the owner or his/her agent.
- (c) In case the transporter or his/her representative returns the goods to the owner or his/her representative showing reasons for the goods that cannot be transported within the specified period for arising out of any circumstance referred to in clause (b) of sub-Section (2) of Section 559 of Chapter-4 of this Part.

636. Limitation: A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter- 12

Provisions Concerning Lease Contracts

637. Lease Contract deemed to be concluded: (1) In case a contract has been concluded with a condition that any person gives any other person any goods under his/her title and ownership to use and enjoy the benefits to be derived therefrom for a certain period for getting rent regularly, it shall be deemed to have concluded a lease contract.

Explanation: (1) For the purpose of this Chapter, "goods" means any type of movable or immovable property from which benefit may be acquired having utilized or used it without diminishing it.

(2) In a contract concluded pursuant to sub-Section (1), unless otherwise provided for in the contract, the lessor has to make sure the lessee of the following matters:-

- (a) To transfer certain goods to be transferred for use according to the contract;
- (b) the goods transferred pursuant to clause (a) to be maintained in good condition so that it may be used or utilized at the time of the transfer
- (c) To make a provision that the goods transferred pursuant to clause (a) or (b) could be used or utilized peacefully and without any interruption.

(3) Notwithstanding anything contained elsewhere in this Section, the goods that would be destroyed while using or consumable goods may not be given on lease.

Provided that such goods may be given on lease for using them for particular purpose without consuming them.

638. Form of the Goods given for lease not to be changed: During the period of lease contract, no change may be made in the fundamental form of the leased goods.

639. Goods on lease to be used in good faith: (1) The lessee shall have to use and utilize the goods taken under a lease contract in good faith and in prudential manner like the goods of his/her ownership.

(2) While using or utilizing the leased goods pursuant to sub-Section (1), it shall be used or utilized according to the objectives of the lease contract.

(3) While using or utilizing the leased goods pursuant to sub-Section (1) or (2), necessary provision of security shall be made according to the nature of such goods.

(4) In case it is proved that the leased goods has been used in contravention of sub-Section (1), (2) or (3), the lessor may at any time terminate such a contract.

640. Leased Goods to be repaired: (1) Unless otherwise provided for in the lease contract, the lessor shall repair the goods taken under the lease.

- (2) Notwithstanding anything contained in sub-Section (1), in case the goods taken under lease could not be used or utilized without repair, maintenance or reform immediately, the lessee himself/herself may repair, maintain or reform such goods having informed the lessor.
- (3) The lessor shall have to reimburse or adjust in rent the expenses incurred for repair, maintenance or reform made pursuant to sub-Section (2).
641. **Lessor to be informed:** (1) In case the goods taken on lease according to a lease contract or any part thereof is lost or destroyed or turned to be unusable or non-utilizable or any person makes a claim over it or raises a dispute about such goods in any manner whatsoever or creates hindrance or disturbances while utilizing the goods, the lessee shall inform about it to the lessor immediately.
- (2) Upon receipt of the information pursuant to sub-Section (1), the lessor shall have to carry out repair, maintenance, reform or seek legal remedies as may be necessary to bring back the goods in the previous condition according to the nature of the goods within a period of fifteen days.
- (3) In case the leased goods could not be brought back to the previous condition, the lease rent amount shall be deducted in proportion to the extent to which such goods was lost or destroyed or not used or utilized or hindered or disputed about.

(4) Notwithstanding anything contained elsewhere in this Section, in case the loss or damage has been caused due to the use or usage of the leased goods by the lessee, a member of his/her family, employee, worker or agent in contravention of Section 3, the lessee shall be liable for it and he/she shall have to bring back the goods in the previous condition accordingly.

642. Lessee to be responsible for loss or damage of the leased

goods: (1) The lessee shall use or utilize the leased goods having adopted adequate measures of safety in order to save the leased goods from loss or destruction.

(2) In case the goods under a lease is lost or destroyed for any reason while the lease contract is in force or it is lost or destroyed in any manner or it is damaged because of negligence of the lessee, any member of his/her family, his/her agent or of the third party and the price of the goods is decreased, the lessee shall be liable for it and for that he/she shall have to pay compensation.

(3) Notwithstanding anything contained in sub-Section (1) or (2), the lessee shall not be liable for the loss or damage caused to the leased goods due to the natural calamities (*force majeure*).

(4) In case of partial loss or damage of leased goods because of natural calamity (*force majeure*) referred to in sub-Section (3) and in case the lessor does not or could not bring it back to the previous condition, the lessor shall have to reduce the lease rent in proportion to the loss or damage.

Explanation: For the purpose of this Section, "natural calamity" means any of the following natural calamities:-

- (a) A storm, earthquake, eruption of volcano;
- (b) Excessive rain, floods, landslide, soil, erosion, thunderstorm;
- (c) Fire caused by any manner, except caused by intention, negligence or recklessness of the lessee, his family member, employee, workers or third party;
- (d) Terrorism, civil riots, civil war;
- (e) Other natural calamities of similar nature beyond control of human being.

643. Lease Rent to be Paid: (1) The lessee shall pay to the lessor the lease rent according to the terms and conditions of the lease contract.

(2) In case the terms and conditions of payment of the lease rent are not specified pursuant to sub-Section (1), the lease rent shall be paid on the next day of end of each month in case of movable property; within fifteen days of the end of every fiscal year in case of farmland, servitude, industrial or infrastructure construction or housing land and within one week of end of every month in case of other goods.

(3) Notwithstanding anything contained elsewhere in this Section, in case any person does not let the lessee to use such goods or any part thereof having created disputes or any type of

hindrance or obstruction about the leased goods or any part thereof, the lessee may reduce the lease rent proportionally.

644. Period of Lease Contract: (1) No lease contract with regard to the following goods shall remain valid for more than the following period:-

- (a) Thirty years in case of the housing land leased for building construction or the house and land in use having constructed the home;
- (b) Thirty years in case of the land leased for the purpose of servitude;
- (c) Thirty years in case of the land leased for the purpose of industrial structure or construction, development and operation of infrastructure like roads, canals, electricity generation;
- (d) Thirty years in case of land for farming;
- (e) Nineteen years in case of house and land leased for the purposes other than those referred to in clauses (a), (b), (c) and (d);
- (f) Fifteen years in case of transport vehicles;
- (g) Fifteen years in case of machinery equipment other than transport vehicles;
- (h) Fifteen years in case of machinery equipment other than those referred to in clauses (f) and (g);
- (i) Ten years in case of domestic animals;

(j) Ten years in case of goods other than those referred to in this Section having regard to their life and nature.

(2) Notwithstanding anything contained in sub-Section (1), the parties may extend the duration of the lease contract subject to the lease term of the contract, before expiry of the period referred to in the said sub-Section.

(3) Notwithstanding anything contained in sub-Section (2), the parties to the contract may decide whether or not to extend the duration of the lease terms having regard to the place of location of the house and land under the lease contract and the nature of the goods.

645. Leased Goods may be sub-leased: (1) The lessee may, having obtained a prior approval of the lessor, sub-lease to any person a goods or any part thereof leased once under a lease contract having entered into a sub-lease contract.

(2) The lessee shall not be relieved from obligation towards the lessor for the reason of the second lease pursuant to sub-Section (1).

(3) The terms and conditions with regard to the goods given under sub- lease contract shall not be inconsistent with the terms and conditions of the first lease contract.

(4) While determining the terms and conditions of a lease contract pursuant to sub-Section (3), provision may be made that the sub-lessee shall be directly responsible to the lessor with regard to the leased good and in case such provisions are made,

he/she shall be responsible to the lessor to the extent of the sub-lease contract.

(5) The period of validity of the lease contract concluded pursuant to sub-Section (1) shall not exceed the period of validity of the lease contract concluded between the lessor and the lessee.

(6) In case the lessor seeks legal remedies under this Chapter or makes a claim against the lessee, the sub-lessee shall not be responsible towards it except in the cases referred to in sub-Section (4).

(7) Notwithstanding anything contained elsewhere in this Section, the rights which a lessor may exercise under a lease contract shall not be deemed to have been hindered in any manner.

646. Goods taken on lease to be Returned: (1) In case a lease contract terminates for any reason whatsoever, the lessee shall have to return back the goods taken on lease under this Chapter to the lessor within a period of seven days of the termination of the lease contract.

Provided that in case of an immovable property, it shall be deemed that the lessor shall, *ipso facto*, have right to use after seven days of the expiry of the lease contract.

(2) The goods taken on a lease pursuant to sub-Section (1) shall be returned back on the same condition as it was at the time of taking on lease.

Provided that the lessee shall not be liable for decay or depreciation in natural course while using or utilizing the goods.

(3) In case record of the goods or its accessories and spare parts had been maintained at the time of taking on lease, the goods and its accessories and spare parts shall also have to be returned while returning goods on lease pursuant to sub-Section (1) or (2).

Provided that the accessories or spare parts that used to be lost or destroyed while using according to nature of the goods need not to be returned.

647. Special Provision concerning lease contract of immovable property:

(1) Notwithstanding anything contained elsewhere in this Chapter, lease contract of immovable property shall be concluded in written form.

(2) While leasing out an immovable property for a period more than ten years, it shall be registered with an agency legally authorized for that purpose having specified the same contents.

(3) Notwithstanding anything contained in this Chapter, immovable property may not be leased to the person who may not acquire immovable property in Nepal according to law for the purpose of farming, building construction or

housing development without approval of Government of Nepal.

- (4) The building, shed or other structure built by the lessee or the garden, forest or trees located in a land leased according to a lease contract shall, except otherwise provided for in the contract, be deemed to be under the title and ownership of the lessee and accordingly, he/she shall have to remove such building, shed, or structure or garden or forest and trees from such land.
- (5) Notwithstanding anything contained in sub-Section (4) in case the lessor desires to take back such building, shed or other structure or garden, forest or trees located in such land on as it is basis, he/she shall have to pay a mutually agreed price for the same.

648. Lease contract may be terminated: (1) The lessor may terminate the lease contract in any of the following circumstances:-

- (a) In case the lessee does not pay the lease amount within a period of ninety days after the date scheduled for payment of the lease rent is over without permission of the lessor;
- (b) In case the goods taken on lease is used or utilized in contravention of Section 639;

- (c) In case lessor is not informed or given information on the matters on which information shall have to give the lessor pursuant to sub-Section (1) of Section 641;
- (d) In case the leased goods is not brought back to the previous condition within a reasonable period according to the nature of the goods pursuant to sub-Section (4) of Section 641;
- (e) In case the goods leased has been sub-leased again without approval of the lessor.

(2) The lessee may terminate the lease contract in any of following circumstances:-

- (a) In case the goods could not be used or utilized for the purpose or objectives for which it has been taken on lease;
- (b) In case the lessor does not bring back the goods taken on lease pursuant to sub-Section (4) of Section 641;
- (c) In case the lease rent amount is not reduced or agreed to reduce pursuant to sub-Section (3) of Section 640;
- (d) In case the lease rent amount is not decreased or agreed to be decreased pursuant to sub-Section (3) of Section 641 and or sub-Section (4) of Section 642.

649. Provisions Concerning House Rent to Apply: Notwithstanding anything contained elsewhere in this Chapter, the provisions

referred to in Chapter-9 of Part 4 shall apply in case of house rent.

650. Limitation: A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter -13

Provisions Concerning Hire Purchase Contracts

651. Hire purchase contract deemed to be concluded (1) In case anyone hires any goods to anyone on the following terms and conditions, it shall be deemed to have concluded a hire purchase contract:-

- (a) The owner of the goods permits the person taking on hire to use such goods with a condition to pay the amount in installment in periodic basis for that goods;
- (b) The person taking on hire the goods may purchase the goods on hire according to the terms and conditions of contract;
- (c) The ownership of such goods to be transferred to the person taking the goods on hire upon payment of the final installment amount;
- (d) The person taking on hire may terminate the contract at any time prior to the transfer of ownership pursuant to clause (c).

(2) The contract referred to in sub-Section (1) shall be in written form.

(3) The owner of the goods shall have to make available one copy of the contract concluded pursuant to this Section to the person taking on hire free of cost.

Explanation: For the purpose of this Chapter,-

- (a) " Goods" means any movable property that may be given on hire for the purpose of using it;
- (b) "Person taking on hire" means the person who receives any goods on hire for use according to a hire purchase contract and also includes his/her successor or other third person to receive the goods under such contract in the event of his/her death.

652. Matters to be specified in a hire purchase contract: (1) The following matters shall be specified in the contract referred to in Section 651:-

- (a) The goods concerning the contract and its short description;
- (b) Hire purchase price of the goods concerning the contract;
- (c) Cash price of the goods concerning the contract;
- (d) The date on which the contract is deemed to be commenced;
- (e) The installment amount payable by the person taking on hire to the owner of goods and number of installments;
- (f) The date of payment of each installment and the method of payment;
- (g) The person and place for payment of amount pursuant to clause (f).

(2) In case the installment amount may be paid by any method other than cash pursuant to clause (f) of sub-Section (1), its brief description shall be specified in the hire purchase contract.

(3) In case a hire purchase contract has been concluded without stipulating the terms and conditions referred to in this Section, the person taking the goods on hire may file a complaint to get such contract rescinded and in case the court deems that non-stipulation of any of such terms and conditions in the contract causes adverse effects to the person taking on hire, court may revoke such contract or may issue any order as it deems fit.

Explanation: For the purpose of this Chapter,-

(a) "Hire purchase price" means the total amount to be paid by the person taking the goods on hire to purchase or acquire the goods having paid full price of the goods and also includes the amount to be paid as deposit or down payment.

(b) "Cash price" means the price to be paid in cash with which the person taking on hire may purchase any goods.

653. Conclusion of more than one contract to be deemed as conclusion of a single contract: (1) If separate contracts are concluded in connection with conclusion of a hire purchase contract such as the contract between the person taking on hire and the owner of the goods; between a surety or investor and the owner of such goods for payments of the hire purchase price installment or in case of bailment of any goods, between the

bailor and the bailee of such goods, they shall be deemed to be a single contract for the purpose of this Chapter.

(2) In case where the contract referred to in sub-Section (1) have been concluded in different dates, the latest date shall be regarded as the date of conclusion of the contract.

654. Consequences of Conclusion of a Hire Purchase Contract: (1) Notwithstanding any other thing contained in the contract between the parties, the following terms and conditions shall be deemed to be inherent in a hire purchase contract concluded under this Chapter:-

- (a) The right of uninterrupted use of the goods on hire by the person taking the goods on hire;
- (b) The goods to be free from any type of charge or claim of any one at the time of transferring the goods by the owner of the goods to the person taking on hire the goods pursuant to clause (a)
- (c) The owner of the goods has assured the person taking on hire the goods of providing him/her a reasonable opportunity to compare such goods with the sample;
- (d) Right of the owner of the goods to sell such goods at the time of transferring the goods by the owner to the person taking on hire;
- (e) The goods referred to in clause (a) has the satisfactory quality at the time of transfer of the goods, and

(f) In case the person taking on hire has informed the owner of the goods that he/she is hiring the goods for any particular purpose, the owner of the goods has guaranteed that such goods or its quality is appropriate for that purpose.

(2) Notwithstanding anything contained in clause (e) of sub-Section (1), the owner of the goods shall not be liable for the quality of the goods in any of the following circumstances:-

(a) The owner of the goods could not know the defect in the goods for which hire purchase contract was concluded at the time of concluding the contract;

(b) The hire purchase contract itself has a stipulation about defect of the goods;

(c) In case the quality of the goods matches with the sample while matching by the person taking on hire;

(d) The hire purchase contract was concluded with regard to a second hand goods and the matter was specified in the contract.

(3) In case the person taking goods on hire takes the goods on hire on the basis of a sample, the owner of the goods shall be deemed to have assured of the fact that all of such goods matches with the sample.

(4) In case a contract has been concluded under this Chapter and any goods or its quality has been specified in the contract, it

shall be deemed that the owner of the goods has assured of the fact that such goods or its quality shall be as specified in the contract.

Provided that in case the sample is also stated in the contract, matching of the quality of such goods with that of the sample may not be enough and it shall have to be matched with the description of the contract.

655. Transfer of ownership of goods: Ownership of the goods related to the hire purchase contract shall be transferred to the person taking the goods on hire upon completion of the purchase according to the hire purchase price determined in accordance with the contract concluded under this Chapter.

Provided that the right to use shall be deemed to have been created at the time of receiving such goods by him.

Explanation: For the purposes of this Section, "completion of purchase" means the payment of the last installment of the hire purchase price.

656. Care and maintenance of goods taken on Hire: (1) The status of the goods taken on hire shall be as of the bailment until the transfer of its ownership pursuant to Section 655.

(2) Unless otherwise provided for in the hire purchase contract, the person taking on hire the goods concerning such contract shall take reasonable care and maintain the goods as the goods in his/her own ownership.

(3) In case such goods is lost or damaged because of not taking reasonable care of and lack of maintenance, the person taking on hire shall be liable for that.

657. Installment amount to be paid: The person taking on hire the goods shall have to pay the installment amount as determined in the hire purchase contract for hiring the goods within the time and according to the method as stipulated in the said contract.

658. Contract may be terminated by paying installment amount:

(1) The person taking on hire may, having given an advance notice of at least fifteen days to the owner of the goods and having paid the hire purchase price of the goods or the amount of remaining installment, terminate the hire purchase contract.

(2) While terminating the contract pursuant to sub-Section (1), the person taking on hire may be entitled to the discount, if any.

659. Contract may be terminated having returned goods: (1) The person taking on hire may, at any time prior to payment of the last installment as determined according to the hire purchase contract for the goods, terminate the contract having given a written notice to the owner of the goods at least fifteen days in advance.

(2) Prior to terminating the contract pursuant to sub-Section (1), the person taking on hire shall have to return the goods taken on hire to the owner according to the hire purchase contract and if there is any amount due to be paid such amount shall also have to be paid.

(3) Notwithstanding anything contained in sub-Section (2), in case the person taking on hire has paid more than half of the hire purchase price prior to terminating the hire purchase contract, he/she does not need to pay any more amount and in case he/she has paid less than the half amount, he/she shall have to pay up to the half of the amount.

(4) Nothing contained in sub-Section (3) shall be deemed to have waived the person taking on hire from paying any other amount, charge or dues to be payable according to the hire purchase contract.

660. Person taking on hire may transfer right and interest: (1)

The person taking on hire may, having obtained approval of the owner of the goods, transfer to any other person the rights, interests or liability over the goods he/she has taken on hire according to the hire purchase contract and other rights or interests to be available to him/her under such a contract.

(2) For the purpose of sub-Section (1), the owner of the goods shall have to give approval or deny approval within a period of fifteen days of the date on which the person taking on hire has made a written request with an intention of getting approval from the owner to transfer his/her rights and interests and in case the approval could not be obtained within the said period, he/she shall be deemed to have denied the approval.

(3) In case the owner of the goods denies pursuant to sub-Section (2), the person taking on hire may file a complaint at a court within thirty five days to get the denial revoked and in case the court issues an order that the denial is not reasonable, it shall be deemed that the approval has been obtained from the owner of the goods.

(4) Nothing contained in this Section shall be deemed to have hindered to utilize or exercise the rights, interests or liability in case where such rights, interests or liability of the person taking on hire have been transferred to another person by operation of law.

661. To be liable in case of use of goods against terms and conditions: The person taking on hire shall be liable for using the goods concerning the hire purchase contract against the terms and conditions of such a contract.

662. Information of actual condition of goods to be given: The person using the goods relating to the hire purchase contract shall, within a period of fifteen days in case the owner has asked to inform the owner of the goods about where the goods is located in what condition and the benefits to be derived from it are in what condition.

663. Owner of Goods to may terminate Contract: (1) In case the person taking on hire fails to pay more than one installment of the hire purchase price to be paid to the owner of the goods according to the hire purchase contract, the owner of the goods

may, having furnished an advance notice to such a person as stated herein below, terminate the hire purchase contract at any time:

- (a) In case the installment amount is to be paid within a period of one week or less than that period, of one week.
- (b) In the cases other than those referred to in clause (a), of fifteen days.

(2) Notwithstanding anything contained in sub-Section (1), in case the person taking on hire makes the payment of the installment and the interest to be accrued thereon according to the hire purchase contract before expiry of the time frame for furnishing the advance notice under the said sub-Section, the hire purchase contract shall not be terminated.

(3) In case the person taking on hire does not follow the hire purchase contract or the terms and conditions referred to in Section 656 or 662, the concerned owner of the goods may terminate the hire purchase contract having given a notice of at least fifteen days.

(4) Upon terminating the contract pursuant to sub-Section (1), the owner of the goods may exercise the following rights with regard to the goods given on hire:-

- (a) To return the goods wherever and in whatsoever situation it may be, and if could not be returned, to be seized;

- (b) Out of the amount paid in lieu of such goods, the amount that may be recoverable as hire may be retained and the person taking on hire to be informed to take the excess amount;
 - (c) To forfeit the amount taken as deposit from the person who takes on hire at the time of giving the goods on hire, if any;
 - (d) To enter into the house in which the goods is located with the assistance of police in connection with seizure of the goods taken on hire;
 - (e) To recover compensation from the amount paid or make a claim for the loss or damage caused due to failure to return the goods taken on hire on time or failure to fulfill the contracts or the terms and conditions referred to in Section 656 or 662.
- (5) Notwithstanding anything contained elsewhere in this Section, in case the person taking on hire or surety or investor has already paid at least the basic price of the goods taken on hire, the owner may not terminate the hire purchase contract under this Section.

Explanation: For the purpose of this Section, "basic price" means three fourth of the amount in case of the price up to fifty thousand rupees and at least half of the price in case the hire purchase price is more than that amount.

(6) In case the owner of goods terminates the hire purchase contract in contravention of sub-Section (5), the person taking on hire or the person providing guarantee shall be relieved from all liabilities to be fulfilled according to the hire purchase contract and he/she shall be entitled to refund the entire amount paid for hiring the goods by him/her.

Provided that he/she shall have to return the goods taken on hire to the concerned owner.

(7) Notwithstanding anything contained in sub-Section(5), restriction to terminate the contract shall not be deemed to have hindered in any manner the right of the owner of the goods to make a claim for the hire purchase price to be received from the person taking on hire according to the hire purchase contract.

(8) Notwithstanding anything contained elsewhere in this Section, the owner of the goods may terminate the hire purchase contract entered into with the person who does not make available the information referred to in Section 662 and if any loss or damage is caused to such goods, the owner may make claim the same as well.

664. Rights of person taking on hire in case of forfeiture of goods:

(1) In case of forfeiture of the goods given on hire by the owner of the goods pursuant to clause (a) of sub-Section (4) of Section 663, the person taking on hire shall be entitled to refund the amount paid for the hire purchase price until the day of

forfeiture and the amount equal to the price of the goods on the date of forfeiture from such person.

Explanation: For the purpose of this Section, "the price of goods on the date of forfeiture" means the amount to remain having deducted the following amount from the amount that may be recovered from the sale of the forfeited goods:-

- 1) Reasonable expenses incurred while forfeiting the goods;
 - 2) Reasonable expenses incurred for storage, repair and maintenance of the goods;
 - 3) Reasonable expenses incurred while selling or transferring the goods in any other manner;
 - 4) The amount paid as taxes, charges, fees or dues if unpaid for the goods by the person taking on hire according to the laws in force.
- (2) The amount referred to in sub-Section (1) shall be paid to the person taking on hire within thirty days of the date of forfeiture of the goods and while making payment thereafter, an interest at the rate of ten percent per year shall also have to be paid.

665. Status of the Goods on Hire in case person taking on hire becomes Bankrupt:

- (1) In case any court decides at a time while the hire purchase contract is in force that the person taking on hire has become a

bankrupt or is likely to be a bankrupt according to the laws in force for the time being and as a consequence thereof, the liquidator or any other equally competent person taking control of the property of such person shall exercise the rights and fulfill the obligations as the person taking on hire with regard to the goods concerning the hire purchase contract.

(2) In case the person taking on hire is subject to bankruptcy and the proceedings concerning it is under consideration by a court, the liquidator or the person exercising the rights equal to the liquidator pursuant to sub-Section (1) may, having obtained approval of such court, handover the goods concerning the hire purchase contract to any other person in any manner whatsoever and in case such goods has been handed over in such a manner, the person receiving the goods shall exercise the rights and fulfill the obligations as the person taking on hire under the hire purchase contract.

666. Limitation: A person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter -14

Provisions Concerning Wages

667. To Employ in work: (1) Any person who has attained the age of at least fourteen years may be employed in a work with his/her consent.

Provided that the person who has not attained the age of sixteen years may not be employed in hazardous business or work.

(2) While employing any one pursuant to sub-Section (1), the provisions of this Chapter have to be followed or cause to be followed.

668. Wages to be paid: (1) While employing anyone in any work pursuant to Section 667, the person who employs him/her in the work shall have to pay wages in proportion to the work except in the cases where one agrees to be employed in the work on his/her own without a wage.

(2) While paying wages pursuant to sub-Section (1), if any particular rate of wage is specified with the agreement between the person employing in work and the person employed in work, it shall be paid accordingly and if no such rate is specified, the wage shall be paid according to the rate prevailing in the place of work.

(3) Except otherwise agreed upon between the persons employing in and employed in work pursuant to sub-Section (1) or (2), the wage shall be paid upon completion of the work.

(4) While determining the wage according to this Section, the wage shall be determined on the basis of each day of work except otherwise agreed upon between the persons employing in and employed in the work.

669. Provisions of Safety Measures to be made: While employing anyone in any work, the employer shall have to make the provisions of adequate safety measures to prevent the possible risk or danger according to the nature of such work.

670. Working hours not to be more than eight hours: (1) While employing any one in a work under this Chapter, normally one may not be employed in work for more than eight hours a day.

(2) In case one is employed in work for the period more than as referred to sub-Section (1), the consent of the person to be employed in work shall be obtained and while employing him/her in the work, eight hours shall be regarded as one day and for every hour of extra work, the extra wage shall be paid in the same proportion.

671. Special Provisions Concerning Domestic Helper: (1) While employing any one as a domestic helper, the person who employs him/her in work shall have to abide by the following terms and conditions as well:-

- (a) The wages to be paid having determined the wage in monthly or annual basis;
- (b) Foods to be provided for three times viz. at morning, afternoon and evening and clothes to be provided to wear as are suitable to the weather according to capacity of the person who employs in works;
- (c) Facilities of using appropriate housing and toilet to be given according to one's capacity;
- (d) In case one is less than eighteen years old and he/she wishes, provision to be made for studies at appropriate time having regard to household works;
- (e) Provision of treatment to be made in case of illness;

Provided that the expenses to be incurred in the course of treatment may not be deducted from his/her monthly or annual wage amount.

- (f) Not to employ in work at the time of illness and in other time as well, not to employ in works that he/she could not do due to his/her age, capacity, or condition;
- (g) In case of death, the expenses to be incurred in performing the obsequies rites to be borne by the person who employs him/her in work;

- (h) Not to commit degrading or inhuman treatment or sexual harassment,
- (i) Not to remove from work without a reasonable cause;
- (j) To abide by the additional terms and conditions agreed upon between the domestic helper and the person who employs him/her in works.

(2) Notwithstanding anything contained in sub-Section (2) of Section 670, the provisions of the said Section shall not be applicable while employing a domestic helper in works.

Explanation: For the purpose of this Chapter, "a domestic helper" means a person who is employed in household works on the condition that he/she may be employed in the works at any time as may be necessary.

672. Assigned works not to be left incomplete: (1) No person shall have to leave the work taken to complete or undertaken to complete without completing it except on reasonable grounds.

(2) In case any one leaves the work incomplete as referred to in sub-Section (1), the person leaving the work shall bear the liability therefor.

673. Wages to be paid to the worker: (1) The wages to be paid for employing in works shall be paid to the person who is employed in the work or to any other person with his/her consent.

(2) In case the worker dies prior to payment of wages pursuant to sub-Section(1), the wages he/she is entitled to shall be paid to his/her nearest successor.

674. Limitation: A person aggrieved on any matter under this Chapter may file a case within a period of three months on which the cause of action arises with regard to matters provided for in Section 671 and within a period of thirty five days with regard to other matters.

Chapter-15

Provisions Concerning Indirect or Quasi-Contracts

- 675. Obligation to arise from indirect or quasi-contract:** (1) Notwithstanding anything contained in Chapter 2 of this Part, in case any certain, lawful, voluntary and unilateral act that may create juridical relationship, is done, it shall be deemed to be an indirect or quasi-contract.
- (2) In case an indirect or quasi-contract is resulted pursuant to sub-Section (1), an obligation under this Chapter shall be created from the same fact.
- 676. If other's property managed voluntarily, not to be deserted (*negotiorum gestio*):** In case any person manages or operates the business or property of any other person on his/her own without information to, or authority from, that person; such business or property shall not be deserted so long as the business or property continuous to exist or without handing it over to such a person or his/her successor or representative or until such a person substitutes him/her.
- 677. Damage to be paid for negligence of property taken:** (1) In case any person takes property of anyone else for taking care or management, he/she shall have to take care and manage the property in good faith as if that is his/her own property.

(2) In case the person who takes the property pursuant to sub-Section (1) causes loss or damage with malafide intention by negligence, he/she shall pay compensation therefor.

678. Not absolved from obligation by delegation of authority:

In case any one has been entrusted with an obligation to do any act from him and in case he/she delegates his/her all or any authority to a third person without prejudice to the obligation towards such a person, he/she shall not be absolved from his/her obligation for the reason of delegation of the authority.

679. Carriers of goods may protect and save goods: (1) In course of transportation of any goods, there occurred a natural disaster or an accident whereby such goods could not be transported to the specified destination and thereby, the goods is going to be perished or its price or quality is going to be materially diminished, the person who undertakes to transport such goods may sell the goods even without approval of the owner of such goods.

(2) In case such goods sold pursuant to sub-Section (1), the person transporting such goods shall pay such amount to the owner of the goods.

680. Carriers to bear obligation: In case any goods is stolen, lost, damaged before such goods is delivered to the concerned person after its transportation by a carrier of such goods, the carrier shall be liable for it.

Provided that in case such goods is lost, damaged or destroyed because of a natural disaster or an accident, the carrier shall not be liable.

681. Reasonable costs to be paid for saving property at the time of natural calamities: In case any person saves or protects any property at the time of occurrence of natural calamities such as fire, flood, landslide, storm, earthquake without information to its owner, the owner of such goods shall have to reimburse the reasonable expenses incurred to save or protect such property.

682. Reimbursement may be claimed: (1) Though any person is not compelled under a law to fulfill any obligation, if he/she fulfills the obligation in his/her own expense or for any other reasons, and thereby any other person gets anything or benefit for that reason, the person fulfilling such obligation may claim for reimbursement from the person getting such thing or advantage in such a manner.

(2) Notwithstanding anything contained in sub-Section (1), in case the obligation has been fulfilled for any unlawful objective, such reimbursement may not be claimed.

683. Amount of rearing a person may be claimed: In case anyone has rears any person without information to the person who is under an obligation to rear such a person, the person rearing in such a manner may claim an amount from the person under the obligation.

Provided that in case he/she rears the person out of compassion or gratification or with an intention not to make a claim of the amount for rearing, such an amount cannot be claimed.

684. Heir to reimburse funeral expenses: Where a person dies and any third person performs the funeral acts of the deceased according to his/her rites, traditions and culture without information to the successor or close relative of the deceased person; and if the person claims the expenses incurred while performing such acts, the nearest successor and in his/her absence, the close relative shall have to reimburse the amount incurred therefor.

685. Rearing expenses of person of unsound mind to be borne by relative: In case the person under an obligation to rear or take care of a person of unsound mind, a person with physical infirmity or any helpless minor having no income of his/her own denies to rear such a person and if any third person rears or takes care of him/her, such a person may claim for reimbursement of the expenses incurred therefor from the person who is under such an obligation.

686. Expenses of treatment to be paid: In case any person meets with an accident or he/she is seriously ill and any person, other than his/her successor living in the same family, relative or close person, conducts or causes to conduct treatment of such a person voluntarily, the successor, relative or close person shall

reimburse the expenses incurred while conducting treatment in such a manner.

Provided that in case the treatment is conducted or caused to be conducted without an intention to claim the reimbursement, the expenses need not to be reimbursed.

- 687. Expenses of Public Bodies to reimburse:** Whoever does not voluntarily follow the necessary measures of health and safety measures required to be followed according to law for protection of body, life or property of his/her own or of general people and because of the same, any government or public body follows or causes to follow such measures, the person shall have to pay reasonable expenses incurred for that purpose even if he/she does not agree to follow such measures.
- 688. Amount paid by person having stake to reimburse:** Where a contract is concluded to pay by any other person an amount to be paid by one person according to law but he does not pay it, if the person who has to pay according to law pays the said amount, he/she shall have to reimburse.
- 689. Price or Remuneration to pay:** In case any person gives anything or orders to do any work to any other person, he/she shall have to pay the price of the thing or remuneration according to the work.
- 690. Price of goods or services to recover:** Where any goods or service has been made available to any person who is incompetent to enter into a contract according to law or to the

person who is responsible to take care of such person, the price of such goods or service may recovered from the person receiving such goods or service.

691. Property in custody to be kept as Bailment: Whoever keeps into his/her custody property of other's that could be kept according to law shall have to keep such property as a bailment.

692. Limitation: The person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter- 16

Provisions Concerning Unjust Enrichment

693. Unjust Enrichment to be deemed: (1) In case any person acquires anything or any benefit for the reason of doing an act or fulfilling an obligation by any other person, the person receiving such thing or benefit is said to have acquired an unjust enrichment.

(2) The unjust enrichment referred to in sub-Section (1) shall be deemed to have been acquired in the following circumstances:-

- (a) In case there is an increment in one's property or decrease in liability;
- (b) In case one acquires services from other or cause some one to do the work.
- (c) In case another's assets is used.

(3) Notwithstanding anything contained in sub-Section (1) or (2), in case anyone acquires movable or immovable property or any advantage or benefit in any manner whatsoever, except in the following circumstances, he/she shall be deemed to have acquired unjust enrichment:-

- (a) Any movable or immovable property or any advantage or benefit may be acquired from any person under a law or contract;

(b) The person from whom any movable or immovable property or any advantage or benefit is acquired; it is acquired on free consent without returning back or reimbursing it.

(4) In determining whether or not and to what extent a person obtains an enrichment under this Chapter, no regard shall be had to any disadvantage or loss caused thereby to such a person after the enrichment.

(5) The person who acquires unjust enrichment according to this Section shall bear the obligation according to this Chapter.

694. Matters not to be taken, if taken, to be returned (*solutio indebiti*): In case any person takes or receives under mistake anything which he/she has not to take or receive, he/she shall have to return the thing to the person from whom he/she has taken or received the thing.

695. Debt paid under mistake to be refunded: In case any person pays a loan to anyone under a mistake that he/she is indebted to him/her and which is not to be paid, the person receiving such amount shall have to refund such amount if he proves that such amount is not required to be paid.

696. Goods or amount taken with malafide intention and benefit thereof to be returned: (1) In case any person receives with malafide intention any amount or goods in which he/she has no ground to claim, he/she shall have to return such amount or goods and the interest to be charged on such amount or the

advantage or return to be accrued from such goods from the date of receiving such amount or goods to the date of its return.

(2) In case the amount or goods received pursuant to sub-Section (1) is lost or damaged for any reason whatsoever, he/she shall have also to pay the compensation therefor.

697. Debt paid by third person to be paid: In case a debt liable to be paid by a person is paid by a third person without his/her knowledge, the debt he/she has paid shall have to be paid to the person who has paid the debt.

698. If Tax payable is paid by another person, reimbursement may be claimed: In case a tax payable by a person is paid by any other person, the person paying the tax may claim reimbursement thereof from the person who is under a duty to pay it.

Explanation: For the purpose of this Chapter, “tax” means any type of government fee, tariff, duty, fine and the word also includes local taxes as well.

699. Goods found may be kept giving information to police: (1) In case any person finds any goods in any manner, he/she may, having given a notice thereof to the police, safely retain such property along with him/her until the concerned owner is traced out.

(2) The concerned owner shall have to bear the expenses incurred for tracing out the owner of the goods and retraining

the goods as referred to sub-Section (1) and unless the expenses are paid, the person receiving the goods may retain the goods.

(3) In case no person makes or claim on the goods retained up to three year pursuant to sub-Section (1), the goods belongs to the person finding the goods.

700. **Limitation:** The person aggrieved from an act carried out under this Chapter may file a case within a period of two years from the date on which the cause of action arises.

Chapter -17

Provisions Concerning Torts

701. Torts deemed to be committed: (1) No person shall cause loss or damage in any manner to any one's person, life or property or legally protected right or interest by way of a default, recklessness or negligence or an act or omission of himself/herself or of anyone to whom one has to bear the obligation according to this Chapter.

(2) In case parties do not have a pre-contract relationship as to the act or omission as referred to in sub-Section (1), the loss or damage to be caused as a result of such an act or recklessness shall be regarded as to have committed a tort.

Explanation: For the purpose of this Chapter, "omission" means a condition in which one has not carried out what he/she is supposed to carry out.

(3) In case of commission of a tort pursuant to sub-Section (2), one who commits the tort shall have to pay compensation.

(4) In case the tort committed pursuant to sub-Section (2) is caused due to anyone's own omission, default, negligence or recklessness, the quantity of compensation shall be less.

702. Parents to be liable for loss or damage caused by minor: For a tort caused by a minor who has not attained the age of fourteen years, the father, mother living along with him/her or if

there is no father or mother, the person exercising maternal or paternal authority over him/her shall bear the liability thereof.

703. Guardian to be liable for loss or damage caused by a person of unsound mind: For the loss or damage caused by a person of unsound mind, his/her guardian shall be liable and accordingly, she/he shall bear the liability.

704. Employer to bear liability: (1) For the loss or damage caused by a domestic helper while being employed by anyone as in the capacity of a domestic helper, the person employing him/her in the work shall be liable and accordingly, he/she shall bear the liability.

(2) While bearing the liability referred to in sub-Section (1), the person employing him/ in work may deduct the amount from the remuneration, allowance or facilities which the domestic helper is entitled to.

(3) In case any loss or harm is caused to anyone by an act carried out in good faith in the course of doing such act by a worker or employee engaged by an employer, the person, firm, company or organization engaging him/her in the work shall bear the liability.

705. Owner of Animal to be liable for loss or damage caused by Animal: For the loss or damage caused to any one by the animal kept by, or under the control of, a person, such an owner of the animal shall bear the liability.

Provided that the owner of the animal shall not be liable in cases where the loss or damage is caused at the time while the owner of the animal had kept the animal in control in appropriate manner having adopted adequate protective measures according to behavior of the animal or the loss or damage is caused due to any act, default or recklessness of the person who has suffered the loss or damage.

Explanation: For the purpose of this Section, "animal" means a domestic animal or wildlife or avian of any type under one's control and the word also includes a domestic, reptile or wild avian as well.

706. House owner to be liable for loss or damage caused by collapse of House: In case a house as a whole or any part thereof collapses at the time of construction or at any time upon completion of its construction and it causes any loss or damage to any one, the concerned house owner shall bear the liability thereof.

707. Owner of Property to be liable: In case any of the following incidents happens for the following reasons and any one suffers a loss or damage therefrom, the concerned property owner shall bear the liability thereof:-

(a) In case a machine, equipment or engine explodes for not adopting safety measures in appropriate manner according to its nature;

- (b) In case of firing or explosion occurred for not adopting safety measures in case of any inflammable or explosive materials in appropriate manner according to its nature;
- (c) In case any industrial enterprises produce excessive smoke and sound contrary to the prescribed parameters;
- (d) In case of falling down or causing to fall down of trees on any highway, road, street, way except for natural disaster or by an act of third person.
- (e) In case of disposition of dirty or toxic matter or matter that spreads communicable diseases from canals, waterways pipes or sewerage openly without adopting precautionary measures in an appropriate manner in contravention of the set norms.

708. House Head to be liable: In case anyone suffers loss or damage because of mishandling of waste materials and garbage of any type from any house, the concerned house head shall bear the liability thereof.

Explanation:

For the purpose of this Section,-

- (a) "House" means a house or shed and the word includes a structure of a house.
- (b) "House head" means the person working as the main person in a family and also includes the person working as

the main person in case of living on rent in a house of someone else.

709. Liability of Trespass to be borne: The person who commits trespass shall bear the liability for the loss or damage caused due to trespassing movable or immovable property of any one.

Explanation: For the purpose of this Section, "trespass" means unlawful entry into, taking possession of products, unauthorized damage to, intervention in or unlawful encroachment on the property that is under the entitlement, procession or ownership of someone else in case of an immovable property; and forcibly taking into custody, take away, to take the advantage arising out of, or causing obstruction or hindrance in the use of the property under the entitlement, possession or ownership of somebody else in case of a movable property and the word also includes the act of taking control of any type of movable or immovable property in an unlawful manner.

710. Liability to be borne jointly: In case an act that is deemed as a tort under this Chapter has been committed by more than one person, each of the persons shall be jointly and severally liable to the degree of the tort committed for the loss or damage caused due to such an act.

711. Compensation to be paid for liability: (1) While bearing liability for a tort committed under this Chapter, the person who commits the tort shall have to pay compensation.

(2) The compensation shall be confined to the matter of actual loss or damage and fictitious or unreal compensation shall not be payable.

(3) The compensation may be of any type in the form of cash, kind or service.

(4) Notwithstanding anything contained elsewhere in this Chapter, a claim of compensation may not be sustained in case the loss or damage is caused due to a default, recklessness or negligence of any other person or that of the victim's own.

Provided that in case the other person causes loss or damage because of his/her default, recklessness or negligence, it may not cause hindrance to claim for compensation for such loss or damage.

712. No Liability in case of separate provision: (1)

Notwithstanding anything contained in this Chapter, in case a tort for which a liability is to be borne under this Chapter is treated as criminal offence under a law or a separate provision or provision of a separate legal remedy is made with regard to such tort in this Code or other law, the liability under this Chapter shall not be borne.

(2) Subject to sub-Section (1), in case it is proved that the tort for which liability is to be borne under this Chapter is not found to be committed due to malafide intention, recklessness, negligence, default or omission of the person who is said to have committed such a tort, but it is committed for any other reason,

he/she shall be absolved from the liability to be borne for such tort.

713. **Limitation:** The person aggrieved from an act carried out under this Chapter may file a case within a period of six months from the date on which the cause of action arises.

Chapter – 18

Provisions Concerning Liability for Defective Products

714. To be Liable for Defective Products: (1) No person shall sell, distribute, or cause to be sold or distributed any goods or service having produced them defectively.

(2) In case the sale or distribution of the product referred to in sub-Section (1), causes a loss or damage to a body, life or property of any one, the producer shall be liable for that under this Chapter.

Explanation: For the purpose of this Chapter,-

(a) "Defective Product" means a goods or service which has not the minimum measures of safety that a common person reasonably expects it to have while consuming any product, for any of the following reasons:-

- (1) Defective design, manufacturing, processing or installation;
- (2) Defective packing, protection or storage;
- (3) Defective presentation;
- (4) Lacking adequate measures or precautions to control the potential risk or danger according to nature of the produced goods or service, as the case may be.

(b) "Producer" means the producer who finally produce, sells and distribute the defective goods or service and also includes the following persons:-

(1) The distribution or seller in case the producer could not be traced out,

(2) In case of an imported goods, the importer who imports defective goods or the distributor or seller who sells or distributes such goods.

(c)"Goods" means an industrial product to be consumed by public-in-general

715. Claimant to prove that Product is Defective: Whoever claims that damage is cause to his/ her body, life or property due to consumption of any goods or service for being defective, he/she shall have to prove the relationship of such defective goods and the damage in question and that the damage is caused only due to consumption of such product.

716. To be relieved from liability: Notwithstanding anything contained in Section 714, the producer shall not have to bear the liability in case any of the following fact is proved:-

(a) He/she has not produced, imported, sold or distributed the defective product;

(b) The goods or service he/she sold or distributed was not defective at the time of sale or distribution or it became defective after sale and distribution;

- (c) The goods or service he/she has produced is not in sale or distribution or not sold
- (d) The loss is caused due to consumer's failure to comply with the directives to be complied with while consuming the produced goods or service;
- (e) The loss is caused because the consumer has not properly consumed the product in a manner which should not have to be consumed;
- (f) Absence of scientific or technical knowledge at the time of production or distribution of the goods or service that such goods or service was defective;
- (g) While selling the product, from which the loss is caused, it was informed that it may cause loss if it is not consumed properly;
- (h) In case any goods or service is consumed having the knowledge or there being reasonable ground to have the knowledge that it may cause loss or damage.

717. Degree of liability may be reduced: Notwithstanding anything contained elsewhere in this Chapter, in case it is proved that the loss is caused due to the person producing the defective goods and also due to the person who suffers from the loss both, the liability of the producer may be reduced proportionally.

Provided that in case the third party suffers from the loss or damage due to such loss, the degree of liability may not be decreased in the case of such a party.

- 718. Products not deemed to be defective:** Goods or service may not be deemed to be defective only for the reason that the goods or service of higher quality than the goods or service which a person has consumed are available in the market.
- 719. No Adverse Effect on Other Rights:** Nothing provided for in this Chapter may cause an adverse effect on the right, interests or claim available under a law or contract to the person who has suffered from loss in body, life or property because of the defective product.
- 720. Limitation:** A person aggrieved from an act carried out under this Chapter may file a case within a period of one year from the date on which the cause of action arises.

Part -6

**Provisions
Concerning Private
International Law**

Provisions Concerning Private International Law

721. Provision of this Chapter to Apply: (1) The provisions of this Chapter shall apply on any matter relating to private legal relationship involving a foreign element.

(2) Without prejudice to the generality of sub-Section (1), the said provisions shall, particularly, apply on the following matters:-

- a) Legal status of a foreigner and his/her capacity;
- b) Matters relating to marital relationship, paternal and maternal and other family relationship or partition of property, inheritance at least one of the related parties of which is a foreigner or matters relating to the activities concerning thereto done in abroad;
- c) Matters relating to movable or immovable property located in abroad in which at least one of the stakeholder parties is a foreigner;
- d) Matters relating to right or liability concerning contractual or non-contractual in which at least one party is a foreigner; or
- e) Matter relating to a contract concluded in abroad.

Explanation:

(1) “Foreign element” means a situation in which a foreigner, foreign object or an act carried out in abroad is involved.

(2) “Foreigner” means a foreign natural person or corporate body and the word also includes a foreign state.

722. Legal capacity of Foreigner to be Determined: (1) Legal capacity of any foreigner shall be determined according to the law of the country of citizenship of such person.

(2) In case citizenship could not be ascertained pursuant to sub-Section (1), his/her capacity shall be determined according to the law of the country of his/her habitual residence, and even if such residence could not be determined, according to the law of the country where he/she is residing for the time being.

(3) While determining legal capacity or legal status of any corporate body, it shall be determined according to the law of the country where it is registered, in case the country of registration could not be ascertained, it shall be determined according to the law of the country where the Headquarters of such a body is located and in case even such country could not be ascertained, it shall be determined according to the law of the country where the place of transaction of such a body is located.

723. Presumption of disappearance or death of a foreigner: (1) In case a presumption of disappearance or death of a foreigner has to be made, it shall be determined according to the law of the country of citizenship of such person.

(2) In case the citizenship could not be ascertained pursuant to sub-Section (1), it shall be determined according to the law of the country of his/her habitual residence, and if such residence could not be ascertained, according to the law of the country where is his/her residence immediately before he/she is disappeared or dead.

724. Successor to be determined according to foreign law: While determining the successor in case property of a foreigner residing in Nepal goes intestate, the successor shall be determined according to the law of the country of his/her citizenship, if such country could not be determined, it shall be determined according to the law of the country of his/her habitual residence, and even if such residence could not be ascertained, according to the law of the country where he/she is residing for the time being.

725. Determination of Succession of Deceased: (1) In case the succession is opened because of death of any foreigner in Nepal and thereby a successor is to be determined for the property located in Nepal, it shall be determined according to the law of the country of citizenship at the time of death of such a person.

(2) In case the law could not be ascertained pursuant to sub-Section (1), it shall be determined according to the law of the country of his/her habitual residence at the time of his/her death, and if even such residence could not be ascertained, it shall be determined according to the Nepal law.

726. Testamentary Will to be determined according to the law of the country of citizenship: (1) The capacity of conclude a testamentary will to amend to and revoke it or form of such a will shall be determined according to the law of the country of citizenship of the person concluding such a will at the time of concluding, amending to or revoking such will.

(2) If the citizenship could not be ascertained pursuant to sub-section (1), it shall be determined according to the law of the country of habitual residence and even if such law also could not be ascertained, it shall be determined according to the law of his/her residence for the time being.

727. Determination of Nature of Corporate Body: While determining whether a company, foundation or any other corporate body is public or private entity, it shall be determined according to the law of the country where such a company, foundation or corporate body has been incorporated and if such a law could not be ascertained, it shall be determined according to the law of the country where the registered office or Headquarters of the company, foundation or corporate body is located.

728. Regulation of Movable or Immovable Property: (1) Regulation of the succession to the movable property shall be according to the law of the country of habitual residence of the deceased at the time of his/her death.

(2) Regulation of the succession to the immovable property shall be according to the law of the country where such property is located.

729. Nepali Citizen to Follow Nepali Law while marrying in abroad: (1) A Nepali citizen shall, while marrying in abroad, have to meet the capacity, qualifications and conditions for marrying as specified in the law of Nepal.

(2) The formality to be followed while solemnizing a marriage pursuant to sub-Section (1) shall be according to the law of the country where the marriage is solemnized.

Provided that while solemnizing a marriage at the Nepali Embassy or Consular General Office in abroad, formality according to the Nepal law shall be followed.

(2) The marriage solemnized in contravention of sub-Section (1) or (2) shall not be recognized in Nepal.

730. Foreigner to follow the terms and conditions of law of own country: (1) While marrying in Nepal by foreigners or by a foreigner and a Nepali citizen, every person entering into the marriage shall have to abide by the conditions as to the capacity, qualifications and other matters as set out in the laws of their respective countries.

(2) The formality to be followed while solemnizing a marriage in Nepal pursuant to sub-Section (1) shall be according to the law of Nepal.

Provided that while solemnizing a marriage at foreign Embassy or Consular General Office in Nepal, formality according to the law of the concerned country shall be followed.

731. Consequences of Marriage to be according to law of one's own country: (1) The matrimonial relationship after the marriage and the consequence of the marriage shall be determined according to the law of the country, if both of them belong to the same country and in case such country is different, it shall be determined according to the law of the country of their habitual residence and even if such a country is also different, it shall be determined according to the law of the country of their residence for the time being.

(2) In case the consequence of the marriage could not be ascertained pursuant to sub-Section (1), it shall be determined according to the law of the country of their marriage.

732. Paternal Authority to be regulated by the law of the country of citizenship: (1) The relationship between father, mother and children including paternal authority shall be regulated by the law of the country of citizenship of the children.

(2) In case the law referred to in sub-Section (1) is not ascertained, it shall be regulated by the law of the country of habitual residence of the parents and even if such law is not

ascertained, it shall be determined according to the law of the country of their residence.

733. Relationship between the person adopting a child and adopted child shall be according to law of the country of citizenship:

After adopting a son or daughter, the relationship between the person adopting a son or daughter and the adopted son or daughter shall be regulated by the law of the country of citizenship of the person adopting a son or daughter; and if no such law could be ascertained, according to the law of the country of habitual residence of the person adopting a son or daughter; even if such law could be ascertained, it shall be determined according to the law of the country where they are passing normal marital life.

734. Determination of Guardianship or Curatorship: (1)

Guardianship or curatorship of a minor or person with unsound mind shall be determined according to the law of the country of citizenship of such a minor or person with unsound mind.

(2) In case the country referred to in sub-Section (1) could be ascertained, it shall be determined according to the law of the country of his/her habitual residence and even if such country could not be ascertained, it shall be determined according to the law of the country of habitual residence for the time being.

(3) The relationship between a guardian or curator and the person under the guardianship or curatorship as the case may be shall be determined according to the law of the country of the

guardian and curator or where he/she is appointed as the guardian or curator, as the case may be.

Provided that in case the habitual residence of the person under the guardianship or curatorship is Nepal, it shall be determined according to the Nepal law.

735. To determine on the basis of the law of the country of residence: (1) While regulating the matters concerning separation of bread and bed, it shall be regulated according to the law of the country of habitual residence of the married couple.

(2) While regulating the matter pursuant to sub-Section (1), in case the country of habitual residence of the couple is different, it shall be regulated according to the last country of their habitual residence and in case even such country could not be ascertained, it shall be regulated according to the law of the country in a court of which the case of alimony is *sub juice*.

736. Dissolution of Marriage in Abroad to be recognized: Dissolution of a marriage between Nepali citizens or between a Nepali citizen and a foreigner effected in abroad shall be recognized in Nepal in accordance with Nepal laws if such a dissolution is made according to the law of the state where the marriage is dissolved and such a dissolution may be enforced.

737. Content of ownership to be determined as per the law of the country where property is located: (1) The content of ownership or possession of movable or immovable property

shall be determined according to the law of the country where such property is located.

(2) The situation leading to maintenance or end of ownership over immovable property shall be determined according to the law of the country where property is located.

738. Goods to be regulated according to law of destination: The goods on transit in the course of transportation shall be regulated by the law of the destination of such goods.

739. Law of Contract to be as determined by parties: (1) The governing law of any contract shall be as determined in the contract by the parties to it.

(2) In case no law is determined pursuant sub-Section (1), it shall be governed by the law of the country where such a contract is to be performed and even if such country could not be ascertained, it shall be governed by the law of the country where the contract has been concluded.

Provided that a contract concluded in Nepal shall be governed by the law of Nepal.

740. Deed entered into in abroad to be recognized: The validity of a contract or a deed concluded outside Nepal shall be determined according to the law of the country in which it is concluded and such a contract or a deed shall be deemed to be lawful if it is duly concluded under the laws of the state where it has been concluded and it shall be recognized in Nepal.

741. Regulation by the law of the country of donor: (1) The matter of validity of a donation or gift shall be determined according to the law of the country of citizenship of the donor at the time of donation or gift.

(2) If formality has been completed according to the law of the place of the country where donation or gift has been given, it shall be regarded that donation or gift was duly given.

742. Determination of liability for Tort: (1) While determining liability for an act which is deemed to be a tort according to the law involving the foreign element, it shall be determined according to the law of the country where the act has been committed.

(2) In case the act referred to in sub-Section (1) originated in one country and the consequence of such act appears in another country, the liability shall be determined according to the law of the country where the consequence appears.

(3) In case no liability could be determined pursuant to sub-Section (2), it shall be determined according to the law of the country where the act to be regarded as tort has been committed.

743. Liability under Quasi-contract or unjust enrichment: The liability under a quasi-contract or unjust enrichment shall be determined according to the law of the country where such an act has been happened.

744. Other matters to be determined according to private international law: While determining any matter that is not

dealt with in this Chapter involving foreign element, it shall be determined according to provisions of Nepal law if there is separate provision with regard to such a matter and if no such provision has been made, it shall be determined according to the recognized principles of private international law.

(2) Notwithstanding anything contained in sub-Section (1), in case all parties of the relevant subjects agree to determine the matter referred to in sub-Section (1) according to Nepal law, it may be determined according to such a law.

745. In case of double citizenship, law of habitual residence to apply: (1) While determining the law as provided for in this Chapter to determine according to the law of the country of citizenship, if a person is having citizenship of two or more countries at a time, his/her citizenship shall be determined according to the law of the county of his/her habitual residence.

(2) In case such matter could not be determined according to the law of the country referred to in sub-Section (1), it shall be determined according to the law of the country of citizenship having closest connection.

Provided that in case of person having Nepali citizenship or a person having habitual residence in Nepal or a non-resident Nepali citizen, it shall be determined according to the Nepal law.

(3) In case the reference of sub-Section (1) is with regard to a refugee or a stateless person, it shall be determined according to the law of the country of his/her habitual residence and in case

even such a law could not be determined, it shall be determined according to the law of the country of his/her residence for the time being.

746. Approval may be granted for proceedings of a case by a Foreign Court: (1) If a case which is under consideration of a court of Nepal, the parties of which are foreigners, if both parties of such a case submit a joint petition to the court specifying reasons that it would be appropriate and practicable for that case to be resolved by a foreign court of the residence to which the parties belong, and in case it is found reasonable upon an inquiry on the petition, the court may grant approval to initiate proceedings of the case by the foreign court according to the demand of the parties to the case.

(2) Once an approval is given with regard to a case by the court pursuant to sub-Section (1) to initiate proceedings by a foreign court, no proceedings shall be adjudicated again by a court of Nepal in the same matter.

747. Case filed in a court of Nepal may be suspended: In a case where foreigners are parties and which is under consideration by a court of Nepal and in case the parties of the case submit a petition requesting for suspending proceedings of the case because judgment in the case by the court of Nepal is likely to have direct impact in the decision of the case pending at the other country, the court may suspend the proceedings of such a case until the case between them pending in abroad is decided.

748. Court of Nepal to Have Jurisdiction: A court of Nepal shall have the jurisdiction to adjudicate proceedings and to decide a case in any dispute arising out of the following matters:-

- (a) A matter between the foreigners who reside within Nepal or between a foreigner and a Nepali citizen that is related under this Code or other law;
- (b) A matter in regard to a case when a foreigner residing in Nepal is a defendant;
- (c) A matter in regard to the succession of a foreigner who resides in Nepal having property at the time of death;
- (d) A matter concerning payment to be made within Nepal in a financial transaction or deal made in abroad between a Nepali citizen and a foreigner;
- (e) A matter concerning property that is located in Nepal between foreigners or a foreigner and a Nepali citizen;
- (f) A matter concerning a contract concluded in or to be performed in Nepal between foreigners or to which at least one party is a Nepali citizen;
- (g) A matter concerning tort, quasi-contract or unjust enrichment committed outside Nepal where both parties or the opposite party are Nepali citizens or foreigners who have habitual residence in Nepal;

(h) A matter to be adjudicated by a court of Nepal under Section 721.

749. Other matters concerning case may also be heard by the court of Nepal: In any case in which the principal dispute involving a foreigner to be resolved by a court of Nepal is being heard under its jurisdiction, if it seems that other matters concerning the case have also to be resolved, the court may resolve the matter accepting its jurisdiction in such matters as well.

750. To be according to Treaty: In case otherwise provided for on any matter dealt with in this Chapter in a treaty to which Nepal is a party, nothing provided for in this Chapter shall have any affect on that matter.

751. Not applicable if against public order: (1) Notwithstanding anything contained elsewhere in this Chapter, in case it becomes against public order while implementing any of the provisions referred to in this Chapter, in such circumstance, the provisions of this Chapter shall not be applicable.

(2) In case a circumstance arises as referred to in sub-Section (1), the matters referred to in this Chapter shall be regulated according to other linking criteria and if no such criteria could be determined, such matters shall be regulated according to the Nepal law.

Annex-2

THE CIVIL PROCEDURES CODE

A Bill Made to Amend and Consolidate Laws Relating to Civil Procedures

Preamble: Whereas, it is expedient to make the civil procedure simplified and timely, by amending and consolidating the prevailing laws relating to procedures on filing, proceedings, hearing and settlement of civil cases, and other procedures pertaining thereto, and the execution of decisions made on such cases,

Now, therefore, be it enacted by the Constituent Assembly pursuant to clause (1) of Article 83 of the Interim Constitution of Nepal, 2007.

Chapter-1

Preliminary

- 1. Short title and commencement:** (1) This Act may be cited as the "Civil Procedure Code, 2010"
 - (2) This Code shall commence on the fourteenth day of the month of April of the year 2011.
- 2. Definitions:** Unless the subject or the context otherwise requires, in this Code:
 - (a) "Court" means the Supreme Court, Appellate Court or District Court, and also includes any other judicial body or authority

empowered by law to try and settle civil cases of any specific type.

- (b) "Law" means the law in force for the time being;
- (c) "Endorsement" means an order made by the concerned officer of the court on the reverse side or any other part of a document or on a separate paper, that cannot be filed pursuant to law, setting out the grounds and reasons for not filing the document and putting his/her signature thereon.
- (d) "Civil case" means a case relating to a legal right, status, position, family relation and property, other than a case defined by law as a criminal case, and also includes a case on any of the following matters:
 - (1) matters relating to establishment relationship or divorce,
 - (2) matters relating to fees, remuneration, salary, allowance, wages, compensation,
 - (3) matters relating to partition, succession, donation and gift, testamentary will, guardian, curator, maternal and paternal authority, adoption,
 - (4) matters relating to any right, claim or compensation under any contract, quasi-contract or unjust enrichment,
 - (5) matters relating to any right, claim or compensation relating to tort, quasi-tort or defective product,
 - (6) matters relating to servitudes,

- (7) Matters relating to any other right or liability of civil nature.
- (e) "Judge" means an authority of the court who tries, hears and settles a case, and also includes the authority competent to try, hear and settle any specific type of civil cases.
- (f) "Memorandum of appeal" means a petition, accompanied by own pleas, made by a person who is not satisfied with a decision of the lower court to the higher court for the correction of such a decision.
- (g) "Statement of defense" means a written statement admitting or rebutting the claims set forth in the plaint and submitted to the court, and also includes deposition equivalent to the statement of defense.
- (h) "Counterclaim" means a claim made by a defendant on the claim made by a plaintiff.
- (i) "Defendant" means a person who submits a statement of defense, and also includes a person who makes a deposition as if he/she were a defendant or a person who has been set by the court as a defendant.
- (j) "Plaint" means a complaint, suit, claim or petition praying for the establishment of one's right, interest or concern on any matter or the execution of one claim, and also includes a deposition equivalent to a plaint or a counterclaim set forth in the statement of defense.

- (k) "Case-file" means a file that records a plaint, statement of defense, memorandum of appeal, petition and proofs and evidence and other documents as collected.
- (l) "Case" means a civil case.
- (m) "Summons" means a notice or summons issued by a court in the name of any person in the course of proceedings on a case.
- (n) "Plaintiff" means a person who makes a plaint and also includes a person who submits a counter-claim, as well.
- (o) "Local body" means the village development committee or municipality, as the case may be.
- (p) "Property" means a movable or immovable property.

3. Matters set forth in separate law not to be affected: (1) The provisions set forth in several procedural laws made on several matters shall govern such matters, and nothing contained in this Code shall affect such matters.

(2) This Code shall apply to the procedures not set forth in the laws as referred to in sub-section (1).

Chapter-2

General Principles of Civil Procedure Code

4. **Principles to be followed in civil cases:** In trying, hearing and adjudicating, the courts shall generally follow the principles and provisions set forth in this Chapter.
5. **Hearing to be held in open bench:** Except as otherwise provided for in law or except as otherwise ordered by the court on a petition by a party of a case, cases shall be tried, heard and adjudicated in open bench.
6. **Hearing to be held by competent court:** A case shall be tried, heard and adjudicated by a competent court in accordance with law.
7. **Question of entitlement to be adjudicated by court only:** If there arises a question of entitlement or disentitlement on any matter, such a question shall be settled by a regular court only.

Explanation: For the purposes of this Code, the expression "regular court" means the District Court, Appellate Court or Supreme Court.

8. **Dispute relating to legal status to be settled by court:** (1) A dispute relating to settlement of relationship, divorce or legal status of any person shall be adjudicated by the regular court only.

(2) If it appears, in the course of proceedings of a case, that the other matters should be tried, heard and adjudicated only after the settlement of the question of entitlement, and a case is *sub judice* in any other court or body, the court shall order the parties to obtain settlement of the question of entitlement from the regular court.

- 9. Status of parties to be equal:** (1) In trying, hearing and adjudicating a case, the status of parties to the case shall equal.
- (2) The court shall treat each party equally.
- (2) If, in the course of proceedings of a case, the Government of Nepal, any body thereof or any legal person is present before the court as a plaintiff or defendant, except as otherwise provided for in law or except as otherwise ordered by the court, the Government of Nepal, any body thereof or any legal person may not claim any separate status, facility, concession, immunity or exemption, in the course of proceedings of cases.
- 10. Locus standi to make plaint:** A person who desires to make a claim by filing a plaint in any court, the person shall show his/her *locus standi* by mentioning in the plaint the matter that he/she has right to make such a claim or demand or has legitimate interest or concern therein or therewith.
- 11. Jurisdiction not to be in vacuum:** (1) A court or judicial authority as specified by law to try, hear and adjudicate any case shall have the jurisdiction to try, hear and adjudicate such a case.
- (2) If no court is specified to have jurisdiction pursuant to sub-section (1), the concerned district court shall be deemed to have jurisdiction to originally try, hear and adjudicate such a case.
- 12. Prohibition on avoidance of decision making:** (1) A judge shall avoid making decision on the ground that law is inadequate or unclear.
- (2) In the event of occurrence of the circumstance as referred to in sub-section (1), decision shall have to be made based on recognized principles of law and justice.

- 13. Opportunity to be given for compromise or mediation:** (1) Prior to passing a judgment on any case, the court shall have to give opportunity to the parties to compromise such a case or enter into a compromise by following the procedures of mediation.
- (2) If, in giving opportunity pursuant to sub-section (1), if the parties agree to enter into compromise or undergo the procedures of mediation, the case shall be capable of being settled through compromise or mediation, irrespective of the level trying the case.
- 14. Principle of *res judicata* to be followed:** In hearing and adjudging a case, the same court shall not make hearing and pass a judgment more than once in the case on the same matter involving the same plaintiff and same defendant.
- 15. Right of appeal:** Where any case has been originally tried, heard and adjudged, a party who is not satisfied with such a judgment shall have the right to make an appeal against such a judgment to the appeal hearing court from the court that has made such a judgment, in accordance with law.

Chapter-3

Provisions Relating to Jurisdiction

- 16. Jurisdiction to be specified:** (1) In order to try, hear and adjudicate a case, the court shall have jurisdiction to that effect pursuant to law.
- (2) Any proceeding, hearing or adjudication made in the course of a case by a court without jurisdiction shall be void.
- (3) In passing a verdict, the court shall have to specify in the judgment the matter of under which law it has jurisdiction.

- 17. Jurisdiction of court:** The court shall have powers, as provided for in law, to try, hear and settle cases, hear appeals therefrom, revise or review them.
- 18. District court to have jurisdiction:** (1) In relation to the cases relating to any immovable property, to servitudes, ditches and borders, requiring an on-site examination or inquiry by the nature of the subject-matters of cases and any cases requiring the examination of any land, house or place in view of plaintiffs, the district court of the district where such land or house is located shall have jurisdiction to try, hear and settle such cases.
- (2) The concerned district court shall also try, hear and adjudicate the following matters, in addition to the cases set forth in sub-section (1):
- (a) A case involving the question of rent, crop or amount in question or relating to the ownership, possession of or entitlement, disentitlement to a property,
 - (b) A case relating to attachment to or preemption of an immovable property,
 - (c) Division of an immovable property,
 - (d) A case relating to furnishing an immovable property in security, mortgaging, possessing and foreclosing such property,
 - (e) A case relating to any concern or condition on an immovable property,
 - (f) A case relating to compensation related with an immovable property.

(3) Notwithstanding anything contained in sub-section (1) or (2), a partition case shall be tried, heard and settled by the district court of the district where the defendant is residing.

19. District court of district where defendant resides or act done to have jurisdiction: (1) Any case other than those set forth in Section 18 shall be tried, heard and settled by the district court in which plaint is filed, out of the district court of the district where the act is done or the district court of the district where the defendant resides.

Explanation: For the purposes of this Section, the expression "district where the defendant resides" means the district where the defendant has abode and also includes, in the case of a legal person, the district where the head office of such a person is situate.

(2) If both plaintiff and defendant do any general transaction in any place within Nepal, other than the territory where the plaintiff and the defendant reside, a case relating to such transaction shall be tried, heard and adjudicated by the district court in which plaint is filed, out of the district court in the territory where the transaction has been done or the district court in the territory where the plaintiff resides.

(3) In filing a case of the matter as referred to in sub-section (1), if there are two or more defendants, the case shall be filed in the district court of the district where more defendants reside.

Provided that where the number of defendants residing in more than one district is equal, the plaint may be filed in any district court of the district where such defendants reside.

- 20. Jurisdiction over cases relating to transaction carried on abroad:** Notwithstanding anything contained in sections 18 and 19, where there a provision that a case on the matter of general transaction or contract done or concluded abroad may be filed in any court in Nepal, the district court of the district where the plaintiff or the defendant resides shall have jurisdiction to try, hear and settle the case.
- 21. Jurisdiction over transaction done abroad Nepalese aircraft and ship:** The court of Nepal shall, subject to Section 20, have jurisdiction to try, hear and adjudicate a case on any transaction done abroad a Nepalese aircraft or ship, registered in Nepal in accordance with law, while such an aircraft or ship is outside Nepal.
- 22. Higher court to have jurisdiction:** If a case is filed in both lower and higher courts on any matter falling under the jurisdiction of the lower court and the higher court pursuant to law, the higher court shall have the jurisdiction to try, hear and settle the case.
- 23. Court to have jurisdiction:** If a case of any matter is filed in both a court and other quasi-judicial body in accordance with law, the court shall have jurisdiction to try, hear and settle the case.
- 24. Jurisdiction over case in which public servant is plaintiff or defendant:** (1) Notwithstanding anything contained elsewhere in this Chapter, while lodging a plaint by a public servant in his/her official capacity or by a person against a public servant in such capacity, such a plaint shall be lodged in the district court of the district where the office in which such a public servant is in service for the time being.
- (2) In making a plaint or submitting a statement of defense by a public servant in his/her personal capacity, the public servant

may, in fulfillment of the requirements of laws in force, make or submit the same to the district court of the district where he/she in service.

(3) The court shall file a plaint or statement of defense tendered for filing pursuant to sub-section (2) and forward the same to the concerned district court.

(4) The concerned court shall try, hear and settle the case forwarded pursuant to sub-section (3), in accordance with law.

25. Concerned district court to have jurisdiction: Where any court is not specified by law to have jurisdiction to try, hear and settle any case, the concerned district court shall have jurisdiction to try, hear and settle such case.

26. Plaint to be maintained in one court only: (1) If a person has filed several plaints on the same matter in several courts, the case shall be maintained in any one district court with the consent of both parties of the case, and information thereof shall be given to the rest courts.

(2) If information is received pursuant to sub-section (1), the courts shall annul such plaints.

(3) If the parties fail to agree pursuant to sub-section (1), the plaint which has been filed earlier in the court shall be maintained, and the plaints filed in the other courts shall be annulled.

27. Jurisdiction of court hearing appeal: If a case is filed in, and tried, heard and settled by, any court in accordance with this Chapter, the court hearing appeals against the orders or judgments made by such a court shall have jurisdiction to try, hear and settle appeals, as provided for in law.

Chapter-4

Provisions Relating to Preparation of Deeds

- 28. Requirement to be met in preparing deeds:** (1) In preparing a deed, it shall be so prepared, clearly setting out the matter on which it has to be prepared, by printing, typing or hand writing that it does not contain any errors and overwriting and cross-out and it has to be signed by the actor or authority concerned with that deed.

Explanation: For the purposes of this Chapter,-

- (a) The expression "deed" means any of the following deeds:
- (1) A deed on any kind of general transaction carried on household, transfer of a movable or immovable property or on mortgage or pledge of a property,
 - (2) A contract,
 - (3) A deed of authorization, power of attorney, deed of consent or other paper of similar nature,
 - (4) Any deed to be submitted to a government office or corporate body,
 - (5) Any kind of deed, including a plaint, statement of defense, memorandum of appeal, petition and petition, to be submitted to the court,
 - (6) Any deed to be issued by a government office or corporate body,
 - (7) Any other deed of similar nature.
- (b) The term "actor" means a person who has responsibility by the contents of a deed to sign the deed.

- (c) The term "government office" means a court, office of the Government of Nepal, constitutional body, an office receiving or involving budget or grant from the Government of Nepal, or a local body.
- (d) The expression "corporate body" means a body and company that is fully or partly owned by the Government of Nepal, and includes a university and community school.

(2) If, in preparing a deed as referred to in sub-section (1), an error is made or contents are to be corrected for any reason, correction shall be made by so crossing out the sentence, word, figure or letter that has to be corrected that such a sentence, word, figure or letter seems to have been otherwise and writing such a sentence, word, figure or letter as required to have been mentioned over or under the cross-out, and the concerned actor shall sign each place where such correction is made.

(3) If correction cannot be made by way of cross-out pursuant to sub-section (2) or despite that such correction can be made, the corrected content would create confusion or doubt, another separate deed shall be prepared instead of such a deed.

(4) In setting down any amount in a deed as referred to in sub-section (1), the amount shall be set down in both figures and words.

(5) If, in setting down any amount pursuant to sub-section (4), there is a difference between the figures and the words, the contents set down in the words shall be valid.

29. Requirements to be met while signing deeds: (1) In signing a deed or causing it to be signed, a person who can write shall write his/her name and sign it, and a person who cannot write shall put his/her thumb impressions on it.

(2) Notwithstanding anything contained in sub-section (1), in signing any of the following deeds, a person who can write shall put both of his/her signature and thumb impression on it and a person who cannot write shall put thumb impressions on it and make signature in such a manner as to prove that such a deed has been executed and signed by the actor:

- (a) A deed related with the transfer of title to, gift, donation, pledge or mortgage of, a movable or immovable property,
- (b) Power of attorney/authorization letter to be submitted to a government body or body corporate,
- (c) A deed of partition, will, exchange to be executed between coparceners,
- (d) A deed of separation of bed and board or joining of bed and board to be executed between coparceners,
- (e) A deed relating to adoption,
- (f) A separate receipt executed upon receiving repayment of loan, without making an endorsement on the reverse side of a bond,
- (g) A deed of loan, pledge, mortgage and also sub-mortgage, deed of term of repayment, guarantee letter and bond,
- (h) Bailment contract,
- (i) Unsecured bond (*Kapali*).

(3) In signing, pursuant to sub-section (1), a deed to be issued by a government office or corporate body shall be signed by the concerned authority indicating his/her name and designation, and such a deed shall also contain the date of its issued.

30. Requirements to be met while putting signature on deeds: (1) A person who can write shall have to write his/her full name, surname and address in a deed, and sign the deed.

(2) In putting signature pursuant to sub-section (1), the other places may be initialed by putting the full signature on the principal place of signature.

(3) In putting signature pursuant to sub-section (1), if a deed of the same matter contains more than one page, the actor shall be required to sign it shall so initial the top and bottom of each page that no content can be added to or deleted from the deed and put the full signature on the principal place of signature.

(4) If any deed is affixed or joined, the actor shall initial each joint and place of such affixation or joint.

31. Requirements to be met while putting or causing to be put finger impressions on deeds: (1) In putting or causing to be put finger impressions on a deed, the person putting finger impressions on the deed shall put impressions of the thumb in his/her right hand on the deed.

(2) In putting or causing to be put finger impressions pursuant to sub-section (1), if the person putting finger impressions has no thumb in the right hand or despite having such a thumb, the wheel like and conch like marking therein are not clear, the person

shall put the impression of thumb in the left hand, if the person has no thumb in both hands or despite having them, the wheel like and conch like marking therein are not clear, the person shall put impression of another figure having clear marking, in the right or left hand, on the deed, setting out the same reason.

(3) In putting or causing to be put impressions of thumbs in both hands in accordance with law, if the actor has no thumb of any hand or the conch like marking therein are not clear, the actor shall put impression of such another finger in the same hand as having clear marking and the thumb of the hand, in which wheel like and conch like marking therein are clear.

(4) In putting or causing to be put impressions of thumbs of both hands, the actor shall put the impression of any one such figure each in the both hands as in which the wheel like marking and conch like marking are clear if the actor has no thumb in both hands or despite have the same, the wheel like marking and conch like marking therein are not clear.

(5) In putting, or causing to be put, finger impressions pursuant to sub-section (4), if one hand has no figure at all or despite have any figure, the wheel like marking and conch like marking are not clear, the impression of any such one or two fingers, as required, in the same hand as wheel like marking and conch like marking in which are clear shall be put, or caused to be put, on the deed.

(6) Except where the impression of any one thumb or both thumbs is caused to be put while putting, or causing to be put, thumb impressions pursuant to this Section, in putting, or causing to be put,

the impression of any other figure, the matter that the impression of other figure has been put or caused to be put for the reason that the actor has no such a thumb or the wheel like and conch like marking therein have not appeared clear shall be set down in the concerned deed.

- 32. Signature to be put:** If in relation to a deed on which the impressions of the thumbs of both hands and signature of the actor who is to put thumb impression have to be put or on which the finger impressions and signature of the actor have to be put in accordance with law, the finger impressions cannot be put on the deed owing to the circumstance set forth in Section 31, and the actor can make signature in writing, the actor shall put or cause to be put only his signature in writing on the deed, and the deed shall contain the matter that figure impression could not be put on the deed for the reason that the actor has no figure in both hands or despite having one, the wheel like and conch like marking therein are not clear.
- 33. Deed to be valid:** Where a deed is signed or on which finger impression is put on it, such a deed shall be valid for any purpose and enforced in accordance with law.
- 34. Deed to be caused to be signed by guardian or curator:** (1) In signing a deed or causing it to be signed by an actor in accordance with law, if the actor is not able to make signature pursuant to Section 30 and, in putting or causing to be put figure impressions on the deed pursuant to Section 31, the actor has no figure in both hands or despite having one, the wheel like and conch like marking therein are not clear, a person who can be a guardian or curator of such an actor shall

put signature on the deed on behalf of, and in the presence of, that actor in accordance with law.

(2) In signing or sealing a deed or causing it to be signed through a person who can be a guardian or curator pursuant to subsection (1), the deed shall contain the matter that the guardian or curator has signed it on behalf of, and in the presence of, that actor for the reason that the actor has no figure in both hands or despite having one, the wheel like and conch like marking therein are not clear.

35. Procedures to be fulfilled in executing deed by person who is not able to seal it: (1) If a person who is not able to seal a deed by putting finger impressions on it for the reason that he/she has no finger in both hands can make signature, the deed certifying authority shall cause him/her to put his/her signature only on the deed and certify the deed, stating that mater in any part of the top of the deed.

(2) In executing a deed by a person who is not able to seal the deed by putting on it the figure impression by the reason that he/she has no finger in both hands and who is not also able to make signature, the deed shall be certified, in witness of his/her wife or husband living in an undivided family and, failing such a person, in witness of the guardian or a person who has the first and foremost right in the order of priority to inherit him/her, setting down in it the reason which the figure impression and signature of the deed executing person have not been put on it.

36. Requirements to be met in executing deed on behalf of persons of special group: (1) Notwithstanding anything contained elsewhere in this Chapter, in executing a deed on behalf of a blind or dumb, it shall

be executed in presence and witness of a person who can be his/her guardian living in an undivided family or failing such a guardian, a person who can be his/her curator, stating that the deed corresponds to what has been expressed or gestured by such a blind or dumb.

(2) In submitting any deed to a government office or corporate body or preparing deeds such as a plaint, statement of defense, memorandum of appeal or petition, such a deed shall be filed or submitted, by getting it certified to that effect by the chief of the office or body to which such a deed is to be produced or by a person authorized by the chief to that effect.

37. Identification details to be set down: (1) In preparing the deeds referred to in sub-section (2) of Section 29, the deeds shall be prepared clearly setting down the identification details of the main actors related with the deeds.

(2) In setting down the identification pursuant to sub-section (1), there shall be set down the three-generation details of the concerned person, namely his/her father's, mother's, grand-father's and grand-father's name, his/her wife's or husband's name, his/her citizenship number, age, date and district of issue of the citizenship certificate, his/her permanent address, and in the case of such a person being a foreign citizen, details of his/her citizenship, his/her passport number, country of issued of passport and date of issue of passport, his/her address and email address.

(3) In executing a deed in presence of a guardian or curator pursuant to this Chapter, there shall be set down in the deed the guardian's or curator's name, surname, address, citizenship number,

and in the case of such a guardian or curator being a foreign citizen, his/her passport number and email address.

38. Details of body corporate to be mentioned: (1) In executing or causing to be executed any deed on behalf of a body corporate, the deed shall mention details clearly identifying such a body, its registration number or place of registered or head office and shall be signed, or cause to be signed, by the person authorized to that effect by a resolution of the directors thereof.

(2) In getting the deed to be signed pursuant to sub-section (1), the person to sign the deed on behalf of such a body shall not be required to put finger impression on the deed.

Provided that upon the deed being signed, the seal of such a body shall be affixed thereunto.

(3) Notwithstanding anything contained in sub-section (2) of Section 29, in the case of a deed of which a body corporate is the actor, it shall not be required to mention the description of three-generation.

39. Only signature to be sufficient: Notwithstanding anything contained elsewhere in this Chapter, in signing any deed by any public office-bearer in that capacity, by an office-bearer of a body corporate in that capacity, in preparing a report of any study, or research, examination or inquiry or signing or sealing any deed other than a deed required by law to bear finger impressions, the finger impressions shall not be required to be put thereon, and if the deed is duly signed by the concerned person, such a deed shall be deemed to have been duly executed.

- 40. Seal to be put in indelible ink:** (1) In putting or causing to be put finger impressions pursuant to this Chapter, the wheel like or conch like figure shall be colored in indelible ink or otherwise and shall be impressed on the deed.
- (2) In putting signature by a person required to make it, the person shall put the same in indelible ink.
- 41. Place and date to be set down while preparing deed:** In preparing a deed as referred to in sub-section (2) of Section 29, the deed shall contain the main contents thereof and state at the end the place and date of execution of such a deed.
- 42. Deed to be witnessed:** (1) A deed required to be prepared in witness of persons pursuant to law shall be prepared in witness of at least two persons who are competent to enter into a contract and state that the act, transaction as referred to in the deed have been carried out.
- (2) A deed prepared pursuant to this Chapter shall state the details setting out the identity and address of witnesses as mentioned in sub-section (1) and be signed or sealed, or caused to be signed or sealed, pursuant to this Chapter.
- (3) If a deed prepared pursuant to this Chapter has been written by the actor himself or herself, the deed shall state that matter and if it has been drafted by another person, it shall state that matter and signed by the writer, indicating his/her identity.
- (4) If any license has to be obtained in accordance with law in order to prepare a deed, the writer preparing the draft pursuant to sub-section (3) shall also state the details thereof.

43. Deed failing to meet requirements to be invalid: (1) A deed prepared without fulfillment of the requirements pursuant to this Chapter shall not be valid, and no right, claim, interest or concern of any person shall be enforced by such a deed.

(2) Notwithstanding anything contained in sub-section (1), a deed may be recognized in the following circumstance by imposing a fine not exceeding two hundred rupees in view of the nature of the deed.

- (a) Where a person who can write has not put finger impression but has put signature duly or where the person has put finger impression but the impression is not legible,
- (b) Where a person who can write has not put signature but has put finger impression only,
- (c) Where the deed at its end containing the date is not signed or sealed by the actor,
- (d) Where a deed is not witnessed or despite being witnessed, it does not bear the signature of the witness,
- (e) Where the name, surname, address and designation have to be set down, any or all of the surname, address and designation has or have been omitted.

44. Deed executed by actor to be valid: Notwithstanding anything contained elsewhere in this Chapter, if it is proved that a deed required to be signed by the actor has been hand written by the actor himself or herself, such a deed shall be valid in accordance with law.

45. Deed may be registered upon making addition legibly: (1) If some addition and cross-out is made and contents added in legible manner in a deed tendered for registration in a government office or body corporate, in getting it to the signed, there shall be made a remark in the deed that such addition and cross out have been made or letters added therein and certified to that effect and then the deed shall be registered.

(2) In the case of a deed written by a government office or body corporate and tendered for registration, the chief of such office or body or the person authorized by the chief may sign it and register it.

(3) If any deed does not meet the requirements pursuant to sub-section (1) or (2) and cannot be registered, the chief of office or body shall, for the reasons why the deed cannot be registered to be clearly recorded, write such reasons on the reverse side of the deed, date and sign it and return it, by getting a receipt from the person tendering it for registration.

(4) Notwithstanding anything contained elsewhere in this Section, no document registered or filed in a government office or body corporate shall be returned to any one nor shall it be exchanged nor shall any figure, letter be deleted, crossed out or altered.

46. Copies of deeds to be provided: (1) If any person who has concern in a case or his/her law practitioner makes a petition for a copy of a document contained in the case-file including the plaint, statement of defense, memorandum of appeal, petition, deed related with the

evidence produced by the plaintiff or the defendant and the judgment, the court shall provide it as soon as possible.

Provided that any law practitioner may obtain a copy of a judgment.

(2) Except as provided for in sub-section (1), any person who is concerned with any deed maintained with a government office or body corporate may make a petition, setting out the matter that the person is concerned with the deed, to the concerned government office or body corporate for a copy of the deed.

(3) In providing a copy pursuant to sub-section (1) or (2), there shall be charged the fees of five rupees per page of A-4 size where the concerned person himself or herself has copied a deed or made a photocopy of the same and the fees of ten rupees per page of A-4 size where the court or other government office or body corporate has itself made a copy and provided it.

(4) In providing a copy pursuant to sub-section (3), the matter that the copy has been provided at the request of the person who has applied for the same and the copy corresponds to the original shall be mentioned on the first page of the copy and the copy shall be certified by the competent authority.

(5) Notwithstanding anything contained elsewhere in this Section, the concerned court, government office or body corporate shall not be compelled to provide the copy of a deed that has to be kept confidential or that has not to be made public pursuant to law or that has been ordered by a court not to be made public.

Chapter-5

Provisions Relating to Limitation

- 47. **Plaint to be made within limitation:**** (1) If any certain period of time is specified by law to make a plaint in, or submit any kind of claim, to any court on any matter, such a period of time shall be deemed to be a limitation.
- (2) Where the limitation is provided for pursuant to sub-section (1), a plaint shall be made within such a limitation.
- (3) If any person shows up in the court to make a plaint in contravention of sub-section (2), his/her plaint shall not be filed, and even if such a plaint happens to have been filed for any reason, such a plaint shall be annulled.
- 48. **Plaint may be made failing provision of limitation:**** If no limitation is provided by law for the filing of a plaint on any matter, a plaint may be made within six months after the date of occurrence of the cause of action.
- 49. **Commencement of limitation:**** (1) If there arises a circumstance to make a plaint on any case, the limitation shall be deemed to have commenced in accordance with that law which provides for limitation.
- (2) If there is no legal provision in relation to the commencement of limitation pursuant to sub-section (1), the limitation shall be deemed to have commenced from the date on which the cause of action has arisen.
- 50. **Plaint may be made from the date of knowledge:**** (1) Where a plaint has to be made as a result of deception, forgery, fraud or conspiracy or for similar other reason or the limitation gets expired in a circumstance where any act is done clandestinely and it is not thus

known then, and the concerned person shows up to make a plaint setting out that matter within thirty five days after the date of knowledge of that matter by him/her, the court shall file and try such a plaint subject to this Chapter, Notwithstanding anything contained in Section 48 or 49.

(2) In the case of a plaint to be made by the Government of Nepal or any body corporate for the purpose of sub-section (1), the date of knowledge by the concerned office or body corporate shall be deemed to be the date of knowledge by the plaintiff.

51. Plaintiff may be filed after leave: (1) If the deadline of limitation falls on a public holiday and a plaint is tendered for filing on the first day on which the court opens immediately after such a holiday, the court shall file the plaint.

(2) If a plaint is filed pursuant to sub-section (1), the plaint shall be deemed to have been filed within the limitation.

Explanation: For the purposes of this Section, the term "public holiday" means the holiday for whole or half day as notified as such by the Government of Nepal that the government offices or courts remain closed on such a day.

52. Limitation of minor or person of unsound mind: (1) If any person who has to make a plaint is a minor, the limitation shall be deemed to have commenced in his/her case from the day on which he/she attains majority.

(2) If any person who has to make a plaint becomes of unsound of mind prior to the commencement of limitation, the

limitation shall be deemed to have commenced in his/her case from the day on which he/she becomes of sound mind.

(3) If any person becomes of unsound mind after the commencement of limitation, if the person makes a plaint within the period of limitation that remains after deduction of the period during which he/she becomes of unsound mind, the plaint shall be deemed to have been made within the limitation.

Provided that the period of limitation that remains after the person who was of unsound mind has become of sound mind is less than fifteen days, the period of fifteen days shall be deemed to be the remaining term of limitation.

53. Commencement of limitation of heir: (1) If a minor or a person of unsound mind who is to file a plaint dies before the minor becomes major or the person becomes of sound mind, his/her heir may make the plaint within the limitation from the date on which he/she dies.

(2) If a minor becomes major and then dies, his/her heir may make a plaint within the remaining period of limitation when the remaining period of limitation is thirty five days or more, and within thirty five days if he/she dies when the remaining period of limitation is less than thirty five days.

(3) If a person of unsound mind becomes of sound mind and then dies, his/her heir may make a plaint within the remaining period of limitation when the remaining period of limitation is thirty five days or more, and within thirty five days if he/she dies when the remaining period of limitation is less than thirty five days.

54. **Plaint by guardian:** Notwithstanding anything contained in Section 52 or 53, if there is a guardian of a minor or a person of unsound mind, as provided for in law, the guardian may make a plaint within the limitation as referred to in this Chapter.

55. **Limitation not to be postponed:** Notwithstanding that any of the persons who are to make a plaint jointly is a minor or a person of unsound mind, the limitation shall not be postponed in the case of the other persons.

Provided that such a minor or person of unsound mind may make a separate plaint subject to Section 53 after he/she becomes a major or a person of sound mind.

56. **Limitation in relation to transaction carried on abroad:** If there is a provision in law or contract that a plaint may be made in any court of Nepal in relation to any act, action or transaction done or taken in a foreign country, such a plaint may be made subject to this Chapter as if such an act, action or transaction were done or taken within Nepal.

57. **Limitation of plaint lodged in court without jurisdiction:** If any person lodges a plaint in any court in accordance with law, it appears from the statement of defense submitted by the defendant or otherwise that the court has no jurisdiction to make decision on such a plaint, the limitation for lodging a plaint by the concerned person shall be deemed to have commenced from the date on which such a court ends the proceeding thereon.

Provided that,

- (1) Where the court has made an endorsement at the time of lodging a plaint that it has no jurisdiction, the limitation

for lodging a complaint pursuant to this Section shall not be extended by the reason only that the court without jurisdiction has proceeded with,

- (2) After the court in which a case has been filed knows that it has no jurisdiction to try, hear and settle the case, nothing shall be deemed to preclude, merely by the reason that such a court has not settled the complaint, the concerned person from lodging a complaint in the competent court within the limitation as provided in law,
- (3) Where a complaint is made, lying as to the limitation, after the expiration of the limitation in accordance with law, the jurisdiction cannot be established merely by the reason that the complaint has been filed.

58. Limitation not to be expired: If the limitation has expired with a person being unable to file a complaint within the limitation owing to the existence of the following force majeure event (circumstance beyond control) and the concerned party tenders a complaint for filing within the following period, setting out that matter, the court shall, notwithstanding anything contained elsewhere in this Chapter, file and proceed with such a complaint, subject to Section 59:

- (a) If the concerned person himself or herself has to observe obsequies by the reason of someone's death, seven days, excluding the time required for journey, after the date of completion of obsequies,

- (b) If the concerned person is a woman has delivered a child, thirty days, excluding the time required for journey, after the date of delivery,
- (c) If motor vehicles have not plied because the route has remained closed because of flood, landslide and snow-fall or declaration of curfew or otherwise, ten days, excluding the time required for journey, after the date of resumption of such a route or movement of motor vehicles,
- (d) If the concerned person has been abducted or taken hostage by another person, seven days, excluding the time required for journey, after the date of release from such abduction or hostage taking,
- (e) If a divine or natural calamity such as earthquake has occurred, ten days, excluding the time required for journey, after the date of occurrence thereof.

59. Evidence of reason for expiration of limitation to be submitted:

(1) In making a plaint pursuant to Section 50 or 58, the reason for being unable to make the plaint within the limitation shall be set out in the plaint or in a separate petition, and such proof or evidence as required to prove the same shall also be produced.

(2) If a person who is not able to produce a proof or evidence of the reason why the person has not been able to lodge a plaint within the limitation at the time of making plaint pursuant to sub-section (1) makes a request for a time-limit for the production of such a proof or

evidence, the court may give such a time-limit as it deems appropriate, but not exceeding twenty one days after the date of filing of the plaint, for the production of such a proof or evidence.

60. Limitation to commence from date of approval: If any law provided that approval of any one has to be obtained in accordance with law prior to making a plaint against any person, organization or office-bearer, the limitation for making a plaint by the concerned person on that matter shall be deemed to commence from the date of notice of such approval received by that person.

61. Limitation not to be computed pending specification of authority: If the Government of Nepal or any other body or office-bearer has authority to specify the authority, court or body to adjudicate a case under any law and if such authority, court or body is specified within the limitation, a plaint has to be lodged accordingly, and if such an authority, court or body is not so specified, a plaint has to be lodged within a period of fifteen days, under the relevant law, after the date of specification of such an authority, court or body.

62. Computing of period of limitation: (1) If the period of limitation is specified on day counting basis, the number of days so specified shall be computed on the day counting basis.

(2) In computing days pursuant to sub-section (1), the period of limitation shall be fixed by reckoning days from the following day of the day of commencement of limitation.

(3) If the period of limitation is specified in months, the number of months as so specified shall be reckoned on the basis of the first day of months irrespective of the days making months.

(4) If the period of limitation is specified in years, the number of years as so specified shall be reckoned treating a period of twelve months as one year.

Chapter-6
Provisions Relating to Court Fees

63. Payment of court fees: (1) In lodging a plaint or memorandum of appeal to the court and making a counterclaim in the court, the court fees shall be charged.

(2) Except in the case referred to in sub-section (1), if an order is made to make a review or revision on a petition made for the review or revision of any case, the court fees shall be paid for the review or revision of the case, as the case may be.

Explanation: For the purposes of this Chapter, the term "court fees" means the fees to be charged while lodging a plaint or memorandum of appeal or a petition for the review or revision of a case, and includes the fees payable by a person who makes a counter-claim.

(3) Notwithstanding anything contained in sub-section (1) or (2), no court fees shall be charged pursuant to this Chapter in the case of a case in which the Government of Nepal is a plaintiff or a case to be heard and adjudicated by a local body in accordance with law or proceeding to be carried out by a body specified by the Government of Nepal by a notification in the Nepal gazette.

64. Case not to be heard without payment of court fees: (1) No person may lodge a plaint, memorandum of appeal or make counterclaim or petition for the review or revision of any case without payment of the court fees charged pursuant to this Chapter nor shall such a plaint, appeal or petition be entertained.

(2) Except as mentioned elsewhere in this Chapter, a plaint, memorandum of appeal or petition for the review or revision of a case without payment of the court fees shall be dismissed.

65. Cases may be heard without collection of court fees: (1) Notwithstanding anything contained in Section 64, in the following circumstance, the judge may, by executing a memorandum with the reasons, make an order to file a plaint, memorandum of appeal, counterclaim or review or revise a case, subject to the collection of the court fees later fully or partly:

(a) If a person who is required to pay the court fees makes a petition specifying the reason that he/she is not able to pay the chargeable court fees fully or partly because of being extremely indigent and the judge has any reasonable ground to believe that matter,

(b) If it is recommended by the concerned local body that a person who is required to pay the court fees is not able to pay the court fees because that person has no property other than the property subject to the case or if a petition is made by the person stating that matter, and the judge has any reasonable ground to believe that matter.

(2) If the judge makes an order to collect court fees later fully or partly pursuant to sub-section (1), the concerned employee shall clearly write how much court fee has been collected and how much is outstanding and attach the records thereof with the case-file.

(3) Notwithstanding anything contained in sub-section (1) or (2), no court fees shall be charged in relation to a case for the use of a government or public property.

66. Price or amount in question of property to be set out: (1) In making a plaint, the value or amount in question of the property that is claimed or disclaimed by the plaint shall be clearly set out in cash.

(2) Except in a case set forth in sub-section (1), where only a claim is made that any matter to be done has not been done or any matter not to be done has been done or is about to be done, such a claim shall also be set out clearly.

(3) Where a plaint is made with a claim pursuant to sub-section (2) and a decision has to be made allowing the provision of the value or amount in question subsequently, the court shall, prior to making such a decision, cause the plaint maker to pay the court fees according to such a value or amount in question.

67. Bases for fixation of value or amount in question: For the purpose of the payment of court fees, the value or amount in question of an immovable property shall be fixed on the basis of the following order of priority pursuant to Section 66:

- (a) Fees fixed by the land revenue office for the purpose of registration,
- (b) The value fixed, if any, by the Government of Nepal for the purpose of tax,
- (c) Locally prevailing value.

68. Value or amount in question to be taken as basis while collecting

court fees: In collecting the court fees, the same shall be collected on the basis of the following value or amount in question:

- (a) Where the right in cash has to be established or claim in cash to be de-established, the figure of the amount in which the right or claim has to be so established or de-established,
- (b) Where gold or silver has to be provided or claim therein de-established, the figure to be set by the rate fixed by the Nepal Rastra Bank, and failing such a figure, the figure to be set as per the prevailing market rate,
- (c) Where a movable property other than that set forth in clause (b) has to be provided or released, the figure to be set as per the prevailing market value of that property,
- (d) Where a security or treasury bill has to be provided or claim in it has to be de-established, the value set by the stock exchange,
- (e) In the case of a movable property of which prevailing market value is not set pursuant to clause (c), the figure of value or amount in question set by the plaintiff,
- (f) Where yields of a land are claimed, the figure of yields of the previous year not subject to natural calamities,
- (g) Where a claim in an immovable property is made or right or claim in such property has to be de-established, the figure of value or amount in question as set by the plaintiff pursuant to Section 66,

- (h) Where a claim is made that the yields of land subject to natural calamities have not been remitted, the figure of yields claimed for remission,
- (i) Where a claim is made for the remission of any thing other than the yields of a land, the figure of the thing so claimed for remission,
- (j) Where a claim is made for the right of trust, priest, *Bhandere* etc. or a claim therein has to be de-established or a claim is made for releasing therefrom, the figure of the residual income to be enjoyable upon administering the functions of the trust and the figure or amount in question of the land as specified where other claim is made and the figure of such Khangi income of one year as may be enjoyed where the land is not specified,
- (k) Where right in contract amount is claimed or right or claim therein has to be de-established, the figure of contract of such number of years as for which the contract amount is claimed, and where a claim is made only for loss in income, the figure of loss in income so claimed,
- (l) In the case of a mortgage of an immovable property, the figure of the amount in question set forth in the deed,
- (m) Where insolvency or date for repayment has to be effected, the figure of the amount in question indicated by the debtor,

- (n) Where a claim is made for the provision of salary, allowance or installment, the figure as claimed,
- (o) Where a claim is made for compensation for loss of wages, the figure of the value as claimed,
- (p) Where a claim is made for a principal, profit, dividend, bonus, donation, gift, interest, house or shop rent or any property, the figure of such a principal, profit, interest, rent or property,
- (q) Where a claim is made for any compensation, the figure of compensation so claimed,
- (r) Where a claim is made for act or recovery to be done or made pursuant to a contract, the figure of such act or recovery so claimed to be done or made.

69. Rate of court fees: There shall be charged the court fees at the following rate from the value or figure of the amount in question as claimed pursuant to Section 68 or a claim in which is prayed for de-establishment, in making a plaint:

- (a) Two hundred rupees for up to the first two thousand rupees,
- (b) For up to twenty five thousand rupees, at the rate of four percent for up to the second twenty three thousand rupees,
- (c) For up to one hundred thousand rupees, at the rate of three percent for up to the third seventy five thousand rupees,

- (d) For up to two hundred fifty thousand rupees, at the rate of two percent for up to the fourth one hundred thousand rupees,
- (e) For above two hundred fifty thousand rupees, at the rate of one percent for any figure whatsoever thereabove.

70. Court fees to be charged in lump sum: (1) Notwithstanding anything contained in Section 69, the court fees of five hundred rupees shall be charged in a case on any of the following matters and matters related thereto:

- (a) Registration or transmission of a land or cancellation of such a registration or transmission,
- (b) Claim of invoice and receipt,
- (c) Claim for invalidation of a deed, deed on repayment date, guarantee letter, bond, receipt etc.,
- (d) Claim for eviction of tenant from a house or land or claim against such eviction,
- (e) Claim on obstruction with the making of a dam, canal or ditch or carrying of water through such a dam, canal or ditch or on the use of water in defiance of order,
- (f) Claim for keeping an exit, window or door open or closed, or for making, adding or closing a window, door or veranda,
- (g) Claim for the issuance of an injunction or mandatory order to refrain, or cause to be refrained, from doing any act or to cause any act to be done or for the withholding of such an order,

- (h) Determination of full competency, semi-competency or incompetency of any person,
 - (i) Divorce,
 - (j) Settlement of relation,
 - (k) Demand for judicial declaration of the death of a person or cancellation of a judicial declaration or claim for amendment thereto,
 - (l) Claim for commencement or non-commencement of insolvency proceeding,
 - (m) Appointment or cancellation of appointment of a trustee,
 - (n) Appointment or cancellation of appointment of a guardian,
 - (o) Appointment or cancellation of appointment of a curator,
 - (p) Claim for usufruct or cancellation thereof,
- Provided that the court fees shall be charged on the basis of the value, if any, mentioned,
- (r) Claim for servitude or cancellation thereof.

(2) Notwithstanding anything contained in sub-section (1), the court fees of one thousand rupees shall be charged on the following cases:

- (a) Claim for the ascertainment or provision of a partition share in the property subject to partition,
- (b) Voidance of a deed or document.

71. Special provision relating to collection to court fees: (1) Notwithstanding anything contained in section 70, the court fees shall be charged as follows on the following cases:

- (a) The court fees pursuant to Section 68 where the right in any property has to be established or de-established from the plaintiff's or appellant's pleas,
- (b) Where an inventory of property is not submitted along with a plaint on the partition case and the amount in question of the property is ascertained as set forth in an inventory submitted along with a statement of defense or required by the court, the court fees as per the figure of such an amount in question,
- (c) Where a plaint is made claiming both principal and interest, the court fees of the figure of interest accrued up to the date of filing of plaint,
- (d) Where the judgment decrees the recovery of interest as well, the court fees of the figure of interest accrued from the date of filing of plaint to the date of the judgment.

(2) Notwithstanding anything contained in sub-section (1), where the value or amount in question is set out in any case, the court fees shall be charged on the basis of the value or amount in question as mentioned in the other Sections of this Chapter and the court fees of one thousand rupees shall be charged, subject to Section 70, in any other case whatever in which the value or amount in question is not set out.

72. Value of previous day on which case is filed to be set: (1) In setting the value of any property for the purposes of the court fees pursuant to this Chapter, the value shall be set taking as the basis the value of the

property prevailing on the previous day of the day on which the case is filed.

73. Court fees chargeable on making appeal: (1) Irrespective of the level in which an appeal is made in a case in which the value or amount in question is set out, there shall be charged the court fees at the rate of fifteen percent of the court fees chargeable while filing a plaint, up to the extent to which appeal is made upon being unsatisfied.

(2) In making an appeal at any level in a partition case in which the amount in question is not set out, there shall be charged the court fees equal to the court fees chargeable while filing the plaint.

(3) Where an appeal is made to the second layer court against the appeal judgment made by the first layer court hearing appeal, there shall be charged the court fees at the rate of fifteen percent of the court fees chargeable while filing the plaint, up to the extent to which appeal is made upon being unsatisfied.

74. Court fees chargeable for making review or revision of case: Where, on a petition made for the review or revision of any case in accordance with law, an order is made to review or revise the case, there shall be charged the court fees at the rate of fifteen percent of the court fees chargeable while filing the plaint, up to the extent to which the pray is made to have a review or revision upon being unsatisfied.

75. Payment of court fees, penalty and fine: (1) In making an appeal by any party of a case against the original judgment or in making an appeal to the second layer court hearing appeal against the judgment of the first layer court hearing appeal, there shall be paid the court fees

as held to have been provided by the party to the other party in pursuance of the judgment.

(2) In making a petition by any party of a case for its review of revision in accordance with law, there shall be paid the court fees charged pursuant to the judgment.

(3) Notwithstanding anything contained elsewhere in this Chapter, if any penalty or fine is imposed on any party of a case pursuant to the judgment, no memorandum of appeal or petition made for the review or revision of a case shall be filed without payment of such a penalty or fine or furnishing of security for the same.

76. Court fees required to be paid in cash: (1) Except as otherwise provided for in this Chapter, the court fees shall be paid in cash.

(2) If payment of court fees is made to the court pursuant to this Section, the concerned employee shall credit the court fees to the cash book, duly prepare a receipt thereof in duplicate, give one copy to the person making payment of court fees and retain the other copy in the concerned case-file.

77. Shortfall court fees caused to be paid: (1) If it appears, in filing a plaint or memorandum of appeal, or from the contents of the plaint or memorandum of appeal, that payment of court fees less than the court fees chargeable pursuant to this Chapter is tendered, the court shall cause the shortfall court fees to be paid immediately.

(2) If any person, being unable to pay the shortfall court fees immediately pursuant to sub-section (1), requests for a time-limit, the court shall give the time-limit to the concerned person to pay the shortfall court fees within the deadline for making a plaint or

memorandum of appeal if there are seven days to go for such a deadline, and, if the deadline is of less than seven days, within seven days.

(3) If, subsequent to the filing of a plaint or memorandum of appeal, the court comes to know in any manner that there have been paid or taken the court fees less than the court fees required to be collected pursuant to this Chapter or if a complaint is made by any person on this matter and the complaint seems to be reasonable upon examination of the complaint, the court shall appoint the due date to pay the shortfall court fees within seven days if the party is on recognizance and issue a summons to pay the shortfall court fees within the time-limit of seven days if the party is not on recognizance.

(4) If the party fails to pay the court fees within the period given pursuant to sub-section (3), such a case shall not be entertained.

78. To return excess court fees: (1) If, in the course of proceedings of a case, it is found on a petition by the party or in any other manner that there have been collected excess court fees from any party, the court shall return the excess court fees to the concerned party.

(2) If it is found in any manner after the judgment on a case that there have been collected excess court fees, the concerned party may make a petition to the concerned court to get such court fees returned to him/her.

(3) If, in examining the petition received pursuant to sub-section (2), the applicant's demand seems to be reasonable, the court shall return court fees to the applicant.

79. Complaint may be made on court fees specified by court: (1) A person who is not satisfied with the court fees specified by the court pursuant to this Chapter may make a complaint to the judge of the same court within three days if the payment of court fees has not been made yet and within seven days prior to the judgment on the case where the payment of court fees has already been made.

(2) If, in examining the complaint received pursuant to sub-section (1), it appears that there have been collected excess court fees, the concerned judge shall make an order to return the excess court fees, and the employee who has so collected the excess court fees may be liable to departmental action.

(3) If, in making examination pursuant to sub-section (2), the content of the complaint is held to be false, the person making such a complaint shall be liable to a fine at the rate of fifteen percent of the figure of the claim against the collection or specification of such excess court fees.

80. Punishment for collection or payment of less court fees: (1) The concerned party may make a complaint to the court where the case is *sub judice* about the reduction of the value or amount in question with intention to pay less court fees.

(2) If, in examining a complaint received pursuant to sub-section (1), or in examining the case-file by the court itself despite that such a complaint has not been made, it appears that the value or amount in question has been reduced with an intent to pay less court fees, the court shall fine such a party with fifteen percent of the reduced court fees and cause that party to pay the shortfall court fees.

(3) If, in examining a complaint made pursuant to sub-section (1), the complaint is held to be false, such a complainant shall be liable to a fine of five percent of the figure as claimed to be shortfall.

(4) If it appears, from a complaint made by any person or in any other manner, that any employee of the court has knowingly collected the court fees less than that required to be collected, the employee shall be liable to departmental action in accordance with law.

Explanation: For the purposes of this sub-section, the term "knowingly" means the failure to collect the court fees pursuant to this Chapter according to such value or amount in question as appeared from the contents of the plaint or memorandum of appeal or evidence.

(5) Where the final judgment has been passed on the case in which less court fees have been collected pursuant to sub-section (4) or the time-limit for appeal in such a case has already expired and such court fees cannot be recovered from the concerned party, the amount in question of the court fees shall be recovered from the employee who has so collected less court fees.

81. Forfeiture of court fees: If the plaintiff or appellant loses the case in which court fees are charged or if, upon proceeding with a petition for review or revision of verdict, the previous judgment is not upheld, the fees paid by him/her shall be forfeited.

82. Proceedings in cases where case is compromised, dismissed or canceled: (1) In executing a deed of compromise in a case filed upon full payment of the court fees, the court shall collect half the court

fees for the execution of deed of compromise and return the remaining court fees to the plaintiff or appellant.

(2) In executing a deed of compromise in a case filed on the condition of collection of the whole or any of the court fees subsequently, the court shall execute the deed of compromise only after collecting the court fees chargeable pursuant to sub-section (1) from the plaintiff or appellant.

(3) If a case filed upon full payment of the court fees is dismissed or canceled, the plaintiff or appellant shall not be liable to any punishment.

(4) If a case is dismissed or terminated, the court fees paid shall not be returned.

(5) If a case filed on the condition of collection of the whole or any of the court fees subsequently is dismissed or terminated, the remaining court fees shall be recovered from the plaintiff or appellant.

Provided that in the case of termination of a case, it appears that the plaint that should not have been filed by virtue of the contents of the plaint has been filed, the court fees collected in such a case shall be returned.

(6) If a case which has been compromised, dismissed or canceled in fulfillment of the requirements of law is revived for any reason on a complaint by the party of case and to be proceeded again, the party on the complaint of whom the case is to be proceeded again shall again pay the court fees chargeable pursuant to this Chapter to the court where the case is *sub judice*.

83. Recovery of court fees: (1) The winning party of a case in which court fees have been paid shall be entitled to recover the court fees paid by him/her from the losing party.

(2) In making recovering of the court fees pursuant to subsection (1), such recovery shall be made according to such amount in question as held to be recoverable from each of them if there are two or more defendants or appellants, according to the extent of right or claim that has to be de-established from them respectively on the matter of de-establishment of right or claim and on pro rata basis from the losing defendants or respondents in the other circumstances.

(3) Where a plaint has been filed without payment of some or whole of the court fees and the plaintiff or appellant wins the case, the court fees held to be chargeable shall be recovered from the other party as a penalty or fine.

(4) If the plaintiff or appellant has made a claim of several matters, the plaintiff or appellant shall be entitled to recover the chargeable court fees from the other party only according to the extent of the claim of that matter as held to be sustained.

(5) Where a case has been filed without payment of some or whole of the court fees and the plaintiff or appellant loses the case, the chargeable court fees shall be recovered from them.

(6) If a judgment is passed under which the plaintiff or appellant is entitled to recover the court fees pursuant to this Section and the defendant or respondent dies prior to the recovery thereof, the plaintiff or appellant shall be entitled to recover such court fees from

person who succeeds the inheritance of such a defendant or respondent.

(7) If in passing a judgment on an appeal or a case for review or revision, the appellant or applicant wins the case wholly or party, the appellant or applicant shall be entitled to recover from the respondent such court fees as held to be chargeable on the extent to which he/she has so won.

- 84. Recovery of court fees to be made with priority:** In making recovery of, or collecting, an amount in question, fine, court fees and other fees or charges in pursuance of judgment, the court shall first recover or collect the court fees.

Chapter-7

Provisions Relating to Plaintiff and Presentation of Claims

85. Claims to be made: (1) In order to have the matter of a claim made by a person in accordance with law enforced by the court, the person shall make such a claim to the court.

(2) In making a claim pursuant to sub-section (1), there shall be filed a plaint by fulfilling the procedures and terms as referred to in this Chapter.

86. Plaint may be made on matter which a person has right in and is enforceable: (1) Except as otherwise mentioned in this Chapter, in filing a plaint pursuant to Section 85, the plaint shall be filed by a person making claims only on the matter which the person has right in and which can be enforced in accordance with law.

(2) If a plaint is prayed for filing in a manner contrary to sub-section (1), the plaint cannot be filed, and even if such a plaint has been filed for any reason, it shall be voided, except in the case of a plain filed under Section 91.

87. One plaint may be filed: (1) A person may file only one plaint against another person on the matters despite that there are many matters of claims of civil nature against such other person.

(2) If, instead of making a plaint in a case in which the same plaint can be made at the same time, a person files another plaint subsequently only after considering the consequences of the plaint so filed earlier, such a plaint shall not be entertained.

88. Number of plaintiff or defendant not to affect: In filing a complaint in relation to the claim of any one matter, any one person may file one

plaint against many persons or many persons may file one plaint against one person.

89. Plaint to be filed only once: (1) After a person has filed a plaint against any person on a matter in a court, that person shall not file another plaint against the same person on the same matter in the same court or any other court.

(2) If one party files a plaint on any one matter in a court and the other party files a plaint on that matter in another court or both parties file separate plaints in the same court, the court shall make an order to try the case in pursuance of the plaint filed earlier and void the other plaints.

Provided that in cases where plaints may be and ought to be filed by both parties in accordance with law, nothing shall prevent the hearing of both plaints.

90. Plaint to be filed within limitation: (1) In making a plaint, the plaint shall be filed within the limitation specified by law for the submission of claims on the matters as claimed in the plaint.

(2) In filing a plaint pursuant to sub-section (1), the plaint shall state by what law the limitation, within which it has been filed, has been specified.

(3) Any plaint tendered for filing in contravention of sub-section (1) or (2) shall be endorsed and returned.

91. Plaint may be filed by any person on dispute involving public interest or concern: (1) Notwithstanding anything contained elsewhere in this Code, any citizen of Nepal may, with the leave of the court, make a plaint on a dispute involving the right, interest or

concern of the Government of Nepal or public interest or concern, as the case may be.

(2) In order to obtain the leave pursuant to sub-section (1), a separate petition shall be filed along with the plaint.

(3) Decision has to be made on the leave prayed for by a petition pursuant to sub-section (1) on the same day of the making of petition.

92. Plaint may be filed to establish right: If the right of any third party is also affected as a result of the judgment passed on a case in the form of dismissal, repeal or otherwise or of the execution of a deed of compromise in accordance with law, such a person may make a plaint to void that judgment or deed of compromise and establish his/her right, within thirty five days of the date of knowledge.

93. Plaint may be filed on behalf of legal person: (1) In making a plaint on behalf of a body corporate recognized as a legal person in accordance with law, the natural person authorized by the decision of director or directors of such a body for the purposes of making the plaint shall state that matter in, and make, the plaint.

(2) In making a limitation pursuant to sub-section (1), the plaint shall also be accompanied by a copy of the decision of director or directors made in relation to the making of a plaint.

(3) Notwithstanding anything contained in sub-section (1) or (2), in making a plaint on behalf of any office of the Government of Nepal, constitutional body or its office or court, the plaint may be made by the office-bearer who acts as the administrative chief of such an office.

- 94. Prohibition on lodging plaint on matter adjudged:** (1) After a judgment is made once on any matter, the same party shall not lodge a plaint against the same person on the same matter, instead of making an appeal against such a judgment in accordance with law.
- (2) A plaint filed in contravention of this Section shall be void.
- (3) A judgment made in contravention of this Section shall be void.
- 95. Matters to be stated in plaint:** (1) In making a plaint, the plaint shall be in the format set forth in Schedule-1 and state, *inter alia*, the following matters:
- (a) Subject matter of the dispute,
 - (b) Defendant's name, surname and address, and telephone number, email, to the extent available,
 - (c) Ground for *locus standi* to file the plaint under the law,
 - (d) Matters claimed,
 - (e) Limitation,
 - (f) Jurisdiction,
 - (g) Whether plaint has been filed elsewhere on that matter or not,
 - (h) Matter of how the summons/time-limit of plaint has to be delivered to the defendant,
 - (i) Evidence, if any, in support of the claims by the plaint.
- (2) No plaint made in contravention of sub-section (1) shall be filed or entertained.

96. Claims of plaintiff ought to be clear: (1) In making a plaintiff, the plaintiff shall specifically set out in the plaintiff what and which claim is made in what and which matter (cause of action) and on the basis of what and which ground and evidence of such a claim is based and present his/her claim or demand before the court.

(2) A plaintiff that does not clearly mention the claim and the proceeding that has to be taken by the court pursuant to sub-section (1) shall not be deemed to have met the requirement.

97. Plaintiff fees: In making a plaintiff, the plaintiff fees of two hundred rupees shall be charged.

98. Filing of plaintiff: (1) If a plaintiff is tendered for filing, the court shall examine whether the plaintiff meets the requirements pursuant to this Chapter or nor and the proof and evidence set forth therein are attached or not and file it in the diary book in the form set forth in Schedule-2 if the plaintiff meets the requirements and give the concerned party an evidence of the filing of plaintiff in the form set forth in Schedule-3.

(2) In producing the copies of the plaintiff pursuant to sub-section (1) for the purpose of its registration, there shall be produced two copies if the number of defendant is only one and one copy for each of the two or more defendants.

Provided that despite the number of defendants living in an undivided family, only one copy may be produced for such defendants.

(3) In producing more than one copy of the plaintiff, the plaintiff shall declare and sign that the copy corresponds to the original, and the court shall verify the copy with the original.

(4) If, in making examination pursuant to sub-section (1), the plaintiff does not seem to meet the requirements, there shall be made an endorsement on the plaintiff setting out the reason for failing to meet the requirements.

Chapter-8

Provisions Relating to Service of Summons

99. Plaintiff may be delivered to the defendant: (1) If, while filing a plaint, the plaintiff wishes to deliver the plaint, accompanied by the summons, to the person named as defendant in the plaint on his/her own or through his/her law practitioner, the plaintiff shall state that matter in the plaint; and if such a provision is made to deliver the plaint, accompanied by the summons, pursuant to sub-section (1), the plaintiff shall deliver a copy of the plaint, accompanied by the summons, to the person named as the defendant within three days excluding the time required for journey, after the date of filing of the plaint by the plaintiff.

(2) Where the plaint, accompanied by the summons, is tendered for delivery to the defendant pursuant to sub-section (1) and the concerned person so wishes, that person shall receive the plaint, accompanied by the summons, and where it is so received, it shall be deemed to have been delivered duly.

Provided that in the case of a legal person, if the plaint, accompanied by the summons, is so tendered for delivery, such a person shall receive it.

(3) Notwithstanding anything contained in sub-section (2), if, in delivering the plaint, accompanied by the summons, to a legal person, it is delivered to the head office of such a person, it shall be deemed to have been duly delivered to the concerned person.

Explanation: For the purposes of this Section, the expression "head office" means the registered office, if any, of a body corporate, and failing such an office, the main office carrying on the transaction of such a person.

(4) If the plaint is received pursuant to sub-section (2), the receiver shall give a receipt in the form set forth in Schedule-4.

(5) Where the plaint, accompanied by the summons, is delivered pursuant to sub-section (2), the plaintiff or the law practitioner appointed by him/her shall submit a receipt of the acknowledgment thereof to the court where the plaintiff has been filed, within seven days after the delivery of the plaint, accompanied by the summons.

(6) The time-limit for the submission of a statement of defense shall be set from the date of receipt of the plaint, accompanied by the summons, pursuant to sub-section (5).

100. Issue of summons to defendant: (1) Except in cases where the plaintiff himself or herself has delivered the plaint to the defendant, the court filing the plaint shall, within three days after the date of filing of the plaint, issue a summons to the defendant to submit the statement of defense.

(3) In serving the summons pursuant to sub-section (2), one copy of the plaint filed by the plaintiff in the court and the evidence attached therewith shall also be delivered.

101. To give time-limit: (1) If a complaint is lodged, the court shall, setting out the matter, give a time-limit of twenty one days, excluding

the time required for journey, to the person against whom the complaint has been lodged to appear in the court to defend in relation to such a complaint.

(2) Notwithstanding anything contained in sub-section (1), in giving the time-limit to a person who is maintained as the defendant by the court pursuant to Section 123, there shall be given a time-limit of seven days, excluding the time required for journey.

102. Summons cause to be served: (1) In issuing the summons by the court pursuant to Section 101, the concerned officer shall prepare the summons or notice in triplicate and sign them, affix the seal of court thereunto and cause the same to be served.

(2) In issuing the summons in the name of the defendant in any case in which a plaint is filed, provision shall be made to serve, or cause to be served, the summons, accompanied by one copy of the plaint to the person living in an undivided family and one copy of the plaint for each defendant in the case of the other defendants.

(3) The summons/time-limit issued pursuant to Section 101 shall be served by delivering it to the defendant or other person, and taking a receipt of acknowledgment thereof.

103. Process server to serve summons: (1) The process server shall have to serve a summons generally within three days excluding the time required for journey, from the date on which he/she received the summons from the court.

Explanation: For the purposes of this Chapter, the term "process server" means an employee who is responsible or deputed to

serve the summons issued by the court, by delivering the same to the concerned person.

104. Form of summons: (1) In issuing a summons by the court in the name of a defendant in accordance with law, it shall be issued in the form set forth in Schedule-5.

(2) In issuing a summons by the court in the name of a person other than a defendant, it shall be issued in the form set forth in Schedule-6.

105. Summons deemed to have been served: (1) If summons issued by the court is delivered to the concerned person at any time pursuant to this Chapter or delivered to his/her address or is brought to his/her knowledge in any other manner in accordance with this Code, the summons shall be deemed to have been served.

(2) Notwithstanding anything contained in sub-section (1), if the person receiving the summons appears in the court and makes a petition to receive it in person, the summons shall be delivered to him/her in the court, and where the summons is so delivered, the summons shall be deemed to have been duly delivered.

106. Procedures relating to service of summons: (1) A court shall have to prepare a summons in triplicate and deliver the same to the process server.

(2) If the summons server personally knows the concerned person, he/she may, mentioning that matter, deliver the summons received by him/her pursuant to sub-section (1) to the concerned person at any place.

(3) If the concerned person is not found pursuant to sub-section (2), the summons server shall go to the address of his/her residence, find out his/her house, rented house and identify the concerned person and deliver the summons to the concerned person in presence of the concerned ward chairperson or member or secretary or any other employee of the ward committee of the concerned local body and at least two local persons and obtain a receipt thereof, indicating the date of service.

(4) Where the person to whom the summons has been issued cannot be found, the summons/time-limit shall be delivered to any other major person living with him/her in an undivided family in pursuance of the procedures referred to in sub-section (3).

(5) Where the concerned person or any major person living with him/her in an undivided family is not found or, albeit found, refuses to receive the summons, the summons shall be served by affixing it to the house or homestead of that person, conspicuously, in presence of the persons as referred to in sub-section (3), and setting out that matter in the summons.

(6) In pursuing the procedures referred to in sub-sections (2), (3), (4) and (5), there shall be mentioned on the reverse of the summons to be submitted to the court which procedure has been followed to serve the summons by delivering or posting, along with the date and time of the service of the summons, and the persons referred to in sub-section (3) shall be caused to clearly sign it at the time of delivery or posting.

(7) The summons server shall sign the copy of the summons served pursuant to sub-section (6) and submit it to the court, along with a report thereof.

(8) Where a summons has been served by affixing it to the house or homestead pursuant to sub-section (5), the summons server shall mention the date and time of service thereof on the third copy of such a summons and deliver it to the concerned local body and take a separate receipt thereof or the member or secretary or employee of the concerned local body shall mention that matter on the reverse of the service and sign and serve it.

(9) Where a summons is delivered pursuant to sub-section (8), the concerned local body shall affix such a summons to its notice board.

(10) Even though a copy of the summons affixed to the house or homestead pursuant to this Section has not been delivered to the concerned local body or the local body has not affixed the summons received by it to its notice-board, the summons shall be deemed to have been served in accordance with law if it has been duly affixed to the house or homestead of the concerned person pursuant to sub-section (5).

(11) Where a summons is to be served on any body corporate or legal person in relation to any case, the summons shall be served on the person acting as principal person for the time being at the registered office, head office or main office of transaction of such a body or person.

Provided that if such a principal person is not available, the summons may be served by delivering it to any office-bearer or employee serving in such an office of such a body or person.

Explanation: For the purposes of this Section, the term "person acting as principal person" means the chief executive officer of a body corporate, and this expression means and includes the chairperson, vice-chairperson, managing director, executive director, general manager of such a body or the company secretary of a company.

(12) Notwithstanding anything contained in sub-section (10), in serving a summons in the name of a government office, constitutional body or court, the summons shall be served by delivering it to the chief, administrative chief of such an office or any office-bearer entrusted with such responsibility or an office-bearer acting for him/her and by delivering the summons to such an office, body or court, setting out that matter, if any such office-bearer is not available.

(13) In serving a summons in the name of a government office, constitutional body, court, body corporate or such an office-bearer or employee in that capacity, the summons shall be served by delivering it to such an office, body, court or such an office-bearer, employee or office of such a body corporate.

(14) If a summons cannot be served pursuant to sub-sections (10), (11), (12) and (13), the concerned summons server shall give a report to the concerned court within three days.

(15) If a report is submitted pursuant to sub-section (14), the concerned court shall make an order to serve the summons through postal service on such an office, body, court or body corporate or its office-bearer or employee in that capacity.

(16) If an order is made pursuant to sub-section (15), the concerned court may serve the summons in the name of the office, body, court or body corporate or its office-bearer or employee in that capacity by sending a registered letter containing that matter.

(17) After a return receipt of the summons sent by post pursuant to sub-section (16) is submitted to the court, the summons shall, except as otherwise proved, be deemed to have been duly served.

(18) Where records of houses or block numbers of the persons residing within the area of any local body have been maintained systematically or where such persons have consented to the service of a summons by the court by post in relation to their transaction, business or any other matter, the court may so serve the summons, notwithstanding anything contained elsewhere in this Section.

(19) If a person is an office-bearer or employee of any government office, constitutional body, court or body corporate and a summons issued in the name of that person cannot be served pursuant to sub-sections (2), (3), (4) and (5), the concerned court may, based on the report of the concerned summons server, make an order to serve the summons on such a person in accordance with sub-section (13) or (15).

(20) If an order is made pursuant to sub-section (19), the summons shall be served on the name of the concerned person in accordance with that order.

(21) Notwithstanding anything contained elsewhere in this Section, if the party and opposite party of a case have provided for their respective address of exchanging electronic notice such as email and fax to give notice to each other in relation to any document, the concerned matter or transaction or send a summons in relation to a dispute, the summons may be served through an electronic notice to such address.

(22) If the summons server submits to the concerned court a report that a summons could not be served in the name of the concerned person despite following the procedures set forth in various sub-sections of this Section and the court considers that the contents of the report are reasonable, the court may make an order to serve the summons in the name of such a person by publishing it in a daily newspaper of national circulation.

(23) If an order is made pursuant to sub-section (22), the summons shall be served in accordance with that order.

(24) The concerned person shall bear the expenses incurred in the service of the summons by publishing it in a daily newspaper of national circulation pursuant to sub-section (22).

107. Summons may be served in the court itself: (1) Notwithstanding anything contained in Section 104 or 105, a summons issued by any

court in the name of the following person, by delivering it to such a person in the court in the following circumstance:

- (a) If the employee or office-bearer of the concerned court is in attendance, while he/she is in the court,
- (b) If a party is on recognizance in any other case in the concerned court, when such a party appears in the court,
- (c) If there is an attorney representing any party of a case that is *sub judice* in the concerned court, when the attorney appears in the court in the course of such representation,
- (d) If the person is a law practitioner who appears in the concerned court in the course of law practice, when he/she appears in the court in the course of such practice,
- (e) If the person is one who appears as a witness, when he/she appears in the court in that capacity.

(2) If a summons issued by the court in the name of the person as referred to in sub-section (1) is tendered for delivery to that person when he/she appears in the concerned court, the person shall receive the summons.

(3) If the person refuses to receive such a summons tendered for delivery pursuant to sub-section (2), the summons server shall give a report thereof to the concerned court immediately.

(4) If a report is given pursuant to sub-section (3) and the contents seem to be reasonable, the court shall make an order to

prevent that person from making representation in the capacity of attorney, taking due date, doing law practice or making deposition in the capacity of witness in that court until the person receives the summons issued by the court in his/her name.

108. To witness service of summons: (1) The concerned ward chairperson or member or secretary of the ward committee of the local body or any other government employee and local person in the place where a summons has to be served shall, while serving the summons pursuant to this Chapter, assist the summons server in the service of such a summons, by witnessing the service thereof.

(2) Notwithstanding anything contained in sub-section (1), a summons which has been duly served in fulfillment of the other procedures shall not be invalid by the reason only that the concerned member, secretary of the concerned local body or other employee has not witnessed and cooperated in the service of summons or has refused to cooperate in such service.

109. Person failing to assist being liable to punishment: (1) In serving a summons sent by the court for service, the concerned member, secretary of the concerned local body or other government employee or local person, as well, shall render all such assistance as required to serve the summons, by searching, showing and identifying the house of the concerned person, and witness and sign the service as required.

(2) The concerned court may, based on the court of the summons server, punish one who fails to render assistance pursuant to sub-section (1) with a fine of up to one hundred rupees.

- 110. Examination of summons served:** Immediately when a report on the service of summons is submitted by the concerned summons server after serving it pursuant to Section 105, the concerned office employee of the court shall examine whether the summons so served has been duly served or not and certify it if it appears to have met the requirements and mention the date of its submission to the court and record it in the case-file.
- 111. Requirement to make re-service:** (1) If, upon making examination pursuant to Section 109, it appears that the summons served has been served without in fulfillment of the requirements of law or if, in examining it upon a complaint made by any person, it appears that the summons has been served unduly or has not been served at all, the court shall order the concerned process server or other summons server to serve it again in fulfillment of the requirements.
- (2) If an order is made pursuant to sub-section (1), such a process server shall serve the summons again pursuant to Section 106.
- 112. Process server liable to punishment:** If the process server fails to deliver the third copy of the summons affixed to the house or homestead of the concerned person when that person is not found to the concerned local body, such a process server shall be liable to a fine of up to one thousand rupees for each instance, and the concerned court may also make an order also to take a departmental action against such a process server employee.
- 113. Service of summons may be made by delivering it to attorney or law practitioner:** (1) Notwithstanding anything contained in Section

106, where a person has appointed an attorney to receive a summons to be served on that person in accordance with law or appointed a law practitioner for that purpose, such a summons may be served on that attorney or law practitioner.

(2) The summons served on the attorney or law practitioner of a party pursuant to sub-section (1) shall be valid as if it were served on the concerned party himself or herself in consonance with law.

(3) In delivering a plaint accompanied by a summons to a law practitioner pursuant to Section 99 or serving a summons/time-limit on an attorney or law practitioner in accordance with clauses (c) or (d) of sub-section (1) of Section 107 and with this Section, a receipt shall be taken from such an attorney or law practitioner in the form set forth in Schedule-7.

114. Service of summons in the name of person whose house, address is not identified: (1) Notwithstanding anything contained in Section 106, in issuing a summons in the name of a person whose house, address is not identified, the summons may be served by posting it at the place where the village, city and street of such a person is set down and on the notice-board of the court, setting out the matter if even such village, city and street is not identified and publishing it in a newspaper to be published in the territory over which the court has jurisdiction.

(2) If a summons/time-limit is published in a newspaper pursuant to sub-section (1), such a summons/time-limit shall be deemed to have been served duly.

115. Service of summons on person outside territory: (1) In serving a summons in the name of a person who is living or residing outside the territorial jurisdiction of a case in which case has been filed, a required number of copies of the summons, accompanied by the order of such a court, shall be sent to the court having territorial jurisdiction over the territory where that person is living or residing, and the court in that territory shall also effect the service of summons in fulfillment of the requirements as set forth in Section 106.

(2) The court so serving the summons shall send the summons served pursuant to sub-section (1) to the concerned court.

116. One who serves, or causes to be served, unduly or causes obstruction being liable to punishment: Based on a report of the concerned summons server or a complaint by a person, the court shall institute action against the person who does the following act and may impose the punishment of a fine of up to ten thousand rupees or imprisonment for a term not exceeding one month or both on such a person:

- (a) Failing to cause the service of a summons issued by the court without a reasonable reason,
- (b) Serving or causing to be served a summons upon setting down false matters or making false contents,
- (c) Making objection or obstruction to the service of a summons,
- (d) Tearing out or peeling off the affixed summons,

- (e) Failing to render assistance by the office-bearer with duty to assist in or witness the service of a summons.

117. Summons unduly served being liable to be void: (1) A party of a case may, at any time prior to the adjudication of the case, make a petition to the court claiming that the summons required to have been served in fulfillment of the procedures as referred to in this Chapter has not been served in fulfillment of such procedures or has not been served at all.

(2) If the court holds the contents of the petition as referred to in sub-section (1) to be reasonable, the court may make an order to void the summons served unduly and re-serve the summons or order the concerned party to receive the summons from the court.

(3) Notwithstanding anything contained in sub-section (1) or (2), if, in examining a summons served pursuant to this Chapter, it appears that the summons has been served without fulfilling the requirements, the court shall void such a summons and cause the summons to be served again in fulfillment of the requirements.

118. Appeal equivalent to statement of defense may be made: (1) A person who is named as a defendant in the plaint may make an appeal equivalent to the statement of defense to the concerned court hearing appeal, within thirty five days of the date of knowledge but not later than six months of the date of ex parte decision by the lower court, setting out the matter that such a decision has been made by the lower court against him/her for the reason that he/she was not able to make defense or to submit a statement of defense in the case as a result of

the service of the summons unduly and without fulfilling the procedures set forth in this Chapter.

(2) If an appeal equivalent to the statement of defense is made pursuant to sub-section (1), the court hearing appeal shall, prior to hearing the memorandum of appeal, shall decide whether or not the summons was served duly on the person named as the defendant in the plaint or on the person maintained as the defendant by the court pursuant to Section 123.

(3) If, on making hearing pursuant to sub-section (2), the court hearing appeal holds that the summons was not served duly on the defendant of the case or the maintained as the defendant by the court pursuant to Section 123, the court hearing appeal shall void the ex parte decision by the lower court, order the lower court to again hear and settle the case in accordance with law by maintaining the memorandum of appeal as the statement of defense, and remand the case file to that court.

(4) If the case-file, accompanied by its order, is received from the court hearing appeal pursuant to sub-section (3), the concerned district court shall issue and serve a summons giving seven days time-limit, excluding the time required for journey, on the plaintiff within three days of the receipt of such a case-file.

(5) If the summons referred to in sub-section (4) is served, the case shall be heard and adjudicated in accordance with law once the plaintiff appears within the time-limit or the time-limit expires.

Chapter-9

Provisions Relating to Statement of Defense and Counterclaim

119. Statement of defense to be submitted: (1) The defendant shall have to submit a statement of defense to the concerned court within twenty one days after the date of delivery of the plaint to the defendant or the date of service of the summons to submit the statement of defense pursuant to Chapter 8.

(2) Except as otherwise mentioned elsewhere in this Code, a statement of defense tendered for submission after the period as referred to in sub-section (1) shall not be filed, and the court shall not recognize such a statement of defense despite the fact that it has been filed.

120. Matters to be set out in statement of defense: In submitting a statement of defense, the statement of defense shall be submitted in the form set forth in Schedule-8, setting out, *inter alia*, the following matters:

- (a) The date of service of summons issued for the submission of the statement of defense,
- (b) The matter to admit or reject the claims of plaint,
- (c) If the claim of the plaint is denied, reason and ground thereof,
- (d) The matter of counterclaim, if any, against the plaintiff,
- (e) Matters concerning claim, if so designed, against locus standi, limitation and jurisdiction of the court,
- (f) The evidence and pointes of reasons and grounds for substantiating or refuting the claims and pleas set forth in the statement of defense,

(g) The matter whether order or decision has to be made by the court in accordance with the plaintiff's demand.

121. Submission of counterclaim: (1) In submitting the statement of defense, the defendant may admit or rebut the plaintiff's claims.

(2) If the plaintiff's claims are refuted or denied pursuant to sub-section (1), the reasons and grounds for such rebuttal or denial shall be set down.

(3) If the defendant wishes to make any claim against the plaintiff in the statement of defense as referred to in sub-section (1), he/she may make such a claim; and if he/she makes such a claim, the/she shall be deemed to have made a counterclaim.

(4) The counterclaim as referred to in sub-section (3) shall be set down in the statement of defense and be limited to the matters of claims by the plaintiff.

(5) If a counterclaim is made pursuant to sub-section (3), the defendant shall, in submitting the statement of defense, produce two copies of the statement of defense if the plaintiff is only one and one copy thereof for each other plaintiff if there are two or more plaintiffs.

Provided that it shall suffice to produce only one copy for the plaintiffs living in an undivided family despite the number of such plaintiffs.

(6) If a counterclaim is made pursuant to sub-section (3), the court fees as referred to in Chapter-6 shall be paid for the same.

(7) Out of the two copies of the statement of defense submitted pursuant to sub-section (5), the court shall deliver one copy

to the plaintiff making presence on the due date appointed by the court immediately after the submission of the statement of defense.

(8) Within fifteen days of the submission of the statement of defense pursuant to sub-section (7), the plaintiff shall submit a defense in writing stating whether he/she admits or rebuts the counterclaim to the concerned court.

(9) Notwithstanding anything contained elsewhere in this Section, where the defendant makes a deposition equivalent to the statement of defense in writing before the court and makes a counterclaim, a copy of the written record of such a deposition shall be provided to the plaintiff pursuant to sub-section (6).

(10) Where a counterclaim is made pursuant to sub-section (9), the court shall order such a party to pay the court fees as referred to in Chapter-6 within three days, and in the event of payment of the court fees in pursuant of such an order, his/her counterclaim shall be entertained.

122. Filing of statement of defense: (1) The statement of defense tendered for filing by a person who is named as a defendant in a plaint shall be examined and be filed if it is found to be within the time-limit and meet the requirements, and a receipt thereof shall be given to the concerned party in the form as referred to in Schedule-3 and that party shall be held on recognizance.

(2) If, in examining the statement of defense pursuant to sub-section (1), it appears that it has been tendered after the expiration of the time-limit or it does not meet the requirements, there shall be

made an endorsement on the statement of defense, for the reasons to be recorded on the statement of defense.

123. Making defendant by the court: (1) If, notwithstanding any a plaintiff has not been filed against any person, it appears that the right, interest, claim or concern of that person is affected by trying, hearing or settling of any case or it appears the involvement of other person as well on the matter of claims by the plaintiff from the contents of the plaintiff or the statement of defense or it is necessary to enquire any person into any matter for any other reasonable reason, the court may, for the reasons to be recorded, order to examine such a person.

(2) In examining any person pursuant to sub-section (1), a summons of seven days shall be served on that person, and if that person receives the summons and makes presence, the court shall take his/her deposition setting out evidence.

(3) If a person examined pursuant to sub-section (3) wishes to make a deposition setting out evidence, his/her deposition shall be recorded and if that person requests for the submission of written response, an order shall be made to submit the written response within a reasonable period.

(4) If it appears from the deposition or written response as referred to in sub-section (3) that such a person has also a concern or involvement in the matter of the plaintiff' claims or judgment by the court would also affect his/her right, interest, claim or concern, the person shall be held on recognizance as if he/she were a defendant.

(5) If it appears from the written response or deposition submitted or made pursuant to sub-section (3) that such a person is merely like evidence, it is not required to hold him/her on recognizance.

124. Petition for standing as defendant: (1) If any other person so wishes, that person may make a petition to the court to stand him/her as a defendant in a case that is *sub judice* in the court, showing that he/she has a right, interest, claim or concern in the case and his/her right, interest, claim or concern will also be affected from a judgment on that case, within sixty days after the date of submission of the statement of defense by the persons named as defendants in that case or after the expiration of the time-limit for the submission of the statement of defense.

(2) If a petition as referred to in sub-section (1) is received and the contents of petition seem to be reasonable, the court shall by its order maintain that person as a defendant and give information thereof to the plaintiff and the defendant of the case.

Provided that the defendant so maintained shall not be entitled to make a counterclaim against the plaintiff.

125. Fees for statement of defense: In submitting a statement of defense, there shall be charged the fees of two hundred and fifty rupees.

Chapter-10

Provisions Relating to Endorsement

- 126. Document to be examined:** The concerned officer shall, immediately when a plaint or statement of defense tendered for filing in the court, or a petition or memorandum of appeal to be filed in the course of proceedings of a case is tendered for filing, study such a document and examine whether it is in the form set forth in law, is within the limitation, falls under the jurisdiction of the court, sets out such matters as required to be set out, it contains any error, incompleteness in writing, presentation or mentioning or any difference between letters and figures and whether it does not meet the requirements under the law for any reason.
- 127. To provide opportunity to correct document failing to meet requirements:** (1) If, in making examination pursuant to Section 126, such a document seems to consist of errors such as failing to be in the form set forth in law, failing to set out the matters required to be set out or containing any error, incompleteness in writing, presentation or mentioning or any difference between letters and figures and such a document can be registered if such errors are corrected and then the document tendered for filing, the concerned officer of the court shall make endorsement on the document setting out the matters to be corrected or made in conformity with the requirements and date the endorsement, and affix the seal of court thereunto and return it to the concerned person, by taking a receipt thereof.

(2) If an endorsement is made pursuant to sub-section (1), , the court shall order the filing of such a document if it is tendered for filing upon making it meet the requirements within the remaining limitation or time-limit, if the limitation or time-limit is remaining for more than three days, or within three days after the date of endorsement, if the limitation or time-limit is remaining for less than three days.

(3) If an order as referred to in sub-section (2) is made, such a document shall be filed.

128. Endorsement to be made: If, in making examination pursuant to Section 126, it seems that such a document cannot be filed because of reasons such as being not within the limitation or time-limit, not falling within the jurisdiction of the concerned court, not being required or allowed to be tried by the court or being contrary to law, the concerned officer of the court shall, setting down the grounds and reasons for making such an endorsement in that document, endorse and date it, affix the seal of court thereunto and return it to the concerned person, by taking a receipt thereof.

129. Records to be maintained in court: One copy of the document returned pursuant to Section 127 or endorsed pursuant to Section 128 shall be recorded in the court.

130. Petition against order of endorsement: (1) A party who is not satisfied with the matter of endorsement made by the concerned officer of any court pursuant to Section 128 may make a petition to the judge of such a court and to the court hearing appeal if such an

endorsement is made by the judge himself or herself, praying for an order to file the document submitted by that party.

(2) If a petition is made to the judge pursuant to sub-section (1), the judge shall make an order whether the matter of endorsement is in conformity with law or not within fifteen days after the date of making petition.

(3) Prior to making an order pursuant to sub-section (2), the judge may, without examination or not, conduct hearings on the matter of whether the endorsement is in conformity with law or not, and if, upon conducting hearings, the endorsement does not appear to be in conformity with law, the judge shall make an order to file the document.

(4) If an order is made pursuant to sub-section (3), the endorsement making officer shall, upon receipt of such an order, file such a document.

(5) If, upon conducting hearings pursuant to sub-section (3), the endorsement appears to be in conformity with law, the judge may, for reasons to be recorded, dismiss the petition.

Chapter-12

Provisions Relating to Due Date for Appearance

135. Party or opponent required to appear on due date: (1) Except in cases where appearance on the appointed due date is not required or where a party is not required by a court order to appear on the appointed due date, a case shall be heard, tried and settled by requiring each party of the case to appear on the appointed due date.

(2) After the examination by the court of evidence of both plaintiff and defendant, any party if he/she so wishes may not appear on the appointed due date with the leave of the court.

136. Appointment of the same due date for appearance: (1) The court shall appoint the same due date for both plaintiff and defendant pursuant to sub-section (1) of Section 135 if they are on recognizance.

(2) In appointing the due date pursuant to sub-section (1) after the filing of the plaint, the date shall be so appointed for the plaintiff by calculating the period in which a statement of defense is submitted or likely to be submitted, by estimating the time-limit for the submission of the statement of defense.

(3) If the due date appointed pursuant to sub-section (1) does not correspond to the period in which the defendant has submitted the statement of defense, the due dates subsequent to the submission of the statement of defense shall be so appointed that such dates are the same for both plaintiff and defendant.

137. Appointment of due date by assigning purpose: (1) In appointing the due date pursuant to this Chapter, the court shall appoint the due date for appearance by setting down in the book of due date and the sheet of due date the reason and purpose for which the date has been appointed and the proceeding to be carried out on each date.

(2) The proceeding specified shall be carried on the due date appointed pursuant to sub-section (1).

(3) Notwithstanding anything contained in sub-section (2), if the specified proceeding cannot be conducted for any reasonable ground on the appointed due date or the time does not allow to complete the proceeding on such date, the court shall set down the same matter in the receipt of due date for appearance, and appoint another due date for appearance.

(3) The book of due date and the sheet of due date for appearance shall be maintained in the forms set forth in Schedule-7 and Schedule-8, respectively.

138. Not to overlap due date for appearance: (1) If a case has been filed by or against a party of a case, other than a case in which an attorney has been appointed in accordance with law, in another court that is outside fifteen kilometers (around four *Kosh*) of the case in which the case has been filed and the party gives information thereof to the court in which the case has been filed by making a petition thereto, such court shall, while appointing the due date for appearance, so appoint such due date as not to overlap with the due date appointed by that other court in the case being tried by it.

(2) If a party who is on recognizance in more than one case in which the same party is plaintiff or defendant in the same court makes a petition, setting out the matter, to the court for the appointment of the same due date, the court shall, as far as practicable, appoint the same due date for all cases.

(3) If the due date is appointed pursuant to sub-section (1) and the party of the case appears before any one section on the appointed due date, the party shall be deemed to have appeared on the due date for the other cases in the same section.

(4) If any party to a case appears on the due date appointed pursuant to this Section, he/she shall be caused to sign the receipt of the due date and his/her appearance shall then be recorded.

(5) If a party does not appear pursuant to sub-section (4), the concerned party shall be deemed to have expired the due date, and the concerned authority shall certify that matter.

(6) The receipt of due date as referred to in sub-section (4) shall be attached with the concerned case-file.

(7) The receipt of due date as referred to in sub-section (4) shall be maintained in the format set forth in Schedule-11.

139. Due date for appearance deemed to have been appointed on the following day: If the court remains closed owing to public holiday falling on the due date appointed by the court, the due date for appearance shall be deemed to have been appointed on the following day of the end of the public holiday.

140. Requirement to give information in event of person required to appear on due date appointed for appearance being held in detention:

(1) Where a person required to appear before any court on the due date appointed for appearance in the course of any case has been held in detention for any reason, the concerned party shall give information of that matter indicating in which case he/she has been held in detention to the court in which he/she has to appear in relation to the case.

(2) If information of being held in detention is received pursuant to sub-section (1), the concerned court shall seek from the concerned body information as to why he/she has been held in detention and how long he/she has to be held in detention.

(3) If information is sought pursuant to sub-section (2), the concerned body shall give the court information about the reason for holding the person in detention and possible days for which he/she has to be held in detention, and information to the effect that he/she cannot be released from detention if so.

(4) If, upon the information received pursuant to sub-section (3), the person held in detention is to be released within one month, and that person appears before the court within seven days from the date of release from detention, excluding the time required for journey, the case shall be tried by appointing the due date for appearance in accordance with law, as if that day were the date of appearance.

(5) If, upon the information received from the concerned body pursuant to sub-section (3), the person required to appear on the

due date appointed for appearance remains in detention for a term exceeding one month or the day of his/her release from detention is not certain or there exists a circumstance that he/she cannot be released from detention, it is not necessary to stay the proceeding, hearing, trial and settlement of the case.

(6) If a person held in detention appoints and send an attorney to act on his/her behalf during such period, the attorney so appointed may do and take action on his/her behalf.

(7) Notwithstanding anything contained in sub-section (5), if a case cannot be settled without subpoenaing and examining any party of the case, the case may be heard, tried and settled by subpoenaing and examining that party in accordance with law.

(8) Notwithstanding anything contained elsewhere in this Section, if a party of a case who being on recognizance has been held in detention in the course of the proceeding of the case is released from detention and appears within seven days, excluding the time required for journey, after the date of release, the case shall be tried by holding him/her on recognizance.

141. Not to expire appointed due date: (1) Except as otherwise provided for in law, where any party to a case is on recognizance in accordance with this Chapter, such a party or his/her attorney shall not fail to appear on the due date appointed by the court for appearance and thereby to expire the appointed due date, by failing to.

(2) If any party to a case fails to appear on the due date for appearance appointed pursuant to sub-section (1) and expires the same,

the following provisions shall apply to the following matters, after the expiration of the period of the due date for appearance allowed to be extended pursuant to this Chapter:

- (a) If the plaintiff expires the due date for appearance after the filing of the plaint but prior to the submission of the statement of defense, the plaint claim shall be dismissed.
 - (b) If the plaintiff expires the due date for appearance after the submission of the statement of defense and it appears or is held that the defendant has admitted the plaintiff's claims in whole or in part, the court shall pass a judgment accordingly to such an extent of admission and dismiss the remaining claims.
 - (c) If the defendant does not submit the statement of defense or expires the due date for appearance after the submission of the statement of defense, the court shall examine all proofs and evidence produced by the plaintiff, appreciate the proofs and evidence of the plaintiff and the defendant and adjudge the case accordingly.
 - (d) If, subsequent to the filing of the plaint or submission of the statement of defense, both plaintiff and defendant expire the due date for appearance, the case shall be dismissed.
- (3) If a case is dismissed pursuant to clauses (a), (b), (c) or (d) of sub-section (2), no other plaint claim by the same plaintiff against the same defendant on the same matter shall lie.

142. Extension of expired time-limit or due date for appearance:

Notwithstanding anything contained in this Section 141, if a party fails to appear before the court on the time-limit or due date for appearance appointed in any case and expires such a time-limit or due date owing to a force majeure event, such a party shall be entitled to the extension of the time-limit or due date for appearance for a period not exceeding twenty one days for two times in maximum.

142. Provisions relating to fixation of instance: (1) In fixing the instance where the due date for appearance once appointed and received subsequent to the filing of a case is expired by a party to the case, the instance shall be fixed by computing only the expired due date for appearance but not computing the extended time-limit.

(2) In computing days for the extension of the due date for appearance expired by the party of a case, provision shall be made to have extension by reckoning the days up to the day allowed to be extended with effect from the following day of the day of expiration of the time-limit or due date for appearance, as the case may be.

(3) Notwithstanding anything contained elsewhere in this Section, if a case is remanded by a higher court to a lower court to re-adjudge it or a case suspended is revived, the instance of the time-limit or due date for appearance extended previously shall not be counted.

144. Extension of expired time-limit or due date for appearance:

Notwithstanding anything contained elsewhere in this Chapter, if any party to a case makes a petition to the court where the case has been

filed for the extension of the time-limit or due date for appearance which has been expired owing to the existence of the following circumstance, and the court holds the petition to be reasonable, the court shall order the extension of the expired time-limit or due date, as the case may be:

- (a) If a person required to appear before the court at the time-limit or due date for appearance expires the time-limit or due date for appearance for the reason that the person himself or herself had to observe obsequies and appears before the court within seven days, excluding the time required for journey, after the date of completion of obsequies, and makes a petition for the extension of the time-limit or due date for appearance, the court shall extend the expired time-limit or due date for appearance for that period.
- (b) If a woman required to appear before the court at the due date for appearance expires the time-limit or due date for appearance for the reason that she has delivered a child and appears before the court within thirty days, excluding the time required for journey, after the day of delivery, and makes a petition for the extension of the time-limit or due date, the court shall extend the expired time-limit or due date for appearance for that period.
- (c) If a person required to appear before the court at the time-limit or due date for appearance expires the time-

limit or due date for appearance for the reason that movement has been difficult because the route has remained closed or motor vehicles have not plied because of a natural calamities such as earthquake, flood, landslide and snow-fall or for other natural calamity and appears before the court within ten days, excluding the time required for journey, after the date of resumption of such a route, and makes a petition, accompanied by an evidence issued by the concerned local body or other competent body, indicating the date of closure of the route and the date of resumption of the route, as for the extension of the time-limit or due date for appearance, the court shall extend the expired time-limit or due date for appearance for that period.

- (d) If a person required to appear before the court at the time-limit or due date for appearance expires the time-limit or due date for appearance for the reason that the person has been abducted or taken hostage by another person and appears before the court within seven days, excluding the time required for journey, after the date of release from abduction or hostage, and makes a petition for the extension of the time-limit or due date for appearance, the court shall extend the expired time-limit or due date for appearance for that period.

145. Computation of time required for journey: (1) In computing the time required for journey, it shall be computed according to the actual

days required to make journey by bus or rail in the case of a place where regular transport service is in operation and at the rate of one day for every fifteen kilometers (around four *Kosh*) in the case of a place where such bus or rail service is not in operation.

(2) In computing the time required for journey pursuant to sub-section (1), the time-limit of one day shall be given for a distance of less than fifteen kilometers (around four *Kosh*).

Provided that no time required for journey shall be given for a distance of less than fifteen kilometers (around four *Kosh*) in total.

146. Not to settle case until the period allowed to be extended: Even though a party to a case fails to appear at the time-limit or due date for appearance appointed by the court and expires such time-limit or due date, the court shall not try and settle the case pending the completion of the period allowed to be extended pursuant to Section 142 or 144.

147. Government of Nepal not required to remain on recognizance: (1) Notwithstanding anything contained elsewhere in this Chapter, the Government of Nepal shall not be required to remain on recognizance in a case in which the Government of Nepal, constitutional body or court is a plaintiff or defendant in accordance with law.

Provided that the government attorney shall appear on the day of examination of evidence, hearing of the case or on the day ordered by the court for the attorney to make appearance to represent such an agency.

148. Power to try and settle cases at appeal level without holding parties on recognizance: Except as otherwise ordered by the court, cases at the appeal level may be tried and settled without holding parties on recognizance.

Chapter-13

Provisions Relating to Attorney

149. Appointment of attorney: (1) Any party of a case may appoint a representative to carry out any acts that pertain to the case in the court on his/her behalf.

(2) Where a representative is appointed pursuant to sub-section (1), an attorney shall be deemed to have been appointed.

(3) In appointing an attorney pursuant to sub-section (2), there shall be executed a deed pursuant to Section 151.

(4) A party to a case may revoke at any time the attorney appointed under this Section by filing a petition before the court or may appoint another attorney by executing another deed.

150. Qualification of person to be appointed as attorney: A person who possesses the following qualification may be eligible to appointed as an attorney:

(a) A person who is competent to enter into a contract in accordance with law,

(b) A person who is not in default of payment of a government amount in question according to judgment and any such fees, court fees as required to be paid to the court for the execution of judgment or any fine or punishment imposed by the court,

- (c) Any person who has not been sentenced to any offence of forgery, fraud, corruption or offence involving moral turpitude.

Provided that nothing contained in this clause shall prevent any party to a case from appointing any person living in an undivided family as his/her attorney.

151. Matters to be set out in power of attorney: (1) A power of attorney set down for appointing an attorney pursuant to this Chapter shall set out the following matters:

- (a) Short description of the reason for the appoint of attorney,
- (b) The full names, addresses, and ages of the persons who appoint an attorney and who are to be appointed as an attorney, and their citizenship number or other description identifying them,
- (c) The acts authorized to be done by the attorney,
- (d) The matter that one who appoints and one who is to be appointed under the power of attorney are not in default of payment of a government amount in question according to judgment and any such fees, court fees as required to be paid to the court for the execution of judgment or any fine or punishment imposed by the court,
- (e) The venue and date of the execution of the power of attorney.

(2) The power of attorney shall be executed in the form set forth in Schedule-9.

(3) The power of attorney as referred to in sub-section (2) shall be signed by the party appointing the attorney and also mention the identification of at least two witnesses and the conveyancer of the power of attorney.

152. Person may become attorney in more than one case: A person may be appointed as an attorney simultaneously in more than once case or by more than one person in the same case.

Provided that a person who is an attorney of a party to a case shall not also become an attorney of the opposite party to the same case simultaneously.

153. Party may be attorney: In cases where the same party of a case involves two or more than two persons as plaintiffs or defendants, any one of them may be appointed as an attorney in the same case on behalf of others.

154. Attorney may be appointed in more than one court: A person who has been appointed as an attorney in a case *sub judice* in a court may be appointed as an attorney in another case *sub judice* in another court.

155. Powers of attorney: The powers of an attorney shall be as set forth in the power of attorney executed at the time of appointment of the attorney.

156. Power of attorney to meet requirements: (1) Prior to registering a power of attorney, the court shall examine whether such power of attorney meets the requirements in accordance with this Chapter and register it if it appears to meet such requirements.

(2) If, in making examination pursuant to sub-section (1), it appears that the power of attorney does not meet the requirements for registration, it shall be endorsed setting out the reason for its failure to meet such requirements and file it within a period of three days along with such requirements.

(3) If the power of attorney endorsed pursuant to sub-section (2) is executed in meeting of the requirements and produced within the time-limit, the court shall register such power of attorney.

157. Power to change attorney or carry out proceeding in person: (1) If a party to a case who has once appointed an attorney so wishes, the party may at any time revoke the power of attorney executed by him/her and carry out acts pertaining to the case in person or appoint another person as his/her attorney.

(2) In the event of the appointment of an attorney or carrying out of acts pertaining to the case by the party in person pursuant to sub-section (2), the power of attorney appointing the attorney shall be attached with the case-file, or record thereof shall be maintained if the party carries out such acts in person.

158. Provisions relating to authorized attorney: (1) Notwithstanding anything contained elsewhere in this Chapter, a person may appoint another person as an authorized attorney by executing a power of

attorney, to file a complaint, submit a statement of defense, withdraws complaint claim or enter into compromise or carry out any other legal action on his/her behalf, with or without specifying any case.

(2) If any summons or summons required to be given to or served on the concerned party of a case in which an authorized attorney has been appointed is given to or served on the authorized attorney, the summons or summons shall be deemed to have been duly given or served.

(3) A person who has been appointed as an authorized attorney pursuant to sub-section (1) may, in the case of proceedings of the case, appear in person before the court or appoint another person as an attorney.

(4) In appointing an authorized attorney by executing a general power of attorney without specifying any case pursuant to this Section, it has to be signed and executed by the person appointing an attorney in presence of, and certified by, any district judge if the power of attorney is executed within the territory of Nepal, and any Nepalese ambassador or consul general if it is executed in a foreign country.

(5) In making certification of a power of attorney pursuant to sub-section (4), the photograph of the person who appoints and that of the person who is appointed under the power of attorney shall be affixed unto any part of the power of attorney, and duplicate copies of their citizenship certificates or passports shall also be attached therewith.

(6) The fee of two hundred rupees shall be charged for the certification of a power of attorney pursuant to sub-section (4).

159. Transfer of right in immovable property through authorized attorney:

(1) A person who, for any reason, is not able to appear in person before the concerned office in order to sell or dispose of, or exchange, or otherwise transfer any immovable property in which he/she has right and ownership or execute a will to be effectively immediately in relation to such property or to execute such a deed as required to be registered pursuant to law may sell, dispose of, exchange or transfer such property by appointing the authorized attorney by executing the power of attorney setting out the reasonable ground for his/her inability to appear in person.

(2) In appointing an authorized attorney pursuant to sub-section (1), the procedures referred to in sub-sections (4) and (5) of Section 158 shall be fulfilled.

(3) A person who has been appointed as an authorized attorney pursuant to sub-section (1) shall carry out such acts as required be performed on behalf of the person executing the power of attorney, subject to the terms and conditions of the power of attorney executed and delivered to him/her.

(4) Notwithstanding anything contained elsewhere in this Section, a deed of testament or testamentary will cannot be executed by appointing an authorized attorney.

160. Termination of status of authorized attorney: The status of authorized attorney pursuant to a power of authority executed

pursuant to this Chapter shall *ipso facto* be terminated in any of the following circumstances:

- (a) If the power of authorized attorney specifies any certain act, purpose and period and such act, purpose or period is completed or expired,
- (b) If the power of authorized attorney is so executed that it shall cease to remain valid after the occurrence of any specific event or circumstance or completion of such event or circumstance, and such event or circumstance occurs or completes,
- (c) If the person executing the power of attorney revokes the power of attorney by publishing a notice in any two newspapers of national circulation,
- (d) If the person executing the power of attorney or the person appointed under such power dies prior to the completion of the act set forth in the power of attorney,
- (e) If the concerned person of the property intended to be transferred through attorney appears in person and transfer the right in such property,
- (f) If a case is filed in the court a case between the person executing, and the person appointed under, the power of attorney, and the person appointed by the power of attorney or any of his/her undivided family members in relation to the property as referred to in the power of attorney,

- (g) If the person appointed under the power of attorney gives information in writing to the person executing the power of attorney, thereby expressing his/her unwillingness to act as the authorized attorney.

Chapter-14

Provisions Relating to Interlocutory or Interim Orders

161. Petition to be made for issuance of interlocutory order: (1) Where the claim of a plaintiff or memorandum of appeal shall be meaningless if any act or action is not prevented immediately or if any act is not done immediately in the course of proceedings of any case, or if any matter is not maintained as it is in regard to any claim or demand of a case, the plaintiff or appellant may make a petition, setting out that matter, to the concerned court, praying for the issuance of an interlocutory order on any matter.

Explanation: For the purposes of this Chapter, the term "interlocutory order" means any order other than a decision or judgment made in relation to a case.

(2) If, upon hearing the petition received pursuant to subsection (1), it appears to be appropriate to issue such an order, the court may, for the reasons to be recorded, issue an interlocutory order on any matter.

162. Petition against interlocutory order: (1) A person who is not satisfied with the following order issued by a lower court in the course of proceedings of a case may make a petition to the court hearing appeal from such court to uphold or withhold such an order within fifteen days after the date of such order:

(a) Order to hold parties on recognizance, take guarantee and court fees,

- (b) Revocation of a complaint made to the judge against the order of endorsement that the case cannot be registered pursuant to Chapter-10,
- (c) Order issued upon determining the matters relating to *locus standi*, limitation or jurisdiction in the course of holding preliminary hearings pursuant to Chapter-11,
- (d) Any other order made in the course of proceedings of the case.

(2) Notwithstanding anything contained in sub-section (1), any party to a case may make to the court hearing appeals, a petition alleging that the time-limit has expired of any action taken by the court or irregularity has been made by not performing the act required to be done in accordance with law within the specified period, and praying for the revocation such undue order.

(3) If a petition is made pursuant to sub-section (1) or (2), the court hearing appeal shall, as required, procure the report and case-file from the concerned court and hold hearings.

(4) If, in holding hearing pursuant to sub-section (3), if the order made by the lower court seems to be undue or made upon expiration of the time-limit, the court hearing appeal may, for reasons to be recorded, uphold or withhold such an order or order to act in accordance with law.

163. Provisions relating to the issuance of interim order: (1) A party may, in the course of proceedings or in relation to an injunction petition, pray for the issuance of an interim order, setting out that the

claims of the petition would be meaningless if any matter is not kept in status quo in respect of any matter or claim of the case on any matter pending the final settlement of such a case.

(2) If an interim order is prayed for pursuant to sub-section (1) and the court thinks it appropriate and necessary, the court may issue the following order for a period until the petition is finally settled:

- (a) To issue an interim order with specification of the period,
- (b) To make an order to summon the presence of the other party to hold discussions on whether the interim order issued pursuant to clause (a) should be given continuity or not,
- (c) If it appears, from the discussions held in relation to the interim order, that there exists a situation where the other party has suffered loss, following the final decision of the petition, as a result of the issuance of the interim order in his/her favor and a commitment in writing is made to bear compensation pursuant to the laws in force, to issue a conditional interim order,
- (d) If the claim of a petition appears to be meaningless if the matter of claim of the petition is not kept in status quo, to keep that matter in status quo.

(3) Notwithstanding anything contained in sub-section (2), if a petition is made for an interim order but the court is of the opinion

that it is appropriate to made decision on a given matter, nothing shall preclude the court from making the final decision on that matter.

(4) The interim order issued pursuant to sub-section (2) shall be deemed to have *ipso facto* been ineffective upon the final settlement of the petition.

(5) If an order is made to summon the presence of the other party to hold discussions on whether the interim order issued pursuant to sub-section (2) should be given continuity or not and discussion cannot be hold on that day because of the petitioner, the interim order shall then be inoperative.

(6) The court shall assign the reason for issuing, or refusing to issue, an interim order pursuant to this Section.

164. Revocation of interim order: (1) Any party may make a petition to the same court for the revocation of an interim order issued pursuant to Section 163 showing the reason that the interim order has been issued upon *ex parte* hearing or that an opportunity has not been given to that party to present his/her matters.

(2) If a petition is made pursuant to sub-section (1), the court may summon the presence of the other party and hold hearings on that matter.

(3) If, in holding hearings pursuant to sub-section (2), the court thinks it appropriate to revoke the interim order issued pursuant to Section 163, the court may make an order to revoke such order.

(4) Notwithstanding anything contained in sub-section (3), if it appears appropriate to amend or alter the terms of the interim order instead of revoking the same, the court may, for the reasons to be recorded, amend or alter the terms of the interim order issued pursuant to sub-section (2) of Section 163.

165. Compensation to be paid: (1) Where the interim order issued pursuant to Section 163 has been revoked or its terms altered or amended and any party has suffered any loss or damage being unable to do any act or take any action as a result of the interim order prior to such revocation, amendment or alteration, that party may make a petition to the concerned court against the party praying for the interim order for compensation, setting out the amount of such loss or damage.

(2) If a petition is made pursuant to sub-section (1), the court may summon the presence of the concerned parties in the court and hold hearings on the matter.

(3) If, upon holding hearings pursuant to sub-section (2), it appears that the petitioner has actually suffered loss or damage as a result of the issuance of interim order, the court may order for the payment of compensation in consideration for such loss or damage.

Provided that no order may be made to make payment of compensation in consideration of any remote or indirect loss or damage.

(4) If an order is made pursuant to sub-section (3), the party praying for the interim order shall pay the compensation pursuant to that order.

Chapter-15

Provisions Relating to Examination of Documentary Evidence

166. Production of documentary evidence: (1) The plaintiff or the defendant, as the case may be, shall produce the originals and duplicate copies of such documentary evidence related with the claims as set down by the plaintiff in the plaint and with the pleas as set down by the defendant in the statement of defense along with the plaint or the statement of defense, as the case may be.

(2) The court shall verify the original evidence submitted pursuant to sub-section (1) with its copy and return the original evidence to the concerned party.

(3) The original returned pursuant to sub-section (1) shall be produced as and when the court so demands.

(4) Any evidence not produced pursuant to sub-sections (1) and (3) may not be taken in evidence in the concerned case.

(5) Notwithstanding anything contained in sub-section (4), if in a case of which the Government of Nepal is plaintiff or defendant, the documentary evidence cannot for any reason be produced at the time of filing or submission of the plaint or the statement of defense, the plaintiff or the defendant may set down the reason and description thereof in the plaint or the statement of defense that in which office such evidence is or likely to be held.

(6) Where description is set down pursuant to sub-section (5), the court may, as required, itself procure and examine such evidence.

(7) Notwithstanding anything contained elsewhere in this Section, if it is not possible to produce the original of any documentary evidence before the court immediately, a duplicate copy thereof shall be duly produced with the plaint or the statement of defense, accompanied by the reason for the same.

167. Evidence to be mentioned: (1) Notwithstanding anything contained in this Section 167, if the original or duplicate copy of any documentary evidence is not available for the time being but such evidence is in the custody of any person or organization, the plaintiff or the defendant shall mention that matter in the plaint or the statement of defense, as the case may be.

(2) If the evidence is mentioned pursuant to sub-section (1) and it is necessary to examine such evidence, the court may order the concerned person or organization to produce the original of such evidence before the court within such a period as specified by the court.

(3) If an order is made pursuant to sub-section (2), such person or organization shall produce such evidence within the period as specified by the court.

(4) The court may fine the person or chief of organization who does not produce the evidence pursuant to sub-section (3) with a sum not exceeding five hundred rupees.

168. Request for time: (1) If, for any reason, it is not possible to produce any documentary evidence at the time of filing of the plaint or submission of the statement of defense and the plaintiff or the

defendant makes a request, accompanied by the reason for the same, for time to produce such evidence, the court may, if it finds the reason to be reasonable, give the time not exceeding fifteen days.

(2) The plaintiff or the defendant shall produce such evidence before the court within the time given pursuant to sub-section (1).

(3) Any evidence not produced within the time as referred to in sub-section (2) may not be examined as evidence.

169. Request for leave to produce evidence: If any new and important documentary evidence that was not in the knowledge of the plaintiff or the defendant at the time of filing of the plaint or submission of the statement of defense, as the case may be, comes to the knowledge or is found/discovered and the plaintiff or the defendant requests for a leave to produce such an evidence and the matter seems to be reasonable, the court may grant a leave to produce such evidence and examine it.

170. Return of originals: (1) After the production of the original and duplicate copy of any documentary evidence pursuant to this Chapter, the person producing such evidence shall be caused to sign the duplicate copy of such documentary evidence.

(2) The concerned officer of the court shall verify the duplicate copy of the documentary evidence produced pursuant to sub-section (1) with its original and certify the duplicate copy and record it in the concerned case-file.

(3) After recording the certified duplicate copy as referred to in sub-section (2) with the case-file, the original of the documentary evidence produced pursuant to sub-section (1) shall be returned to the concerned person.

- 171. Not to examine evidence prior to submission of statement of defense:** No proceeding may be initiated to examine evidence normally prior to the submission of the statement of defense or expiration of the period for the submission of the statement of defense upon the filing of a plaint, except in accordance with law.
- 172. To examine evidence:** If it appears necessary to examine any such document in evidence as maintained with a government office as mentioned in the plaint or the statement of defense, an order shall be made to examine it normally within a period of seven days after the date of the submission of the statement of defense or after the date upon the expiration of the period for the submission of the statement of defense where such statement has not been submitted.
- 173. To examine evidence on issue to be decided:** (1) On the due date appointed for appearance of the parties of a case following the filing of the plaint, the court shall inspect the plaint and the statement of defense and all documents produced, in presence of the plaintiff and the defendant and inquire the plaintiff and the defendant into necessary matters and ascertain the issues admitted or denied by both parties.

(2) If, in making ascertainment pursuant to sub-section (1), it appears that both parties agree on the issues claimed by the plaintiff, the court shall make decision on the same day.

(3) If, in making ascertainment pursuant to sub-section (1), it appears that both parties disagree on the matters partly or fully, the court shall frame the issues that are denied and to be decided and clearly set out other additional evidence required to be examined in that connection, order the production of evidence and proofs and appoint the date for the examination of evidence and proofs.

(4) Notwithstanding anything contained elsewhere in this Section, no evidence may be examined on any matter other than the matters relevant with the issues to be decided.

174. Power of court to produce deed: (1) The court may, at any time in the course of proceedings of a case, order any person who is in possession such a document which the party of the case has not been able to produce or cannot produce as may be necessary to decide the issues of the case, to produce the deed within the period as specified by the court.

(2) The court may order any person in possession of any document that can be taken in evidence and is relevant with the issues to be decided in a case to produce such a document before the court.

(3) If an order is made pursuant to sub-section (1) or (2), the concerned person shall produce the deed in person or through any other person before the court within the period as specified in the order.

(4) The court may fine the person who does not produce the document pursuant to sub-section (3) or does not appear before the court without showing a reasonable reason for the failure to produce it or does not make a petition with a sum not exceeding five thousand rupees.

175. Order of examination of evidence: (1) Except as otherwise ordered by the court, in examining evidence on the date appointed pursuant to the court order for the examination of evidence by the court, the evidence produced by the defendant shall ordinarily be examined after the examination of the evidence produced by the plaintiff.

(2) If, in examining evidence pursuant to sub-section (1), any party immediately raise any objection that any document or proof is inadmissible in evidence or is irrelevant, the judge shall immediately order as to whether such an objection is reasonable or not.

(3) If, in making order pursuant to sub-section (2), any document produced by any party is held to be inadmissible in evidence or irrelevant, that matter shall be recorded in the case-file.

176. Power to cause document to be executed: (1) The court may, in relation to any necessary matter related with the case as required to be inquired with the parties of case, inquire it at any time in presence of the plaintiff or the defendant and cause a document to be executed to that effect.

(2) Except on such matters as required to be tried, heard and settled upon a plaint in accordance with law, the court shall try, hear and settle any case to be tried, heard and settled upon any other

complaint by setting out the evidence of each matter required to be set out by the plaintiff or the defendant, getting them to make depositions and recording the same.

177. To make deposition whether document is genuine or forged: (1)

On the date appointed for the examination of proof and evidence, the evidentiary document submitted by the plaintiff shall be shown in original to the defendant and that of evidentiary document submitted by the defendant shall be shown in original to the plaintiff, and the contents to be read out to each, and if any party names a document as a genuine, forged or fraudulent one, deposition to that effect shall be taken and recorded.

(2) If, in showing or reading out a document pursuant to sub-section (1), a party is not able to immediately determine whether the document in question is genuine, forged or fraudulent one and requests for a time-limit, the court may give a time-limit not exceeding three days.

(3) Where a document bearing the signature of any person other than the parties to the case has been produced and a request is made by a party of the case for a time-limit in view of being unable to immediately determine whether the document is genuine, forged or fraudulent, a time-limit not exceeding fifteen days may be given to make statement, accompanied by evidence, as to the genuineness, forgery or fraudulence of the document.

(4) The person who is to make deposition within the time-limit given pursuant to sub-section (3) shall be caused to make

deposition as to the genuineness, forgery or fraudulence of the document, and any deposition made by him/her shall be recorded.

(5) Where a deposition to be taken pursuant to sub-section (4) is made that the document is forged or fraudulent, depositions of all parties to the case, if present on that day, shall be taken on that day and that by any party who is not present on that day shall be recorded on the day on which he/she is present.

(6) Where the attorney or legal practitioner of any party is making presence and it appears necessary to summon the presence of the concerned party in person, the court may summon the presence of, and take the deposition of, such a party in person.

(7) If, in showing or reading out an evidentiary document pursuant to this Section, the genuineness, forgery or fraudulence of the document cannot be ascertained, the court may send such an evidentiary document to the concerned specialist for its examination.

178. Reading out for genuineness, forgery or fraudulence not required:

(1) Any document that cannot be taken in evidence in accordance with law is not required to be read out or shown for the purpose of genuineness, forgery or fraudulence.

(2) If a document produced by a defendant affects another defendant, it shall be shown and read out to such affected defendant and his/her deposition shall be taken, in accordance with the procedures set forth in Section 177.

179. Examination of evidence by court hearing appeal: If it is necessary to adjudge a case of which the judgment examining court is

seized by way of appeal or otherwise by ascertaining whether any document produced for evidence in that case is a genuine or forged one and the lower court has adjudged the case without carrying out that proceeding, the court hearing appeal shall procure the original of that deed or document and take the deposition of the party.

- 180. To try, hear and adjudicate case by taking deposition in the same case:** A case that is a criminal case in accordance with law and has arisen from the statement of defense or deposition of the defendant of any civil case pending in any court shall be tried by taking deposition for the same case-file.

Provided that the court trying only specific type of cases under any specific Act shall try, hear and settle only such cases in accordance with such Act.

- 181. To examine affected parties:** If it appears from the study of the documents attached with the case-file related with any case that any matter to be adjudged in such a case will also affect any third person or that such person is also found to be relevant with the case, the court shall examine even such a person, provide him/her with a reasonable time and opportunity to be heard and try, hear and settle the case by holding him/her on recognizance based on the evidence produced by him/her and by requiring him/her to appear on the appointed due date as if he/she were the principal person.

- 182. Power to make measurement or map:** (1) If it appears that the issue should not be adjudged without making a map, survey or measurement of any immovable property subject to dispute in a case,

the court may order for making the map or measurement of such property.

(2) In making a map or measurement pursuant to an order made under sub-section (1), a date shall be appointed for both parties to make presence at the place where the map or measurement has to be made or a notice of such date shall be given to them.

(3) Where a date has been appointed pursuant to sub-section (2), one employee of at least non-gazetted second class serving in the court, also accompanied by a surveyor, shall go to that place and carry out such inspection, measurement and survey of the house, wall or other immovable property as may be required to be so surveyed or measured on that date, in presence also of both parties of the case, at least one representative of the local body as far as available and at least two local persons.

(4) In making a map or measurement pursuant to sub-section (3), such a map deed has to be got signed by the concerned party, local person and representative of the local body and by the concerned employee, produced before the court and recorded in the concerned case-file.

(5) If the parties do not show up in the place where such map or measurement has to be carried out pursuant to sub-section (3) or refuse to sign despite showing up there or if this is a case in which the parties have not made presence on the date appointed for appearance, such a map or measurement as may be required shall be carried out in presence of the other persons mentioned in sub-section (4), and a

remark that the parties have been absent shall be mentioned therein, and shall be signed by the employee deputed and by at least one representative of the local body, produced before the court and recorded in the concerned case-file.

(6) If a representative of the local body who is required to be present pursuant to this Section is not present despite a notice having been given to him/her, any inspection, map or measurement meeting the other requirements shall not be invalid only by the reason that he/she has remained absent.

(7) A map or measurement that fails to meet the requirements pursuant to this Section shall be inadmissible in evidence.

183. Power to inspect venue: (1) If it appears that it is not possible to produce the subject-matter of a case actually before the court owing to the complexity of the subject-matter of the case or it is necessary to make direct observation or inspection of the place where the matter of dispute or immovable property is situated, the judge shall make an order, setting out the reason for the same.

(2) If an order is made pursuant to sub-section (1), the court shall appoint the day in advance for such inspection, and the judgment himself or herself or the technician or other employee deputed pursuant to the order of court shall make such observation or inspection.

(3) If observation or inspection is made by a technician or other person deputed pursuant to sub-section (2), such technician or

person shall prepare a report only on the matters relevant to the subject-matter of the case and submit it to the court.

Chapter-16

Provisions Relating to Examination of Witness

184. Parties to cause presence of witness: (1) The party of a case shall cause the presence of any witness mentioned as his/her evidence on the date appointed by the court for the examination of witness.

(2) The evidence of a witness who fails to make presence on the date appointed pursuant to sub-section (1) shall not be taken in.

(3) Notwithstanding anything contained in sub-section (1) or (2), if the witness fails to make presence on the due date appointed for causing the presence of witness owing to a circumstance as referred to in clause (c) of Section 144 and the party makes a petition for the appointment of another due date, and the petition is accompanied by a recommendation by the concerned local body or any government body certifying the occurrence of such a circumstance, the court shall appoint another due date to examine such a witness no later than ten days of the date of such petition.

185. Power to court to subpoena and examine witness: (1) Notwithstanding anything contained in Section 184, the court shall issue a summons to any witness who must be examined in a case involving the property of the Government of Nepal or public property or public right, interest or concern, thereby ordering such a witness to make presence before the court within fifteen days.

(2) Where a summons is issued pursuant to sub-section (1), such a witness shall make presence within the period specified by the court.

(3) A summons to be issued in the name of a witness pursuant to this Section shall be in the format set forth in Schedule-13.

186. Power to examine witness through video conference: (1) Notwithstanding anything contained elsewhere in this Chapter, if it is not possible to produce before the court a witness required to be examined pursuant to this Chapter because of the witness being highly aged or physically infirm or staying outside Nepal, and any party of the case makes a petition to the court for the examination of such a witness through video conference and the court thinks the matter to be reasonable, the court may make an order for the examination of the witness through video conference.

(2) If an order is made pursuant to sub-section (1), the concerned party shall cause the presence of the witness at the place and day appointed for the examination of witness through video conference.

(3) In making examination of the witness pursuant to sub-section (2), the examination of witness shall be made or caused to be made as if the witness present at the video conference were present before the court.

(4) In making examination of the witness pursuant to sub-section (3), the court shall write down and record the deposition of the witness on video conference and the matters of the video conference.

(5) The record of examination of a witness through video conference shall be maintained in the format set forth in Schedule-14.

(6) The expenses incurred in the examination of a witness pursuant to this Section shall be borne by the party applying for the examination of the witness through video conference.

187. Power to depute employee to examine witness: (1) If any party of the case makes a petition to the court to go to the place where a witness who is unable to appear before the court due to physical infirmity is residing or staying and examine such a witness and the petition seems to be reasonable, the court may order for the examination of such a witness.

(2) If an order is made pursuant to sub-section (1), the judge himself or herself may proceed to or depute an officer of the concerned court to the place where such a witness is residing or staying, and the witness shall be examined, or caused to be examined, by the judge or employee, as the case may be.

(3) If an employee is deputed pursuant to sub-section (2), the concerned employee shall proceed to the place where such a witness is residing or staying and examine him/her.

(4) The expenses incurred in proceeding of the judge or deputation by the court of an employee to examine the witness shall be borne by the person making petition for the examination of the witness pursuant to sub-section (2).

188. Witness to be examined on due date appointed for parties: (1) Except in cases referred to in Section 186 or 187, the court shall so

appoint the day for the examination of witnesses that such examination is made on the due date appointed for the parties to make presence.

(2) In examining a witness, there shall be prepared a deposition containing the matters expressed by the witness, and the deposition shall be signed by him/her and recorded.

189. To take an oath: Prior to making a deposition by a witness who appears before the court to make such deposition shall take oath before the judge that he/she will state nothing but the truth, in the form specified in Schedule-15.

190. Deposition taken by judge: (1) The deposition of a witness shall be taken down by the judge before the bench of whom the examination of witness is referred to.

(2) In examining the witness pursuant to sub-section (1), the judge may seek the assistance of required employees to record the deposition and examine the witness.

191. Witness to be examined on due date appointed: (1) Except in cases referred to in Section 186 or 187, the deposition of all witnesses in appearance at the court on the due date appointed for the examination of witness shall be taken down.

(2) Where, in making examination pursuant to sub-section (1), it is not possible because of the time factor to complete the taking down of the deposition of all witnesses in appearance on that day, the due date for appearance shall, for reasons to be recorded, be so

appointed for the witnesses and parties that the deposition of witnesses shall be taken down on the next day thereof.

Explanation: For the purposes of this Section, the expression "on the next day thereof" means the first day on which the court remains open, immediately following the day of the examination of witness.

192. Deposition to be certified: (1) The judge shall, in examining a witness, put questions to the witness on the matters as required to be set out by the witness and record in the deposition such questions and replies made by the witness to such questions and also the description of cross examination, if any, made in accordance with law.

(2) After the recording of the description as referred to in sub-section (1), the court shall ask the witness whether he/she has any thing else to state on any matter and cause him/her to state such matter, if any, and set down in the prepared deposition that the examination of witness has been made in presence of him/her and attending parties of the case or attorneys and cause it to be signed by him/her.

(3) If the witness, parties of the case or attorneys refuse to sign the deposition pursuant to sub-section (2), the witness examining judge shall certify that matter as mentioned by any or all of the witness, parties of the case or attorneys and record in the case-file of the concerned case.

(4) While examining a witness, the deposition of a witness shall be taken in the form set forth in Schedule-16.

193. Remarks to be made and certified: If, in examining a witness pursuant to this Chapter, the concerned witness does not give or refuses to give answers to the questions asked by the judge or gives answers to unrelated matters rather than answers sought by the questions put to him/her, the judge shall make remarks thereof and certify the same pursuant to Section 192.

194. Power to examine witness on commission/letter rogetory: (1) Notwithstanding anything contained elsewhere in this Chapter, if a witness required to be examined is a resident of another district and because of his/her physical infirmity he/she is not able to appear in person and it is not possible to procure his/her presence in the court trying the case and take his/her deposition, and the concerned party makes a petition, setting out such matter, to the court for the examination of such a witness on commission/letter rogetory and the contents of the petition seem to be reasonable, the court may order to examine the witness on commission/letter rogetory.

(2) The interrogatories required to be asked on commission/letter rogetory pursuant to sub-section (1) shall be framed in the form set forth in Schedule-17 and certified by the judge and the commission/letter rogetory shall be sent to the district court of the district where the witness is staying or residing.

(3) Where a commission/letter rogetory is issued by the concerned court pursuant to sub-section (2), the court shall appoint the due date for the concerned parties to the case to make presence before

the court examining the witness on commission/letter rogetory and give information thereof to the concerned court.

(4) Upon receipt of the commission/letter rogetory pursuant to sub-section (2), the concerned district court shall prepare a deposition containing the answer to each interrogatory of the commission/letter rogetory upon fulfilling the procedures pursuant to this Chapter as if the case were filed in that court, and the judge of the concerned district court shall certify the deposition pursuant to Section 192 or 193 and send it to the concerned court that has issued the commission/letter rogetory.

(5) In fulfilling the procedures of the commission/letter rogetory pursuant to sub-section (4), the concerned district court shall give information thereof to the parties of the case or attorneys and appoint the due date for them to make presence and send them to the case in which the case has been filed.

Chapter-17

Provisions Relating to Hearings and Judgment

195. Power to make judgment on matter as agreed: (1) On the due date appointed for the plaintiff and the defendant to make presence after the submission of the statement of defense, the plaintiff, the statement of defense and all documents produced shall be examined in presence of both parties and shown to them, and the plaintiff and the defendant shall also be inquired into the matters that are not clear, and the court shall consider whether both parties agree or disagree thereon.

(2) If, in making consideration pursuant to sub-section (1), it appears that the defendant has admitted and agreed to the claims of the plaintiff, the court may adjudge the case at any time.

196. Power to hold pre-hearing discussions of plaintiff and defendant:

(1) If the court considers it reasonable to hold pre-hearing discussions of the plaintiff and the defendant in order to ascertain the matter to be adjudged in the case pursuant to this Chapter, the court may, for reasons to be recorded, order to hold such discussions.

(2) Where an order is made pursuant to sub-section (1), the court shall appoint the due date for that purpose and hold such discussions.

(3) The plaintiff, defendant or their attorneys and legal practitioners may attend the meeting referred to in sub-section (2).

(4) On the discussions referred to in sub-section (3), the plaintiff and the defendant may present claim, counter-claim or

statement of defense and evidence in support or rebuttal of that matter and their claims or pleas in order to ascertain the matter to be adjudged in the case.

(5) The court shall ascertain the matter to be adjudged in a court from the discussions referred to in sub-section (4) and makes an order to examine evidence if it appears that necessary evidence has to be examined in that matter.

(6) Where discussions are held pursuant to this Section, the court shall maintain records thereof and attach the same with the case-file.

197. To hold hearings upon completion of examination of evidence: (1)

The judge shall, upon the completion of the examination of evidence, hold the hearing and decide the case ordinarily within one month.

(2) In holding hearings pursuant to sub-section (1), the parties of the case may present their respective claims or defense and pleadings on their own or through legal practitioners or attorneys appointed by them respectively.

(3) If, in holding hearings pursuant to sub-section (1), the court makes an order to present pleading notes in order to clarify the additional matters in the case, the parties of the case shall present pleading notes in writing on their own or through legal practitioners or attorneys appointed by them respectively.

198. To provide opportunity to enter into compromise: (1) If the parties of a case that is *sub judice* in the court wish to enter into compromise

at any stage, they may make a joint petition, setting out that matter, to the court.

(2) If a petition is made pursuant to sub-section (1), the judge shall read out the contents of the petition and the meanings and consequences thereof known to the concerned parties.

(3) If, upon reading out pursuant to sub-section (2), both parties agree to enter into compromise, the court shall draw up a deed of compromise in triplicate.

(4) If, in reading out the contents of the deed of compromise drawn up pursuant to sub-section (3) to the parties, the parties agree to enter into compromise, it shall be caused to be signed by both parties, and the judge shall make an order to certify that the deed of compromise was executed in his/her presence, and one copy thereof shall be attached with the concerned case-file and one copy each shall be given to the plaintiff and the defendant.

(5) Where a deed of compromise is executed pursuant to sub-section (3), no plaint that the party in question is not satisfied with the deed of compromise shall be entertained except a plaint that the other party has not complied with the deed of compromise.

(6) If transmission, registration or plotting of immovable property has to be made pursuant to the deed of compromise, as a result of the order made to enter into compromise pursuant to sub-section (5), the court executing the deed of compromise shall, within three days, ask the concerned office to carry out the act as referred to in the deed of compromise.

199. Settlement of dispute through mediation: (1) If the parties of a case that is *sub judice* in the court wish to settle the case through mediation, they may, irrespective of the stage of the case, make a joint petition to the court for the settlement of dispute through mediation.

(2) If a petition is made pursuant to sub-section (1) and it appears to be reasonable to settle the dispute through mediation, the judge trying the case shall make an order to settle the dispute through mediation.

(3) Notwithstanding anything contained in pursuant to sub-section (1) or (2), if the court is of the opinion that it is appropriate to settle any case that is *sub judice* in the court through mediation, the court may, in consultation with the parties, order for the settlement of the dispute through mediation by the mediator appointed by the court itself or by the parties themselves.

(4) If an order is made pursuant to sub-section (2) or (3), the dispute has to be settled through mediation in accordance with law.

(5) If the dispute is settled through mediation pursuant to sub-section (4), the parties shall make a petition to the court, accompanied thereby by a deed of settlement of dispute through mediation.

(6) If a petition is received pursuant to sub-section (5), the court shall execute the deed of compromise between the parties.

(7) The provisions relating to compromise as set forth in sub-sections (3), (4) and (5) of Section 198 shall also apply *mutatis mutandis* to the settlement of dispute pursuant to this Section.

(8) If an order is made for the settlement of a dispute through mediation pursuant to this Section but the dispute cannot be settled through mediation, the court shall appoint the due date for the parties to make presence and try, hear and settle such case in accordance with law.

200. Not to execute compromise or mediation: Notwithstanding anything contained in Section 198 or 199, a case instituted upon the Government of Nepal being plaintiff and a case relating to a public, government or community property shall not be capable of being settled by compromise or mediation.

Provided that nothing shall bar the entering into compromise in such a manner as to maintain the public, government or community property.

201. Withdrawal of claim: (1) In any case other than a case in which the Government of Nepal is plaintiff, the party of the case may, in order to abandon the claims made by him/her in the plaint, memorandum of appeal or petition and withdraw such claims or to withdraw the plaint, memorandum of appeal or petition stating that he/she is not able to prove the claims, make a petition to the court at any time prior to the hearing of the case.

(2) If a petition is made pursuant to sub-section (1), the court shall make an order to grant leave to withdraw the claims or the plaint, memorandum of appeal or petition as requested by the petition.

(3) If an order is made pursuant to sub-section (2), the court shall cross of the record of that case.

(4) If the claims or the plaint, memorandum of appeal or petition are withdrawn pursuant to sub-section (1), the same party may not make a complaint against the persons made as opposite parties in the same plaint, memorandum of appeal or petition on the same matter.

202. Judgment to be made: (1) Subsequent to the completion of the hearings pursuant to this Chapter, the judge shall make verdict on the issue to be decided ordinarily on the same day of the completion of hearings and record the same in the verdict book.

Explanation: For the purposes of this Section, the term "verdict book" means a book maintained in the court for the judge to record precisely the matters decided on a case and the grounds for the same.

(2) Notwithstanding anything contained in sub-section (1), where an order is issued to submit a note of pleadings pursuant to sub-section (3) of Section 197, verdict shall be made within seven days of the receipt of the note of pleadings.

(3) If the court, for reasons to be recorded, makes an order that verdict cannot be made on any matters to be decided on a case pursuant to sub-section (1) on the same day given that the matters involve complex legal or factual questions, the due date for appearance shall be appointed to read out the verdict within fifteen days in maximum.

(4) Where the due date is appointed pursuant to sub-section (3), the court shall make verdict on the case on that day, record it in the verdict book and read out the same to the parties.

203. Matters to be stated in judgment: (1) The judge shall set down the judgment of a case based on the matters decided pursuant to Section 202 ordinarily within seven days.

(2) The judgments set down pursuant to sub-section (1) state, *inter alia*, the following matters:

- (a) The short description of the case,
- (b) The plaintiff's claims,
- (c) The defendant's contentions and defenses,
- (d) The evidence produced by the plaintiff and the defendant,
- (e) Matters adjudged upon agreement or disagreement between the parties over the issues,
- (f) Points of pleadings made by the party or his/her law practitioner on the matters referred to in clause (d) or (e) or the main points of note of pleadings, if any, submitted,
- (g) Matters adjudged by the court and grounds for the adjudging,
- (h) Relevant law relied on for adjudging the issue,
- (i) Such points of the judgment as required to be executed,
- (j) Matter whether the judgment is appealable or not.

(3) A judgment shall be set down in the format set forth in Schedule-18.

(4) The judge shall sign and authenticate the judgment as referred to in sub-section (3).

204. Prohibition on amendment to judgment: After the authentication of a judgment by the judgment as referred to in Section 203, no amendment shall be made to it, except correction of minor errors in such a manner as not to alter the verdict.

Explanation: For the purposes of this Section, the term "minor errors" means such difference between a figure and word contained in the judgment, error on the reference of any one of the names, surnames and addresses of the plaintiff, defendant or witness and minor typo or printing error as not to differ or alter the matters adjudged and the verdict.

205. Deed to be executed on hearing of judgment: (1) Where a case is heard and adjudged by the court, the judgment shall be read out to the parties of the case, if they are present, and a deed shall be caused to be executed by them to the effect that they have heard the judgment and be attached with the case-file.

(2) If a party is not present as mentioned in sub-section (1) but his/her attorney is present, then such a deed shall be caused to be executed by the attorney.

(3) In the case of a party who is not present at the time of reading out the judgment pursuant to sub-section (1), the court passing the judgment shall, on its own or through the lower court, serve the time-limit for appeal, along with the notice of judgment, in the form set forth in Schedule-19, on that party within three days of the preparation of the judgment.

Chapter-18

Provisions Relating to Suspension and Transfer of Cases

206. Power to suspend cases: (1) Where any party to any case, out of several cases filed in several courts, makes a petition to the court, showing a reason that the disposal of one case cannot be, or ought not to be, made until any other case is disposed of, or that judgment of one case will have substantial effect on the judgment of any other case or where the court deems that matter, on its own initiative, in the course of proceeding, the court may order, on reasons to be recorded, that such a case be suspended.

(2) If an order is made to suspend any case pursuant to sub-section (1), the court shall give information of that matter to the parties of the case, and also give information thereof to the concerned court in which another related case is filed.

(3) Upon receipt of the information referred to in sub-section (2), the concerned court shall, upon disposal of the related case filed in it, give information thereof, accompanied by a copy of the judgment, to the court suspending the case pursuant to sub-section (2) within thirty days after the date of judgment.

(4) If, upon the disposal of the case pursuant to sub-section (3), the parties to the case are on recognizance and the due date has to be appointed for the parties to appear on the court suspending the case, the court shall appoint such date for the parties to make appearance before the court suspending the case and send them to that court.

(5) Notwithstanding anything contained in this Section, if different courts hold divergent views on which of the cases *sub judice* in such courts should be suspended, the courts shall make reports to the court hearing appeals from the concerned courts.

(6) Where a report has been sent pursuant to sub-section (5), the appellate court shall make an appropriate order on that matter and the concerned court shall act in accordance with that order.

207. Revival of suspended case: (1) If a case suspended pursuant to Section 206 has to be revived and proceeded, any party of the case may make a petition, accompanied by the reason for the revival, to the court.

(2) If a petition is made pursuant to sub-section (1) and the grounds appear to be reasonable, the court may revive and hear the case suspended as prayed for by the petition.

(3) Notwithstanding anything contained elsewhere in this Section, if information is received that the case suspended in another court has been adjudged or there is no reason to continue the suspension of the case, the court shall revive and proceed the suspended case.

(4) In suspending the case, the parties on recognizance shall be dispensed with the requirement to make presence on the appointed due date. In reviving the suspended case, the parties on recognizance shall be summoned by giving them a time-limit of seven days, and the case shall be proceeded.

208. Powers to transfer cases: (1) If a court makes a report to the Supreme Court, setting out the reason for any obstruction to or hindrance with the settlement by the court of any case filed in it and yet to be settled and the reason seems to be reasonable, the Supreme Court may order another court of equal jurisdiction to proceed, hear, try and adjudicate such a case.

(2) Where an order is made pursuant to sub-section (1), such a court shall proceed, hear, try and adjudicate the case pursuant to that order.

Provided that an appeal against the judgment made by such a court shall lie with the court hearing appeals from the court in which the plaint was originally filed.

209. Power of Supreme Court to hear and adjudicate case: Notwithstanding anything contained elsewhere in this Code, if, on the petition of any party of a case or the report of the concerned court in which the case is filed, the Supreme Court is of the opinion that, in view of the fact that the case involves some complex constitutional question or legal question of public importance or concern or related to interpretation it will be appropriate to have the case heard and adjudicated or any constitutional or legal question involved in the case decided by the Supreme Court, then the Supreme Court shall, for the reasons to be recorded, make an order to call for such a case and hear and adjudicate it by itself.

(2) Where an order is made pursuant to sub-section (1), the file of such a case shall be forwarded to the Supreme Court and

information thereof shall be given to the parties of the case and date to appear shall be appointed.

(3) Where an order is made pursuant to sub-section (1), the Supreme Court may hear and settle such a case or decide any constitutional or legal question involved in that case, and remand the case-file to the concerned court for the disposal of the rest matters.

Chapter-19

Provisions Relating to Appeal

210. Appeal to lie: (1) Except as otherwise provided for in this Code, a party who is not satisfied with a judgment made by the court of first instance may make appeal to the concerned appellate court within thirty days from the date of knowledge of the judgment.

(2) The time-limit for appeal shall begin within thirty days after the date of the deed executed to the effect of hearing the judgment where a party of an appealable case or his/her attorney, being present in the court, has heard the judgment, or after the date of the service of the notice of judgment, if any, where the party has not so appeared.

(3) Notwithstanding anything contained in sub-section (2), even though a deed is not executed to the effect of hearing the judgment or the notice of judgment made is not served, the party of the case shall make an appeal within thirty days after the date of receipt of the duplicate copy of the judgment of the court within one year of the judgment of the case.

211. Circumstances where appeal cannot lie: Notwithstanding anything contained in section 210, no appeal shall lie in any of the following circumstances;

(a) Where the time-limit has been expired without submitting the statements of defense or without making

defense after the receipt of the summons or after the service of the summons,

- (b) Where the case has been compromised or mediated,
- (c) Where the plaint has been withdrawn,
- (d) Where the plaint has been dismissed.

Provided that an appeal may be made in the case of the plaint being dismissed unduly.

- 212. Requirement to pay court fees in making appeal:** An evidence of payment of the court fees leviable in making an appeal pursuant to law shall be submitted with the memorandum of appeal.

Provided that where an appeal is tendered for registration with the leave of court subject to the payment of the court fees at the time of the judgment of the case, the appeal shall be registered despite that an evidence of the payment of the court fees is not produced.

- 213. Matters to be stated in memorandum of appeal:** (1) While making a memorandum of appeal, it shall be made, accompanied by a certified duplicate copy of the judgment, to the court hearing appeals from the court that has made the judgment, stating, *inter alia*, the following matters:

- (a) A short description of the case,
- (b) The court and judge making the judgment,
- (c) Details of the time-limit for making appeal,
- (d) Grounds on which the judgment is based,

- (e) Appeal pleas and grounds thereof,
- (f) Legal basis for making appeal,
- (g) Legal basis in support of the appeal pleas,
- (h) Appeal fees.

(2) In making an appeal, the memorandum of appeal shall be written in descent language, and be accompanied by necessary documents proving the pleas of appeal.

(3) The memorandum of appeal shall be in the form set forth in Schedule-20.

(4) There shall be charged the appeal fees of two hundred rupees while making an appeal.

214. Appeal required to be made to court hearing appeal: (1) In making an appeal, the memorandum of appeal as referred to in Section 213 shall be prepared and registered.

(2) Where a memorandum of appeal is tendered for registration pursuant to sub-section (1), the court shall examine whether the matters referred to in Section 213 are stated in the memorandum of appeal or not, whether it is made within the time-limit as referred to in sub-section (2) or (3) of Section 210 or not, whether it is in the specified form or not, whether the fee as specified by the court is paid or not and whether the court fees are to be paid or not, and register it if it meets the requirements and give a receipt in the form set forth in Schedule-3 to the concerned party.

(3) If, in examining a memorandum of appeal pursuant to sub-section (2), it does not seem to meet the requirements for any reason, the concerned court shall, for the reasons to be recorded, not register the memorandum of appeal and shall make endorsement on it.

215. Memorandum of appeal may be filed in court adjudging case: (1) Notwithstanding anything contained in Section 214, a memorandum of appeal may also be registered through the court adjudging the case.

(2) Where a memorandum of appeal is tendered for filing/registration pursuant to sub-section (1), such a court shall file the memorandum of appeal in fulfillment of the procedures as referred to in Section 214.

(3) The memorandum of appeal tendered for registration pursuant to sub-section (2) shall be sent, accompanied by the concerned case-file, to the court hearing appeal within three days.

(4) If the appellant who has filed a memorandum of appeal pursuant to this Section wishes to be on recognizance, the due date shall be appointed for appearance in the concerned court hearing appeal.

216. Appeal by government employee to concerned court: (1) If any government employee is to make an appeal on a case involving his/her right, interest and concern and is not able to appear in person in the court hearing appeal owing to a government business, he/she may file the appeal, setting out the reasons, through such type of court hearing appeal, if any, available in the area where he/she is in service

or failing such a court, through the district court in the area where he/she is in service.

(2) If an appeal is tendered for filing pursuant to sub-section (1), such a court shall file the appeal in fulfillment of the procedures as referred to in Section 214.

(3) If an appeal is filed pursuant to sub-section (2), the court filing the memorandum of appeal shall send such a memorandum of appeal, along with certification of the filing of the memorandum of appeal and the concerned employee making appeal is in service in that area, to the concerned court hearing appeal within three days.

(4) If a government employee making appeal pursuant to this Section wishes to remain on recognizance, the court filing the memorandum of appeal shall hold him/her on recognizance and send information thereof to the concerned court hearing appeal.

217. Calling for case-file: (1) Upon the registration of an appeal in the court hearing appeal pursuant to this Chapter, the court shall call for the case-file of the concerned case within three days.

(2) If the case-file is called for pursuant to sub-section (1), the concerned court shall send the case-file to the court hearing appeal within three days of the receipt of letter.

218. To make order to respondent to make presence: (1) After receipt of the case-file from the lower court pursuant to Section 217, the court hearing appeal shall, within fifteen days, hold hearings as to whether the case has to be tried by summoning the presence of the respondent as prayed by the appellant or not.

(2) If, upon holding hearings pursuant to sub-section (1), it does not seem that the verdict made by the lower court will be reversed, the court hearing appeal shall adjudge as so held.

(3) If, upon holding hearings pursuant to sub-section (1) and in consideration of the case upon appeal, it seems that the verdict made by the lower court may be reversed, the court hearing appeal shall, for the reasons to be recorded, order to summon the presence of the respondent for hearings.

219. Service of summons on respondent: (1) Where an order is made pursuant to sub-section (3) of Section 218, the summons as referred to in that order shall be served, in the form set forth in Schedule-21.

(2) The summons as referred to in sub-section (1) may be served by the court hearing appeal itself or through the court making judgment in the case originally in fulfillment of the procedures as referred to in Chapter-8.

(3) If the summons is served pursuant to sub-section (2), the respondent may, if he/she so wishes, submit defenses in writing to the court hearing appeal.

(4) If the respondent so wishes, the case shall be tried, heard and settled by holding him/her on recognizance.

220. Hearing of appeal: (1) After the service of the summons pursuant to sub-section (1) of Section 219, the court hearing appeal shall appoint the day for hearing where the respondent is present and both the appellant and the respondent are on recognizance and hear the appeal on that day, and even though both parties or either party are/is

not on recognizance, the court hearing appeal shall appoint the due date or day for hearing the appeal and hear the appeal on that date or day.

(2) After the service of the summons pursuant to sub-section (1) of Section 219, the court hearing appeal shall hear the appeal despite that the respondent is not present.

(3) Upon holding hearings pursuant to sub-section (1) or (2), verdict shall be made as so be held.

(4) While delivering an appellate judgment, it shall be made in the format as referred to in Schedule-22.

221. Powers of the court hearing appeal: Upon hearing a case n the appellate level pursuant to Section 220, the court hearing appeal shall make any of the following decisions:

- (a) To uphold or withhold the judgment of the lower court;
- (b) To reverse partially or fully the judgment delivered by the lower court;
- (c) Where the judgment has been made by the lower court without examining such evidence as required to have been examined, to make such examination by itself or to order the lower court to make such examination,
- (d) If any particular matter required to have been adjudged (fact in issue) in the case has not been adjudged, to make such adjudgment itself or order the lower court to adjudge such matter;

(e) To make any consequential or incidental amendment to the judgment of the lower court.

222. To exercise of powers of court of first instance: In trying, hearing or adjudging a case on appeal pursuant to this Chapter, the court hearing appeal may exercise the powers exercisable by the court of first instance.

223. Synchronization of hearings and judgments: (1) Where various parties have made separate appeals against the decision made by the lower court on the same case, hearings of all appeals shall be synchronized and judgment passed as so held.

(2) Even though, in making a decision pursuant to subsection (1), any appeal has already been decided for any reason, the case shall be adjudged upon the remaining appeals as so held as if such appeal were not adjudged previously.

Chapter-20

Revision and Review of Cases

224. Revision of cases: (1) If the concerned party makes a petition to the Supreme Court within thirty days, excluding the time required for journey, after the date of a judgment or final order, setting out that such a judgment or final order made by the Appellate Court on a case not appealable to the Supreme Court pursuant to law contains any of the following circumstances, the Supreme Court may conduct the revision of the judgment or final order made by the Appellate Court:

- (a) If the judgment or final order involves error in the interpretation of the Constitution or law,
- (b) If any legal principle established by the Supreme Court has not been followed or has been applied with wrong interpretation;
- (c) If irrelevant law has been used;
- (d) If any government or public property is misappropriated or any loss is caused to such a property or ownership or possession of a person is established in an unauthorized manner over such a property due to lack of proper and exact evaluation of the evidence contained in the case file of a case involving dispute relating to such government or public property.

(2) If a petition is received for the revision of a case pursuant to sub-section (1), the Supreme Court shall conduct hearings on

whether the circumstance referred to in sub-section (1) exists in the judgment or final order of the Appellate Court or not.

(3) If, on conducting hearing pursuant to sub-section (2), it appears that the judgment or final order of the Appellate Court contains the circumstance referred to in sub-section (1), the Supreme Court shall order the presence of the other parties of such a case in order to conduct the revision of the case.

(4) If the other parties of the case appear pursuant to sub-section (3), the Supreme Court shall also conduct hearing for revision, also in presence of them, and pass judgment on the case.

225. Power to review: (1) Notwithstanding anything contained elsewhere in this Code, the Supreme Court may review its judgment or final order in any of the following circumstances:

(a) If the party has come to discover or know any evidence or fact likely to materially affect the judgment or final order only after the judgment or final order has been made,

(b) If it appears that the judgment or final order has been passed contrary to the precedent or legal principle enunciated by the Supreme Court prior to the passing of the judgment or final order, as the case may be.

(2) If any circumstance referred to in sub-section (1) exists in the judgment or final order made by the Supreme Court, the party of case may make a petition, setting out the reasons, to the Supreme Court for review within thirty five days of the knowledge by no later

than one year after the date of the passing of the judgment or final order.

(3) If, on examining the petition received pursuant to subsection (2), its contents seem to be reasonable, the Supreme Court shall make an order to review the case.

(4) Notwithstanding anything contained elsewhere in this Section, the Supreme Court shall not review its judgment or final order in any of the following circumstances:

- (a) If the judgment or final order has once been reviewed in accordance with law,
- (b) If the questions raised by the petition for review were also raised in the Division Bench of the Supreme Court and they were heard by the Full Bench because the Judges were divided in their opinions thereon, and decision was already made by addressing those questions,
- (c) If the case has already been settled by way of revision pursuant to the prevailing law prior to the commencement of this Code,
- (d) If the judgment of the Appellate Court has been upheld in the case reviewed pursuant to Section 224.

226. Case to be settled being confined to relevant matters: In conducting the revision of a case pursuant to Section 224 or review of a case pursuant to Section 225, the case shall be adjudicated being confined only to such grounds and relevant matters as on which the

Supreme Court has made an order to revise or review the case, as the case may be.

Chapter-21

Provisions Relating to Mutual Legal Assistance

227. Power to make order to serve summons: (1) If, on any case filed in a court, any summons is to be served on any person who is living or residing in a foreign country, the court may make an order for that purpose.

(2) If an order is made pursuant to sub-section (1), the court shall make a submission, accompanied by the following matters, to the central body to serve such a summons on the person who is living or residing in a foreign country:

- (a) Full name of the person on whom the summons has to be served,
- (b) The country where the person as referred to in clause (a) is living or residing, the local address of him/her and other description setting out his/her identity (his/her passport number, identity card number etc.),
- (c) If the summons cannot be served on the address of the person as referred to in clause (a), the country of the enterprise where he/she works or which he/she operates, and the address thereof,

(d) Details in relation to which case the summons has to be served.

Explanation: For the purposes of this Chapter, the term "central body" means any such body as may be designated by the Government of Nepal by a notification in the Nepal Gazette.

(3) Where a submission is made pursuant to sub-section (2), the central body shall translate the court order and the details in the English language and make a request to the concerned country through diplomatic channels.

(4) If, in making a request pursuant to sub-section (3), any treaty has not been concluded with such a country for that purpose and, for the service of such a summons in the concerned country, any assurance has to be made by Nepal to the effect that the summons of similar nature issued by the competent court of such a country in the future will be served in Nepal on the basis of reciprocity, the central body may make such assurance through diplomatic channels.

(5) If information is received from the country requested for pursuant to sub-section (3) that the summons has been served on the concerned person, the summons shall be deemed to have been duly served on that person.

(6) If the country requested for pursuant to sub-section (3) refuses to serve the summons or such a country gives information to the central body through diplomatic channels that the summons has not been served for the reason that such a person could not be found or identified, the contents of such summons shall be published in a

daily newspaper of national circulation in the country where such a person is living or residing or in Nepal.

(7) Where a summons is served pursuant to sub-section (6), the summons shall be deemed to have been duly served.

228. Request may be made to effect service of judicial document issued by foreign court: (1) If any judicial document issued by a foreign court has to be served on any person who is residing or living in Nepal, the concerned foreign country shall, pursuant to the order of such a court, make a request to the central body through diplomatic channels.

Explanation: For the purposes of this Chapter, the term "judicial document" means any such document like a summons, plaint or statement of claims, petition or memorandum of appeal issued by any foreign court.

(2) The request referred to in sub-section (1) shall state the following matters:

- (a) The foreign court making order to serve the judicial document in Nepal,
- (b) Details of the case in the context of which such order has been made,
- (c) Details of the judicial document to be served,
- (d) The name, surname, address of, and other necessary details to identify, the person on whom the document referred to in sub-section (1) has to be served,

(e) Details of which procedure or manner has to be followed to effect the service of such a judicial document.

(3) The request referred to in sub-section (1) has to be accompanied by a memorandum set down for the service of the judicial document in the format set forth in Schedule-23 and the document to be served.

(4) The request and the judicial document to be served or its authentic copy referred to in sub-section (3) has to be in duplicate.

229. Service of judicial document: (1) Upon receipt of a request referred to in Section 228, the central body shall study whether the request of a foreign court meets the requisite terms or not and whether any judicial document can be served in Nepal accordingly or not.

(2) If, upon studying pursuant to sub-section (1), it appears that the judicial document issued by such a foreign court cannot be served in Nepal, the central body shall give information, accompanied by the reasons for the same, to the concerned country through diplomatic channels.

(3) If, upon studying pursuant to sub-section (1), it appears appropriate to serve the judicial document issued by such a foreign court in Nepal pursuant to the request by the foreign court, the central body shall request the concerned court to serve such a document.

Explanation: For the purposes of this Chapter, the term "concerned court" means the district court of the area where the person on whom the judicial document has to be served is residing or living.

(4) If a court is requested by the central body to serve any judicial document pursuant to sub-section (3), the court shall proceed to serve such a judicial document as if the judicial proceeding were *sub judice* in that court.

(5) In serving a judicial document pursuant to sub-section (4), it shall be served in accordance with Chapter-8.

(6) If, in effecting the service pursuant to sub-section (5), any judicial document has to be served in pursuant of any specific procedure or manner as per the request of the foreign court and request is made accordingly by the central body, the concerned court shall also pursue such procedures or manner.

(7) After the service of any judicial document pursuant to sub-section (5) or (6), the concerned court shall prepare a description of the service of such a document in the format set forth in Schedule-24 and forward it to the central body.

(8) If the details of service received pursuant to sub-section (7) has to be translated into the English language as per the request of the foreign court, the central body shall translate it and certify the original copy received from the concerned court and the translated copy and send the same to the requesting foreign country through diplomatic channels.

230. Taking of evidence abroad: (1) If, on any case that is *sub judice* in a court, it is necessary to take any evidence outside Nepal, the court may make an order for that purpose.

(2) If an order is made pursuant to sub-section (1), the concerned court shall make a submission to the central body.

(3) Where a submission is made by the court pursuant to sub-section (2), the central body shall set down the details of evidence to be taken in the form set forth in Schedule-25 and make a request to the concerned country, through diplomatic channels, to effect the taking of evidence by the concerned authority of that country.

(5) Notwithstanding anything contained elsewhere in this Section, if a request has been made to effect the taking of an evidence pursuant to this Section and the concerned foreign country has refused to take evidence or the evidence has not been taken by the competent authority of such a country, nothing shall bar the adjudging of the case by examining the other available evidence by that reason only.

231. Power to take evidence as per request of foreign court: (1) If any evidence has to be taken in Nepal in relation to any case that is *sub judice* in any foreign court or body, such court shall make a request to the central body through diplomatic channels.

(2) The request referred to in sub-section (1) for taking an evidence shall state the following matters:

- (a) The foreign court or body making request to effect the taking of evidence,
- (b) Where the court or body requested to effect the taking of evidence in Nepal is identified, details thereof,

- (c) Nature of the case in relation to which request is made to effect the taking of evidence,
- (d) Details of the parties of the case and their attorneys or representatives,
- (e) Details of the evidence or other judicial action to be taken in Nepal,
- (f) If any witness has to be examined in Nepal, the name, surname and address of such a witness,
- (g) If any witness has to be examined in Nepal by a letter rogatory, the details of interrogatories to be asked to him/her,
- (h) Whether the witness has to take an oath on making deposition, the details thereof,
- (i) If any inspection, survey, measurement, map or examination of any document, movable or immovable property has to be made in Nepal, the details thereof,
- (j) Other necessary details.

232. Request to be in Nepali language: A request made to take evidence pursuant to Section 231 shall be set down in the Nepali language.

Provided that if a request is set down in any foreign language and it is not practicable to translate it into the Nepali language and, upon showing the reasons for the same, the original copy in the English language or its formal translation in English from another

language is attached, such a request shall be acceptable to the central body or the concerned court, as the case may be.

233. To be sent to the concerned court: (1) Upon receipt of a request referred to in Section 231, the central body shall study whether it is appropriate to take evidence in Nepal or not.

(2) If, upon studying pursuant to sub-section (1), it appears appropriate to take evidence in Nepal pursuant to the request by the foreign country, the central body shall request the concerned court to take evidence in accordance with the request.

Explanation: For the purposes of this Section, the expression "concerned court" means the following court to take the following evidence:

- (a) Where any witness has to be examined or replies to the letter rogatory prepared, the district court of the area where such a witness or person is residing or living,
- (b) Where any inspection, survey, measurement, map or examination of any movable or immovable property has to be made or the description thereof prepared, the district court of the area where such a property is situated,
- (c) Where details relating to any document has to be set out, the district court of the area where the government or non-government office or the person in custody of that document is situated or is living or residing.

(3) If, upon studying pursuant to sub-section (1), it appears that the evidence cannot be taken in Nepal as per the request, the central body shall give information thereof, setting out details thereof, to the concerned authority of the requesting country, through the diplomatic channels.

234. The concerned court to take evidence: (1) If the central body request the concerned court to take evidence of any matter as per the request of a foreign court pursuant to sub-section (2) of Section 233, the concerned court shall proceed to take such evidence as if such an evidence were taken on the proceedings of any case *sub-judice* in that court.

(2) Where a time-limit has to be given to any witness or person to appear before the court pursuant to sub-section (1), the concerned court shall give the time-limit of a maximum of seven days, excluding the time required for journey, and such a summons of time-limit shall be served in accordance with Chapter-8.

(3) In taking evidence pursuant to sub-section (1), the concerned court shall take evidence being confined to such matter as on which the witness has to be examined or to such interrogatories as on which replies of letter rogatory have to be prepared or to such evidence, document or movable or immovable property as the description of which has to be given, as per the request of the foreign court.

(4) If, in examining a witness or preparing replies of a letter rogatory or examining a document or evidence, the parties of the case

on which evidence is to be taken pursuant to this Section or their attorneys or law practitioners wish to appear before the court, the concerned may grant a leave to such parties, attorneys or law practitioners to appear before the court at the time of taking evidence.

(5) In taking evidence pursuant to this Section, the concerned court shall apply the laws of Nepal.

Provided that if the foreign court has made a request to take evidence of any specific subject by adopting any specific procedures or manner on any specific matter and it is requested by the central body to take evidence accordingly, the concerned court shall have to take evidence accordingly.

235. To send evidence taken to foreign court: (1) The concerned court shall send the evidence taken pursuant to Section 234 to the central body.

(2) If the evidence received pursuant to sub-section (1) has to be translated into any foreign language as per the request of the foreign court, the central body shall translate it accordingly and send the same to the foreign court through diplomatic channels.

236. Expenditure to be borne: If any expenditure to be incurred in serving a summons or taking any request in pursuance of a request made by a foreign court pursuant to this Chapter, the requesting court shall bear such an expenditure.

237. Recognition and enforcement of foreign judgments: (1) Any judgment made by a court of any foreign country shall be recognized

in Nepal and may be enforced in Nepal, in the following circumstance:

- (a) If such a judgment has been made by a competent court with proper jurisdiction,
- (b) If such a judgment is enforceable in the concerned country,
- (c) If such a judgment is final and not subject to review in accordance with the law of the concerned country.

(2) Notwithstanding anything contained in sub-section (1), the judgment made by the court of foreign country shall not be recognized and enforced in Nepal in the following circumstance:

- (a) If such a judgment seems to be deceptive or fraudulent from procedural viewpoint,
- (b) If there has been filed and sub judice in a court of Nepal a case between the same parties for the same fact and purpose as on which such a judgment has been passed, prior to the case being filed in the foreign court,
- (c) If the case referred to in clause (b) has already been adjudged by a court of Nepal,
- (d) If the case referred to in clause (b) has been adjudged by a court of another country, and such a judgment has been recognized and already enforced or being in the process of enforcement in Nepal,

- (e) If such a judgment has been passed without giving adequate opportunity to any party of the case to represent himself or herself fairly,
- (f) If such a judgment seems to have been passed without following due process required for the proceedings of a case.

238. Petition to be made for enforcement of judgment passed by foreign court: (1) Any party who wishes to have a judgment passed by a foreign court recognized and enforced in Nepal has to make a petition, accompanied by the following documents, to the concerned appellate court:

- (a) A full and certified text of the judgment,
- (b) If the judgment has been made in the absence of any party of the case, the original or certified copy of the document establishing that the summons has been duly issued on such a party,
- (c) All documents establishing that the judgment has fulfilled the terms as referred to in clauses (b) and (c) of sub-section (1) of Section 237,
- (d) Where the judgment is not set down in the Nepalese language, a Nepalese translated version of the judgment, along with certification by the diplomatic or consul representative or by a person authorized to do formal translation of the judgment.

(2) If a petition referred to in sub-section (1) is received, the appellate court, upon studying such a petition, is satisfied that the judgment passed by a foreign court fulfills the terms as referred to in sub-section (1) of Section 237 and that there is no reason to refuse to recognize it pursuant to sub-section (2) of the same Section, the court shall forward the judgment passed by the foreign court to the concerned district court to recognize and enforce it.

Explanation: For the purposes of this Section, the term "concerned district court" means the district court of the area/territory where any amount in question, partition and foreclosure, as well, have to be recovered, effected or made, as the case may be, pursuant to the judgment.

239. Judgment to be executed by district court: If so written by the appellate court pursuant to sub-section (2) of Section 238, the concerned district court shall enforce the judgment as if it were one passed by itself.

240. Compromise between parties: (1) If a petition is made for the enforcement of a foreign judgment in Nepal pursuant to Section 238, and the parties wish to enter into a compromise by enforcing the judgment with mutual consent, they may make a joint petition to the concerned court, setting out the details including the terms and conditions of such compromise.

(2) If a petition is made pursuant to sub-section (1), the concerned court shall effect compromise to enforce the judgment with the consent in pursuance of the petition.

(3) If compromise is effected pursuant to sub-section (2), the concerned parties shall enforce the judgment in pursuance of the mutual consent.

241. Non-enforcement in absence of treaty: (1) In order to serve a summons issued by a court of any foreign country in Nepal, take evidence in Nepal at the request of any foreign court or enforce a judgment passed by a court of any foreign country in Nepal, there shall be a bilateral treaty concluded between Nepal and such a foreign country.

(2) If any treaty has not been concluded pursuant to sub-section (1), notwithstanding anything contained elsewhere in this Chapter, a summons issued by such a court cannot be served, evidence cannot be taken at the request of such a court or a judgment passed by such a court cannot be enforced in Nepal.

(3) Notwithstanding anything contained in sub-section (2), if any foreign country makes a request, through diplomatic channels, to the Government of Nepal for the service of a summons issued by a court of a foreign country on any specific case or for the taking of evidence as per the request of the court of such a country, and that country gives assurances through diplomatic channels that it will serve a summons issued by any court of Nepal on similar type of case or take evidence as per the request of any court of Nepal in that country in the future, the summons issued by the court of such a country can be served or evidence can be taken at the request of that court on the basis of reciprocity.

(4) Where assurance has been made or summons served or evidence taken pursuant to sub-section (3), the central body shall maintain records thereof.

242. Non-enforcement: Notwithstanding anything contained elsewhere in this Chapter, if it would be contrary to public order or sovereignty of Nepal in serving a summons issued by a court of any foreign country in Nepal or taking evidence in Nepal at the request of such a court or enforcing a judgment passed by such a court or as a result of such service or enforcement, no such summons may be served, evidence taken or judgment enforced.

Chapter-22

Execution of Judgments

243. Records to be prepared: (1) Where any judgment is made by the court ordering the foreclosure, entry into records, striking off of records, transmission, preemption, partition, recovery of amount in question, realization of fine or court fees, the concerned court shall, as soon as possible, prepare the records thereof and forward the same to the bailiff section.

Explanation: For the purposes of this Chapter, the term "amount in question" means any amount including compensation as required to be recovered pursuant to the judgment.

(2) Upon receipt of the records pursuant to sub-section (1), the concerned employee shall create a separate case-file on it,

accompanied by a copy of the judgment, for the purpose of the execution of judgment.

(3) Where the records referred to in sub-section (2) are prepared by the court hearing appeal, the concerned employee shall forward the case-file, accompanied by the records, to the concerned district court within a period of seven days of the preparation of the judgment.

244. Execution by concerned district court: (1) The district court where the plaint or complaint has been filed shall execute the judgment passed on such a case irrespective of the level of court passing the judgment.

(2) The concerned district court shall execute the judgment on a case originally tried and settled by the court hearing appeal.

(3) Notwithstanding anything contained elsewhere in this Section, if the district court executing the judgment cannot be ascertained owing to the subject-matter of the case, the district court designated by the court hearing appeal shall execute the judgment of that case.

Provided that the judgment passed by any authority other than the regular court shall be executed by the concerned authority.

245. Postponement of execution of judgment: Notwithstanding anything contained in Section 243, the court shall postpone the execution of judgment in the following circumstance:

- (a) If an appeal is made in a case which is appealable pursuant to law, until the case is finally disposed on appeal,
- (b) If no such appeal is made, until the period allowed for preferring appeal is expired;
- (c) If an order is made to summon the presence of parties in the court of revision of case pursuant to Section 224, until it is disposed,
- (d) If an order is made to make the review of a case pursuant to Section 225, until it is finally disposed.

246. Not to bar execution of judgment or deed of compromise:

Notwithstanding anything contained elsewhere in this Chapter, nothing shall bar the execution of judgment or deed of compromise in the following circumstance:

- (a) In cases where a case is *sub judice* in a court in pursuance of a petition made by a party to have a judgment on any case reviewed or revised, except as otherwise ordered by the court, to execute the judgment passed on that case by the reason only that such a petition has been made,
- (b) Even though a case to withhold a judgment or a deed of compromise is filed by any one, except as otherwise ordered by the court, to execute the judgment or deed of compromise on that case,

- (c) If it appears that the property remaining as the subject matter of a case will get damaged if the judgment of any case is not executed immediately or if the winning party of a case involving payment of compensation makes a written commitment to bear compensation for any loss caused to the other party if the winning party loses the case on appeal subsequently, to execute such a judgment by the court prior to the expiration of the time-limit for appeal in such a case or prior to passing of judgment on appeal,
- (d) If the parties of case agree on some matters of any case that is *sub judice* in the court and the matters so agreed can be separated and executed accordingly, and order is made by the court to that effect.

147. Appointment of attorney: If any party of the case is not able to appear in person in the course of execution of judgment, such a party may assign and send an attorney for that purpose.

148. Opportunity to be given to enter into compromise or mediation:

- (1) Notwithstanding anything contained elsewhere in this Chapter, if the parties wish to execute the judgment through a compromise or mediation, they may make a joint petition, setting out that matter, to the court.

Provided that no petition may be made for compromise or mediation on the matter of recovery of a government amount in question.

(2) If a petition is received from the parties for compromise or mediation pursuant to sub-section (1), the court shall specify the period of execution and provide them with an opportunity to execute the judgment through a compromise or mediation.

(3) If the parties agree to execute the judgment through a compromise or mediation within the period given pursuant to sub-section (2), the court shall effect the compromise between the parties in accordance with law.

(4) If the parties do not agree to execute the judgment through a compromise or mediation within the period given pursuant to sub-section (2), the court shall have to execute the judgment in pursuance of the procedures as referred to in this Chapter.

249. Parties to remain on recognizance: (1) Where the court of first instance passing judgment on a case passes judgment ordering the foreclosure, entry into records, striking off of records, transmission, preemption, partition and recovery of amount in question, among others and the parties of case are present in the court, the court shall so appoint the due date for the parties to make presence for the purpose of executing the judgment that the date falls after the period of expiration of the time-limit for appeal.

(2) If an appeal is made on the case by the date appointed pursuant to sub-section (1), the court shall discontinue the recognizance of the parties.

(3) Where a final judgment is made also by the court hearing appeal to do as set forth in sub-section (1) and the parties of a case are

present in the court, the court shall appoint the due date for the parties to make presence for the purpose of executing the judgment and ask the parties to make presence before the concerned court of first instance and send the case-file to the latter court if the parties of the case are not present in the court.

(4) If the parties of case make presence before the court of first instance pursuant to sub-section (3), the court shall hold the parties who are present on recognizance for the purpose of executing the judgment.

(5) If intimation is received from the court hearing appeal that the parties are not on recognizance pursuant to sub-section (3), parties are not present on the appointed due date or the case becomes final upon the judgment of court not being appealed and the parties of a case are not present in the court, the court of first instance shall issue a summons of twenty one days in the form set forth in Schedule-23 for the parties to make presence in the court for the purpose of executing the judgment.

(6) Notwithstanding anything contained elsewhere in this Section, if it is not necessary to hold any party on recognizance in the course of execution of judgment, the court shall not hold such a party on recognizance.

250. Power to execute judgment upon collecting additional fees: (1) If a party of a case shows up for the execution of judgment after the expiration of the time-limit for the undertaking to continue the case or the extension of the expired time-limit, the court shall execute the

judgment by collecting the additional fees of ten percent of the fees chargeable for the execution of judgment if it is within six months of the expiration of the time-limit and of twenty five percent thereof if it is within one year of such expiration.

(2) If the party is not present to have a judgment executed even within the period as referred to in sub-section (1), the court shall close the proceedings relating to the execution of such a judgment, except as otherwise provided for in this Chapter.

251. Continuity of case or extension of expired due date: (1) If any party of the case dies in the course of execution of a judgment, his/her heir may undertake to continue such a case pursuant to this Code.

(2) If any party of the case expires the appointed due date in the course of execution of a judgment, he/she may extend the expired appointed due date pursuant to this Code.

252. Procedures for effecting foreclosure: (1) If, in the course of foreclosing in pursuance of a judgment, the party shall be caused to pay to the court three percent of the amount in question of the property subject to foreclosure if such an amount is set out as fees prior to the deputation of a commission for the foreclosure effected by the court.

(2) If the party entitled to foreclosure pays the amount to the court within the time referred to in sub-section (1), the court shall on the same day of payment of amount appoint the day on which a commission to effect foreclosure is to be dispatched and give a notice thereof to the parties and appoint the due date for them to make

presence at the place where the foreclosure is to be effected; and if the person to allow the foreclosure is not on recognizance, the court shall also give a notice of that matter to such a party.

(3) In appointing the due date or giving notice pursuant to sub-section (2), if the property to be foreclosed is a house or land, a notice shall also be given to vacate such a house or land.

(4) If the property to be foreclosed is in possession or custody of a person other than the parties of the case, the court shall also give a notice to such a person to appear at the place where the commission is deputed.

(5) The court shall depute a commission on the day appointed pursuant to sub-section (2) and foreclose such a property in pursuance of the judgment.

(6) If the direction or side of any house or land to be foreclosed in pursuance of the judgment is not set out, the court shall effect the foreclosure of such a house or land by lot upon making proportionate division in presence of the parties.

(7) In effecting the foreclosure pursuant to this Section, the court shall effect it in presence of the party obliged to allow the foreclosure and the party entitled to the foreclosure or their representatives and in witness of a representative of the local body and at least two witnesses.

(8) If the person obliged to allow the foreclosure or any other person causes obstruction or hindrance to the foreclosure, the court shall effect the foreclosure by using force as required.

(9) Notwithstanding anything contained elsewhere in this Section, if the house or shop containing the property to be foreclosed is locked up and the person in possession or custody of the house or shop to be foreclosed is present, the foreclosure shall be effected by asking the person to open the house or shop; and if such a person is not present, a notice, in the format set forth in Schedule-27, shall be affixed to the door of that house or shop, thereby requiring that person to vacate the house or shop within fifteen days.

(10) If the concerned person does not open the key of the house or shop within the time-limit referred to in sub-section (9), the court shall after the expiration of such a time-limit effect the foreclosure of the house or shop by breaking the lock of such a house or shop.

(11) If any property is found within the house or shop in the course of effecting foreclosure pursuant to this Section, the court shall at the same time prepare an inventory of the property and may take control of such property.

(12) If the concerned person does not show up to receive the property taken in control pursuant to sub-section (11) within thirty five days, the court shall auction such a property and immediately hand over the proceeds of auction to the concerned person.

(13) If the concerned person refuses to receive immediately the proceeds of auction made pursuant to sub-section (12), the court shall credit such proceeds into the deposit account.

(14) If the concerned person shows up to receive the amount within one year after the crediting of the amount into the deposit account pursuant to sub-section (13), the court shall refund the amount remaining after deduction of ten percent therefrom to such a person.

(15) If the concerned person does not show up to receive such an amount within the period referred to in sub-section (14), the court shall credit such an amount to the government fund.

(16) Where foreclosure is effected once but any person makes hindrance and does not allow the foreclosure of the property, the court shall punish such a person with a fine of up to twenty five thousand rupees or with imprisonment for a term not exceeding three months for each instance, and again effect the foreclosure in relation to the property previously foreclosed in accordance with the judgment. No fee shall be payable for effecting foreclosure in such a case.

(17) If the property to be foreclosed is situated in another territory, the court shall appoint the due date for the concerned parties for effecting foreclosure and send the case file and parties to the district court of such a territory.

(18) If a request is made to effect the foreclosure pursuant to sub-section (17), the concerned court shall effect the foreclosure pursuant to law and give information thereof to that court.

(19) After the foreclosure has been effected by the court pursuant to this Section, the court shall give a documentary evidence thereof to the party entitled to the foreclosure.

(20) The court shall complete the effecting of foreclosure within six months after the presence of the parties in the court.

253. Procedures for effecting entry into and striking off of records and transmission: (1) If, in the course of making entry into and striking off of records and transmission, in pursuance of a judgment, the party entitled to obtain the same is in attendance in the court pursuant to Section 249, the court shall write the matter to the office making entry into and striking off of records and transmission for the purpose of the execution of the judgment and send that party to that office within twenty one days.

(2) If so written pursuant to sub-section (1) or the concerned party appears in the office, such an office shall effect the making of entry into and striking off of records and transmission in pursuance of the judgment.

(3) If any party appears in the concerned office to obtain entry into and striking off of records and transmission after the expiration of the time-limit as referred to in sub-section (1), the office shall effect the making of entry into and striking off of records and transmission in pursuance of the judgment, by collecting the fees of five hundred rupees for each year.

254. Procedures relating to preemption: (1) If, in the course of making or allowing preemption in pursuance of a judgment, any party is on recognizance pursuant to Section 249, the court shall appoint the due date for such a party to make presence to obtain the preemption of the

property subject to preemption or receive a deposited amount and send the party to the office where the amount is deposited.

(2) If both parties to obtain and allow preemption make presence in the office pursuant to sub-section (1), the office shall hand over the deposited amount to the person obliged to allow preemption and deliver the deed of that property and receipt thereof to the person entitled to obtain preemption.

(3) If only the person obliged to allow preemption makes presence in the office pursuant to sub-section (1), the office shall hand over the amount to him/her pursuant to sub-section (2) and deliver the documents including the receipt of payment of the amount to the person entitled to obtain preemption as and when that person makes presence subsequently.

(4) If only the person entitled to obtain preemption makes presence in the office pursuant to sub-section (1), the office shall effect the preemption in pursuance of the judgment and deliver the documents including the payment of amount to him/her.

(5) If preemption is effected by the office pursuant to this Section, the person obliged to allow preemption shall receive the deposited amount within thirty five days after that date.

(6) If the person obliged to allow preemption shows up to receive the deposited amount within two years after the expiration of the time-limit as referred to in sub-section (5), the office shall return the amount remaining after deduction of three percent of the deposited amount therefrom to such a person.

(7) If the person obliged to allow preemption does not show up to receive the deposited amount even within the time-limit as referred to in sub-section (6), the office shall credit such a deposited amount to the government fund, as a governmental revenue.

255. Procedures for setting aside partition: (1) If, in the course of setting aside the partition in pursuance of a judgment, the parties are on recognizance pursuant to Section 249, the court shall effect partition by setting aside partition shares within six months.

(2) If a judgment is made to set aside partition to more than one coparcener and any coparcener is not present, the court shall serve a fifteen-day summons, in the form set forth in Schedule-28, on the coparcener failing to make presence.

(3) If the concerned coparcener makes presence within the time-limit as referred to in sub-section (2), the court shall set aside partition shares and effect partition in presence of all coparceners.

(4) If all coparceners entitled to receive partition do not make presence within the time-limit as referred to in sub-section (2), the court shall set aside partition shares of the coparceners failing to make presence and effect partition share of the coparceners who make presence.

(5) If partition is effected pursuant to sub-section (4), the person failing to make presence within the time-limit shall not be entitled to file a suit on the matter of making partition or higher or lower grade or value of the partition share.

(6) If partition is to be effected by sending a commission, the court shall effect partition by sending an employee.

(7) In the course of setting aside partition shares pursuant to this Section, the coparceners who are obliged to give partition in pursuance of the judgment or the coparceners who take custody of the property set forth in the inventory, their representatives or other major persons living with them in an undivided family shall produce the property subject to partition and as set forth in the inventory.

(8) If the person giving partition or taking custody of the property is not found or any major person living in the undivided family does not produce all properties as set forth in the inventory, the court shall serve a summons, in the form set forth in Schedule-29 on the person giving, and taking custody of, the partition share.

(9) If the person giving partition or taking custody of the property fails to make presence within the time-limit as referred to in sub-section (8) or does not show the property subject to partition despite making presence, the court shall effect partition as per the inventory by opening any property, if any closed, in witness of a member or representative of the local body and at least two representatives.

(10) If the parties fail to make presence within the time-limit as referred to in sub-section (2) or (8), the court shall set aside partition shares and commence the partition proceedings in pursuance of the judgment within three days after the expiration of the time-limit.

(11) If any party makes presence in the court after the time-limit given pursuant to sub-section (8) and the partition making is not complete by that time, the court shall effect partition also in presence of him/her.

(12) If, in the course of making partition, all properties are not in order as set forth in the inventory, the amount of the shortfall property shall be ascertained and shall be reimbursed from the partition share of the partition giver or the person taking custody of the property. If the partition share is not recovered even from such a reimbursement, recovery shall be made from any other property owned and possessed by such a person to the person receiving partition, in consideration for such shortfall portion.

(13) If, in the course of effecting partition, the person receiving partition or a major member living with him/her in an undivided family refuses to receive his/her partition share and any perishable property is subject to partition, the court shall auction such a property. If the concerned person shows up to receive the proceeds of such auction subsequently, the court shall return the amount remaining after deducting fifteen percent thereof to him/her.

(14) If the persons receiving partition do not agree as to the property subject to partition, the court shall divide such a property on proportionate of higher or lower value or grade and effect partition by lot.

(15) If any person does not show or produce the property in his/her custody as mentioned in the inventory, the court shall fine that

person with a sum of five percent of the amount in question of the property not so shown or produced.

(16) In a case where final judgment is passed holding the plaintiff entitled to partition, if the other defendant coparceners also make a petition to set aside and receive their respective partition shares, the court shall collect court fees chargeable by law and set aside such partition shares from the property as held by judgment and cause the same to be provided to them.

(17) If the property subject to partition is situated also in another territory, the court shall write to the concerned court to effect partition of such property.

(18) If so written pursuant to sub-section (17), the concerned court shall also effect partition pursuant to this Section and give information thereof to such a court.

256. Procedures for recovery of amount in question: (1) If, in the course of recovering amount in question in pursuance of a judgment, the party entitled to recovery of amount in question is on recognizance pursuant to Section 249, the court shall cause a deed to be executed by such a party as to whether that party is willing to have recovery of the amount in question or not.

(2) If, in executing a deed pursuant to sub-section (1), the party entitled to recovery of the amount in question is not willing to have recovery of the amount in question, the court shall, on the same day, terminate the judgment execution proceeding and cross off the records of amount in question.

(3) If, in executing a deed pursuant to sub-section (1), the party entitled to recovery of the amount in question desires to have recovery of the amount in question and the party obliged to pay the amount in question is on recognizance, the court shall give a time limit of a maximum of thirty five days to that party to pay the amount in question as required to be paid in pursuance of the judgment.

(4) The party obliged to pay the amount in question shall furnish an amount equal to the amount in question with the court in cash or through a good for payment cheque or any other instrument within the time given pursuant to sub-section (3).

(5) Notwithstanding anything contained in sub-section (4), the party entitled to recovery of amount in question may make a request to the court to have recover of the amount in question from any property of him/her.

(6) If the party liable to recovery of amount in question is not present in the court or despite being present refuses to pay the amount in consideration of the amount in question or fails to show a property pursuant to sub-section (5), the party entitled to recovery of the amount in question may, showing the property of the party liable to pay the amount in question, make a petition to the court to have the recovery of the amount in question from such a property.

(7) If, in recovering the amount in question pursuant to this Section, any property has to be attached, the court shall attach such a property as required and effect the recovery of the amount in question by also auctioning such a property as required.

(8) If the proceeds of auction sale of the property made pursuant to sub-section (7) exceed the amount in question, the court shall immediately return such excess amount to the party liable to pay the amount in question if he/she is present.

(9) If the concerned party refuses to receive the amount pursuant to sub-section (8), the court shall credit that amount into the deposit account.

(10) If the concerned person does not show up to receive the amount credited into the deposited account within two years after the date of crediting therein, that amount shall be paid to the government fund, as a governmental revenue.

(11) If the party liable to pay the amount in question is living or residing in another territory, the court shall write to the concerned court to effect recovery of the amount in question.

(12) If so written pursuant to sub-section (11), the concerned court shall also effect recovery of the amount in question pursuant to this Section and give information thereof to such a court.

(13) Notwithstanding anything contained elsewhere in this Section, if the party liable to recovery of amount in question discovers the concealment or hiding of any property by the party obliged to pay the amount in question and makes a petition showing the same while the party obliged to pay the amount in question is alive, the court shall auction the property and effect the recovery of amount up to the extent of the amount in question to which he/she is entitled.

(14) The court shall, in consideration for effecting the recovery of amount in question pursuant to this Section, collect the fees of three percent of such amount in question from the party entitled to recovery of amount in question.

257. Property subject to confiscation: (1) In making confiscation of entire property pursuant to section 256, also the partition shares of those who are above twelve years of age and have not separated bread and board and have lived together and enjoyed such a property or of those who, despite having obtained their respective partition shares or separated bread and board, have lived together while enjoying that property shall be subject to the confiscation of entire property.

(2) In making confiscation of entire property pursuant to sub-section (1), the following property shall be set aside:

- (a) If any property is in the form of a personal property of a person other than the person subject to confiscation of entire property, such a property,
- (b) Up to three pairs of clothes and up to three pairs of shoes to be put on by the person subject to confiscation of entire property and his/her undivided family members,
- (c) Such bare cooking and dining utensils, pots and bare quilt and mattress as required for the person subject to confiscation of entire property and his/her undivided family members,

- (d) Such books as required for the undivided family of the person subject to confiscation of entire property to impart education,
- (e) Such food as required to maintain livelihood of the person subject to confiscation of entire property and his/her undivided family members for up to three months in maximum,
- (f) Bare inputs, tool or arms related with the occupation or employment of the person subject to confiscation of entire property and his/her undivided family members,
- (g) One yoke of oxen for farming.

(3) Notwithstanding anything contained in sub-section (2), in setting aside the property pursuant to clauses (b), (c), (d), (e), (f), and (g) of that sub-section, no property valued at more than thirty thousand rupees shall be so set aside.

(4) If the amount in question is not recovered in full even upon making confiscation of entire property pursuant to sub-section (2), no claim shall be made against other family members.

258. Imprisonment for amount in question or fine: (1) If the amount in question is not recovered in full even from the auction sale pursuant to sub-section (7) of Section 256 and the party entitled to recovery of amount in question wishes to subject the party liable to pay the amount in question to imprisonment and makes a petition for the same within seven days of the auction sale of property, the court shall

execute a memorandum thereof and imprison the party liable to pay the amount in question in accordance with law.

(2) In subjecting to imprisonment pursuant to sub-section (1), the court shall convert the remaining amount in question into imprisonment at the rate of three hundred rupees a day, and imprison the party liable to pay amount in question equal thereto.

(3) In subjecting to imprisonment pursuant to sub-section (1), no person shall be so imprisoned for more than four years in the case of an amount in question of the Government of Nepal or a public body which is owned or controlled by the Government of Nepal in full or majority and for more than two years in the case of an amount in question of a particular person or other body.

(4) If, in subjecting to imprisonment pursuant to sub-section (1), the amount in question is less than or remains less than three hundred rupees, the concerned person shall be subjected to imprisonment for one day for such an amount.

(5) In subjecting to imprisonment pursuant to sub-section (1), the person wishing to effect such imprisonment shall bear the ration expenses as chargeable pursuant to law.

(6) In subjecting to imprisonment for a fine, one shall be so imprisoned at the rate of one hundred rupees a day.

(7) Prior to subjecting to imprisonment pursuant to this Section, the concerned person shall be given a reasonable time to present his/her statements.

(8) Notwithstanding anything contained elsewhere in this Chapter, where a person in default of payment of the remaining amount in question is subjected by order of the court to imprisonment at the request of the party for the remaining amount in question not recovered, no claim may be made again on that matter.

259. In the event of death of person liable to pay amount in question:

(1) If the person liable to pay the amount in question dies prior to the recovery of such amount in question, the amount in question shall be recovered from the property in which he/she has right.

(2) If the amount in question is not recovered from the property in which he/she has right, the shortfall amount in question shall be recovered from the person who inherits his/her property.

(3) Notwithstanding anything contained in sub-section (2), in recovering the amount in question from the inheritor, no amount in excess of that inherited by him/her shall be recovered.

260. Concession in fine: If a person who is sentenced to a fine pursuant to a judgment pays the fine immediately or within sixty days of the date of passage of judgment, the person shall enjoy twenty percent concession in the fine imposed on him/her.

261. Execution of deed of compromise: (1) If any deed of compromise is so executed that any act has to be done or caused to be done by any government body, the court shall write to the concerned office to do the act set forth in the deed of compromise, within three days of the execution of the deed of compromise.

(2) Even though, in a case involving more than one plaintiff or defendant, all parties are not present for the execution of the deed of compromise, the deed of compromise shall be executed after the expiration of the time-limit. In so executing the deed of compromise, the interest of the person who does not show up for such compromise shall also be protected.

262. Period to get return of court fees, deposits and expenses: (1) Except as otherwise provided for in this Code, the concerned person shall get return of such court fees and deposits as held to be returned pursuant to judgment within one year after the date of knowledge of the final judgment.

(2) Except as otherwise provided for in this Code, the person entitled to get or return of the proceeds of auction sale shall receive such amount within three months after the date of auction sale.

(3) If the concerned person does not receive the court fees, deposits or amounts within the time-limit referred to in sub-section (1) or (2), the person shall not be entitled to get return of such amount subsequently.

(4) After the expiration of the time-limit referred to in sub-section (2), such deposits shall be credited to the government account.

263. Fees chargeable for the execution of judgment: (1) Except as otherwise provided for in this Chapter, the court shall collect the fees at the rate of ten percent from the recipient of any amount the payment of which has been effected by the court pursuant to a

judgment or any other amount and the fees at the rate of five percent from the payer of such amount.

(2) Notwithstanding anything contained in sub-section (1), no fees shall be charged for such specification of the deadline for repayment of a loan, provision of a document or division of property between or among creditors as effected by the court.

264. Complaint may be made: (1) A concerned person who is not satisfied with an act or action done or taken by any employee in the course of execution of a judgment may make a complaint with the judgment of the same court within fifteen days.

(2) A person who is not satisfied with a decision made on the complaint made pursuant to sub-section (1) may make a petition to the court hearing appeal.

(3) A complaint made pursuant to sub-section (1) and a petition made pursuant to sub-section (2) shall be disposed of within one month and two months, respectively.

265. Proceeding not to be void by the reason only the absence of representative: (1) If any proceeding has to be carried out in presence of a member or representative of the local body or to be signed by him/her pursuant to this Chapter and such a member or representative does not show up despite serving a written notice for his/her presence, the proceeding may be carried out or caused to be carried.

(2) Any proceeding otherwise duly carried out shall not be void merely by the reason that a member or representative of the local body was not present or refused to sign pursuant to sub-section (1).

266. Power to institute action or impose punishment on contempt: (1)

It shall be the duty of the parties of a case to assist in the execution of judgment pursuant to this Chapter.

(2) The court may institute action on contempt of court against a person who hinders the execution of judgment in accordance with law or impose punishment of a fine of up to one thousand rupees or imprisonment for a term not exceeding three months or both on such a person.

267. Employee entitled to incentive: (1) If a government employee who is deputed for the recovery of a fine imposed or government amount in question in pursuance of judgment does not wish to receive the amount for daily and travel allowance, the employee shall be entitled to an incentive allowance of thirty percent of the amount recovered.

(2) The bailiff (*Tahashildar*) shall be entitled to seven percent of the amount recovered pursuant to sub-section (1).

(3) The allowance or amount as referred to in sub-sections (1) and (2) shall be chargeable on the amount of fine or government recovered.

(4) If any person other than a government employee has recovered the government amount in question or fine pursuant to this Section, the amount as referred to in sub-section (2) may be provided that person as if he/she were a government employee.

Chapter-23

Provisions Relating to Civil Cases in which Government of Nepal is Plaintiff or Party

268. Investigation and filing of civil cases in which Government of Nepal is plaintiff: (1) A person who intends to institute a case set forth in Schedule-30 and a civil case which is defined as a civil case by the laws in force shall have to make a petition in writing or information orally, setting the evidence which is in his/her custody or which is available to the best of his/her knowledge and information in relation to such a case to the authority specified by the Government of Nepal by publishing a notice in the Nepal Gazette or to the concerned Landreform Officer where such authority has not been so specified.

(2) Where information orally is made pursuant to sub-section (1), the concerned authority shall set down the matters of that person in the form of a petition and get him/her to sign that document.

(3) The concerned authority shall, as required, take measurement and mapping of the house or land related with the case or make investigation into other necessary matters, and shall, having regard to the time required to make decision to or not to institute the case and if decision is made to institute the case, the time required to frame a plaint and file case, forward the originals of documents in the case file and one set of duplicate copies thereof, accompanied by the evidence collected and his/her opinion, to the concerned District

Government Attorney for decision to or not to institute case, in advance of at least fifteen days of the date of expiration of limitation.

(4) Even though a petition is not made by any person pursuant to sub-section (1), if the concerned authority himself or herself sees any reason to institute a case as referred to in sub-section (1), he/she has to collect necessary evidence, complete the procedures as referred to in sub-section (3) and forward the case file to the Government Attorney of the concerned district.

(5) The Government Attorney shall study the case file received pursuant to sub-section (3) or (4) and decide to or not to institute the case.

(6) If decision is made to institute the case pursuant to sub-section (5), the Government attorney shall frame a plaint and file it, accompanied by the evidence, in the concerned court.

(7) If decision is made not to institute the case pursuant to sub-section (5), the Government Attorney shall return the received case file and evidence to the concerned authority.

269. Case to be instituted as Government of Nepal being plaintiff: The cases set forth in Schedule-30 shall be instituted as the Government of Nepal being plaintiff in such cases.

Provided that Section 91 shall apply to the matters in which plaint has to be filed pursuant to that Section.

270. In the event of revelation that person is to institute case: (1) If, in studying the case file pursuant to sub-section (5) of Section 268, it is

revealed that the case is not one that is to be instituted as the Government of Nepal being plaintiff but that is to be instituted upon making complaint by the aggrieved person himself or herself in accordance with law, the Government Attorney shall make decision accordingly and inform the authority who has forwarded the case file to give a notice indicating that matter to the concerned person.

(2) The limitation as referred to in law shall, in the case of the concerned person, be counted from the date of receipt of information pursuant to sub-section (1).

272. Provisions relating to institution of other civil cases: (1) The authority, if any, specified by the concerned law for the institution of or collection of evidence on any civil case other than that set forth in Schedule-30, and the concerned chief of office, where such an authority has not be specified, shall so submit the case file and evidence, accompanied by his/her opinion, to the concerned Government Attorney for decision to or not to institute the case that the limitation for filing the plaint does not get expired.

(2) Upon receipt of the case file pursuant to sub-section (1), the Government Attorney shall make decision to or not to institute the case, and if so decided as to institute the case, shall also mention as to whom the case is to be instituted against, on which matter and under which law and send the case file back in a manner that the limitation for filing the case does not get expired.

(3) If decision is made by the Government Attorney to institute the case pursuant to sub-section (2), the authority who is

competent by law to that effect shall frame a plaint, sign it and file the case in the concerned court within the limitation, and a copy of the case file of such a case has to be provided to the Government Attorney.

273. Provision relating to limitation: (1) If a lawsuit is to be filed on behalf of the Government against any person on any civil matter, the lawsuit has to be filed within the limitation if any specified in this Code and other laws on that matter, and if no limitation has been so specified, within two years after the date of knowledge to the Government of Nepal of the occurrence of the cause of action.

Provided that if this Code or the other law provides that there is no limitation to file a lawsuit and that a lawsuit may be filed any time, the lawsuit may be filed any time.

(2) For the purposes of sub-section (1), when the concerned authority of the Government of Nepal comes to know the matter, the Government of Nepal shall be deemed to be in knowledge of the matter.

274. Provisions relating to examination of witness or submission of evidence: (1) A person who gives information on a case set forth in Schedule-30 shall be a witness of the plaintiff side.

(2) The concerned authority shall arrange to cause the presence or submission of a witness or evidence, on a case set forth in Schedule-30 and any other civil case in which the Government of Nepal is concerned, through the Government Attorney on the day as appointed by the court.

(3) The Government Attorney shall cause the examination of witnesses and submission of evidence on a case set forth in Schedule-30 and any other civil case in which the Government of Nepal is concerned.

(4) If any witness must be examined on a case set forth in Schedule-2, the witness may be summoned and examined as if he/she were a witness that must be summoned and examined on a criminal case.

275. Government Attorney to make pleadings and defense: (1) The Government Attorney shall make pleadings and defense on a case set forth in Schedule-30 and a civil case that is defined by any law as to be a state case.

(2) If, except as mentioned in sub-section (1), it is so requested by the concerned body in relation to a case in which the Government of Nepal is made an opposite party or a civil case which has been instituted as the Government of Nepal being a plaintiff, the Government Attorney may make pleadings and defense.

276. Time limit to be given: (1) The court shall give a time-limit of seventy days for making an appeal on a case set forth in Schedule-30.

(2) If the concerned party expires the time limit pursuant to sub-section (1) and makes an application showing a reasonable reason to the court, the court may extend the time limit of up to thirty days in relation the time limit that is extendable pursuant to Chapter-8.

277. Authority to make appeal, revision or review petition: (1) If it is required to make an appeal, revision or review petition on a case set

forth in Schedule-30 and on a civil case which is defined by any law as the Government of Nepal being plaintiff, the concerned Government Attorney shall make such an appeal or petition.

(2) If, except that set forth in sub-section (1), it is required to make an appeal, revision or review petition or other relevant petition on a civil case in which the Government of Nepal is a party or opposite party, the concerned authority or chief of office himself or herself shall make such an appeal or petition.

Provided that if the concerned authority or chief of office so writes, the concerned Government Attorney may make an appeal, revision or review petition or other relevant petition.

278. Procedures for filing lawsuit against the Government of Nepal:

(1) If it is required to make a lawsuit against the Government of Nepal on a civil case, the concerned person shall give a notice thereof to that office or the chief of that office against which the lawsuit has to be made.

(2) If a notice is received pursuant to sub-section (1), the concerned office or chief of that office shall have to obtain consultation or clearance of another office or body wherever so required.

(3) If a notice is received pursuant to sub-section (1) and there is any reason why the lawsuit should not have been made on that matter, the concerned office or chief of that office shall give information thereof, along with clear reason for the same, to the

concerned person within thirty days after the date of receipt of information pursuant to that sub-section.

(4) If no information is given within the period as referred to in sub-section (1) or the said reason why the lawsuit should not have been made is not reasonable, the concerned person may file a lawsuit within thirty five days after the date of receipt of such information.

279. Application of Code and law on other matters: This Chapter shall apply to the matters set forth in this Chapter, and the other Chapters and law shall apply to the other matters not set forth in this Chapter, in relation to civil cases in which the Government of Nepal is plaintiff or party.

Chapter-24

Miscellaneous

280. Compensation to be determined: (1) If, on a case in which compensation may be obtained pursuant to law for any loss or damage caused to a person by the violation of right or interest of that person, that person makes a claim for compensation, the court shall, in deciding the case, determine the compensation.

(2) In determining the compensation pursuant to sub-section (1), the following matters may be taken into consideration except as otherwise provided by law for the determination of compensation:

- (a) Actual loss or damage caused from the violation,
- (b) Loss in income caused from the violation,
- (c) Additional loss resulted from the violation.

(3) Notwithstanding anything contained elsewhere in this Section, in determining the compensation, compensation shall be determined only on the basis of the actual loss resulted from the violation of the right or interest of any person and the actual loss resulted or likely to result from that cause, and compensation may not be determined on remote matters.

281. Guardian may file case with the leave of court: (1) In making or submitting a plaint, statement of defense, memorandum of appeal or petition on behalf of a minor who has not attained the age as referred to in law, an infirm person due to old age despite attaining the age, a

person who is blind or dumb or a person who is insane, the guardian of such a person may, with the leave of the court upon a separate petition, along with the plaint, statement of defense, memorandum of appeal or petition, make or submit the plaint, statement of defense, memorandum of appeal or petition.

(2) There shall be examined evidence first as to whether a person is a minor, a person is infirm due to old age despite attaining the age, is a blind, dumb or insane or not, pursuant to sub-section (1), and if so proved, the guardian may make or submit a plaint, statement of defense, memorandum of appeal or petition on behalf of that person despite failing a power of attorney or authorization.

(3) If a petition is made for a leave pursuant to sub-section (1), the court shall examine the petition and make decision on the petition on the same day as on which the petition is made for leave.

282. Institution of case on behalf of disappeared person: (1) In making or submitting a plaint, statement of defense, memorandum of appeal or petition on behalf of a disappeared person, the heir to such a person may, with the leave of the court upon a separate petition, along with the plaint, statement of defense, memorandum of appeal or petition, make or submit the plaint, statement of defense, memorandum of appeal or petition.

Explanation: For the purposes of this Section, the expression "disappeared person" means a person who has left the house without information since consecutive three years ago or who has gone abroad but it is uncertain that he/she will return to Nepal.

(2) There shall be examined evidence first as to whether a person is a disappeared person or not, pursuant to sub-section (1), and if so proved, the heir may make or submit a plaint, statement of defense, memorandum of appeal or petition on behalf of that person despite failing a power of attorney or authorization.

(3) If a petition is made for a leave pursuant to sub-section (1), the court shall examine the petition and make decision on the petition within fifteen days after the making of petition for leave.

(4) The provision of limitation shall not apply in the case as referred to in sub-section (3).

283. Undertaking to accept case: (1) Where a case is being proceeded with any court upon a plaint or memorandum of appeal being filed by person, and any party of the case dies or becomes of unsound of mind or disappears prior to the judgment on that case and consequently the time-limit and due date appointed by the court gets expired, the heir to that party may make a petition to the court, undertaking to accept the case, for the extension of the time-limit and due date, within twenty one days from the date of his/her death, being of unsound mind or disappearance, excluding the time required for journey.

(2) If, upon examining a petition made pursuant to sub-section (1), the contents seem to be reasonable, the court may order to allow to undertake to accept the case and to extend the expired time-limit or due date.

284. Hearing of cases to be conducted in open bench: (1) The court shall conduct hearing of cases in open bench.

(2) Notwithstanding anything contained in sub-section (1), if any party of the case makes a petition setting out the reasons for conducting in camera the hearing of a case of family relation, establishment of relation and divorce, and the request of petition seems to be reasonable or if the court itself deems that it is appropriate to conduct in camera the hearing of any case, the court shall make an order to conduct in camera the hearing of the case.

(3) Where an order is made to conduct in camera the hearing of a case pursuant to sub-section (2), the court shall prohibit the access of any person other than the parties of that case or their attorneys, law practitioners appointed by the parties or such other persons or employees as the judge considers necessary.

(4) Notwithstanding anything contained elsewhere in this Section, if the court considers it reasonable to prevent the access of any person for the public security reason, the court may prohibit the access of such person to the bench.

285. Requirement to make proceeding in presence of parties: In conducting hearing of cases pursuant to Section 271 or deciding issues to be settled, such proceeding shall be conducted in presence of the parties.

Provided that even if any party is not present on the due date appointed for the hearing of a case, nothing shall be deemed to bar the deciding, and reaching the verdict on, the case.

286. Priority order of trying cases: (1) The court shall proceed, hear and settle cases as per the following order of priority:

- (a) A case in which a disabled or a minor is a party,
- (b) A case in which a physically infirm person or aged having attained more than seventy five years of age is a party,
- (c) A case relating to name-giving function or settlement of relationship,
- (d) A case relating to alimony,
- (e) A case relating to divorce,
- (f) A case registered earlier according to the order of registration of cases.

(2) Notwithstanding anything contained in sub-sections (1), if there are cases of more than one nature in the same order, the case registered earlier shall be proceeded, heard and adjudicated first.

(3) Notwithstanding anything contained in sub-sections (1), and (2), the court may, in view of the gravity and propriety of any case, proceed, hear and adjudicate such a case by according priority to it.

287. Judge not to try case involving conflict of interest: (1) No judge shall, in proceeding, hearing and adjudicating cases pursuant to this Code, proceed, hear and adjudicate the following case:

- (a) A case to or in which his/her right, interest or concern or that of his/her close relative is involved,

Explanation: For the purposes of this Section, the term “close relative” means a person who is in the order of

priority to inherit his/her property upon succession, in accordance with law, maternal uncle, maternal aunt, mother's elder sister, mother's younger sister, father's elder brother, father's younger brother, mother-in-law, father-in-law on the side of husband or wife, father's sister, father's sister's husband, elder brother-in-law, younger brother-in-law, sister-in-law, elder sister, younger sister, daughter, son-in-law, nephew, niece's husband, or any person residing in an undivided family of such relative person.

- (b) A case in which he/she was an attorney, law practitioner or witness at any time,
- (c) A case which was decided by himself or herself as the judge in any court or in which he/she made final order,
- (d) A case in which he/she has given an opinion on whether to institute it or not at any time,
- (e) A case in which he/she or his/her undivided family member has a conflict of interest substantially for any other reason.

(2) If there appears any circumstance as referred to in sub-section (1), the case hearing judge shall make an order setting out the reason for not hearing it.

(3) If any judge proceeds to try, hear or settle any case in breach of sub-section (1), any party may make a petition,

accompanied by necessary evidence, for not so proceeding, hearing or adjudicating the case.

(4) If a petition is received pursuant to sub-section (3), the case trying judge shall, before proceeding, hearing or adjudicating the case, ascertain whether the request or claim of such a petition is reasonable or not, and make an order to that effect if the judge should not hear the case.

(5) If an order is made pursuant to sub-section (2) or (4), such case shall be proceeded, heard or adjudicated by another judge in the same court, and failing such a judge, the case-file, accompanied by the reasons therefor, shall be sent to the nearby court of same level to proceed, hear and adjudicate the case, and due date shall also be appointed for the parties to make presence in that court.

(6) If the case-file is received pursuant to sub-section (5), such a court shall also proceed, hear and adjudicate such a case despite that it is not within its jurisdiction.

288. Acts to be carried out by judge himself or herself: (1) The following acts, out of the acts to be carried out by the court pursuant to this Code, shall be carried out by the judge himself or herself:

- (a) To take and record depositions of parties,
- (b) To take an oath of witness,
- (c) To take and record depositions of witnesses,
- (d) To make interim or interlocutory orders,

- (e) To execute order sheets on matters to be decided in the case,
- (f) To issue order for the examination of evidence,
- (g) Preliminary hearing and pre-hearing discussions of cases,
- (h) To make hearings,
- (i) To effect compromise,
- (j) To pass judgments or issue any kind of final order.

(2) Notwithstanding anything contained in sub-section (1), a judge may take assistance of an employee in the court whose rank is at least non-gazette first class, as far as available in the court, for the purposes of taking or record statements or depositions.

289. Translation of document: (1) If any document written in any language other than the Nepali language is submitted to the court in the form of evidence, and it appears necessary to translate such a document in the Nepali language, the court may order the party who has submitted such a document to submit a translation of the document in the Nepali language.

(2) If an order is made pursuant to sub-section (1), the concerned party shall get the document translated in the Nepali language and submit a certified copy thereof to the court.

290. Assistance of translator: (1) If it is required to take a statement or deposition of any party or witness who is unable to understand the Nepali language, or for any other purpose, the court may appoint take assistance of a translator of the concerned language.

(2) The concerned party shall bear the expenses incurred in taking assistance of the translator for statement or deposition pursuant to sub-section (1).

291. Power to ask parties of case at any time: (1) The judge may, prior to passing a judgment on a case, order and ask any matter to the parties of the case at any time.

(2) The responses given pursuant to sub-section (1) shall be recorded in the case-file.

292. Identity of party or witness may be kept secret: (1) Notwithstanding anything contained elsewhere in this Code, if it appears that the disclosure of the identity of any party or witness may be prejudicial to the social prestige or honor of such a party or witness or may result in undue fear, terror or fright by any party or be prejudicial to the security of his/her body or life, the concerned party may request the court that the name, surname, address of such a party or witness or the name of his/her father or any other description which may disclose his/her identity be kept secret.

(2) If a request is made pursuant to sub-section (1), the court may issue an order that the name, surname and address of such a party or witness and his/her father's name or his/her identity be kept secret.

(3) In disclosing the name, surname, address of the person or his/her father's name having been kept secret pursuant to sub-section (1) at the time of hearing of the concerned case or publishing details pertaining thereto, such disclosure shall be made under nick name, surname, address or father's name, as per the order of the court.

293. Duty to assist in witnessing or signing: (1) Any person required to witness an action or sign a document prepared by the court in the course of any proceeding pursuant to this Code shall assist the court by so witnessing the action or signing the document.

(2) If any person refuses to witness a action or sign a document as referred to in sub-section (1), the employee executing that action or document shall execute such document which shall be signed by any other two persons present and by himself or herself, setting out that matter and remarks, along with the reason for the failure of such a person to witness or sign the concerned document.

(3) Any document executed pursuant to sub-section (2) shall be deemed to have been executed in fulfillment of the requirements specified by law.

(4) If any person required to sign any document executed before the court refuses to sign it, the judge shall set out the matter, mention remarks in the concerned document and sign it.

(5) The concerned court may fine a person who causes obstruction to or does not cooperate in the action of the court pursuant to this Section with a maximum of five thousand rupees.

294. Saving of act done in good faith: No judge or other employee shall be subject to any action in relation to any act or action done or taken in good faith in accordance with this Code or the rules framed under this Code.

295. Not to be invalid by reason of printing or mathematical error: (1) Where there is any minor error or omission in respect of the

procedures referred to in this Code while trying, hearing and settling a case, or mathematical or any other minor error or omission in writing or printing while preparing any document, all acts and proceedings relating thereto shall not be deemed invalid merely by that reason.

(2) Where there is any mathematical or any other minor error or omission in writing or printing while trying, hearing and settling a case or while preparing any document pursuant to sub-section (1), the judgment may, by executing a separate memorandum, so correct such an error or omission that such correction does not affect the verdict.

296. Receipt to be taken or given: (1) While returning any original document registered in the court to any person or handing over any original document by the court to any person, a receipt or proof to the effect the such document has been so returned or handed over shall be executed or taken and enclosed in the case file.

(2) While receiving any document submitted by any person to the court, it shall give a receipt of the same to that person.

297. Petition fee: Except as otherwise provided for in this Code, there shall be charged a fee of ten rupees while making any petition to the court.

298. Index of documents: There shall be maintained an index of documents in each case in the format specified in Schedule-30, and such index shall record the serial number and details of the documents, according to the order of the date of registration.

299. Disposal of documents: (1) After the completion of five years of the final decision on a case, the court shall dispose the documents, except the following documents enclosed in the case file of the said case:

- (a) Complaint,
- (b) Affidavit,
- (c) Statement of defense or counter claim,
- (d) Summons issued in the name of party,
- (e) Map or design related with the case,
- (f) Originals of documentary evidence,
- (g) Deed of compromise,
- (h) Memorandum of appeal,
- (i) Petition made for revision or review of verdict,
- (j) Judgment, decision, final decision made by the court,
- (k) Any such other documents as considered necessary to be preserved in accordance with law.

(2) The employee responsible for documents (*Shrestedar*) shall, prior to the disposal of documents pursuant to sub-section (1) prepare an inventory of the documents to be disposed and sign the inventory.

300. Power to make alteration in Schedules: The Government of Nepal may, by publishing a notification in the Nepal Gazette, make necessary alteration in, or addition to, or deletion from, the Schedules.

- 301. Power to frame rules:** The Supreme Court may frame necessary rules on matters of court proceedings, for the accomplishment of the objectives of this Code.
- 302. Power to remove difficulty:** If there arises any difficulty in relation to court proceedings in implementing this Code, the full court of the Supreme Court may make necessary provision in order to remove such a difficulty.
- 303. Power to frame guidelines:** The Supreme Court may, subject to this Code and the rules framed under this Code, frame necessary guidelines for the accomplishment of the objectives of this Code.

Schedule-1

(Relating to sub-section (1) of Section 95)

Format of Complaint

To be filled by Court/Office

Registration number:

Date of registration:

Complaint

lodged in.....Court/Office

Civil diary number of the year.....

Mr./Ms....., age of years, son/daughter/husband/wife of
....., a resident of -Plaintiff

(If there are two or more Plaintiffs, mention the same details in the
case of each Plaintiff)

Versus

....., age of years, son/daughter/husband/wife of
....., a resident of -Defendant

(If there are two or more Defendants, mention the same details in the
case of each Defendant)

Case:

1. I/we Plaintiff make complaint as mentioned in the following paragraphs:
 - (a)
 - (b)

(c)

(d)

(e)

2. This case is within the jurisdiction of this Court/Office pursuant to Section... of

3. In the case of appointment of law practitioner, details thereof:

(a) Name..... Certificate number.....

(b) Name..... Certificate number.....

(c) Name..... Certificate number.....

4. I/we have tendered the following fees for payment herewith:

(a) Rs..... for.....

(b) Rs..... for.....

(c) Rs..... for.....

5. Evidence:

I/we have attached the copies of the following evidentiary documents in this matter:

(a)

(b)

(c)

6. Witness:

(a)

(b)

(c)(Mention full names, ages, and addresses of witnesses)

7. The matters contained herein are true and correct. If they are proved false, I shall be liable to consequences in accordance with law.

Pliant lodged by:

.....

Done onday of the month of.....of the year.....

Schedule-2

(Relating to sub-section (1) of Section 98)

Format of Diary Book

.....**Court/Office**

Civil Diary Book from the month of *Shrwan* of the year.....to the last day of
the month of *Ashad* of the year.....

Remarks	Signature of employee receiving record case file	Type of judgment	Date of judgment and name of judge passing judgment	Date on which statement of defense submitted or time limit has expired	Fees	Figure of amount in question	Name and signature of section chief	Case	Defendant's name, surname and address	Plaintiff's name, surname and address	Plaintiff's signature	Date of registration	Case number	SN

Schedule-3

**(Relating to sub-section (1) of Section 98, sub-section (1) of Section 122,
and sub-section (2) of Section 124)**

Receipt

.....Court/Office

Whereas, plaint/ statement of defense/ memorandum of appeal lodged/submitted by....., has been received by this Court/Office and registered in the Diary Book of this Court/Office, with registration number....on(date);

Now, therefore, this receipt is hereby given.

Employee registering plaint/statement of defense/memorandum of appeal:

Signature:

Name:

Post:

Date:

Seal of Court/Office

Schedule-4

(Relating to sub-section (4) of Section 99)

Receipt of Acknowledgement of Pleint along with the summons

Whereas, has lodged the Pleint inCourt/Office on.....(date), and has been tendered by him/her to me for the purpose of submitting a statement of defense;

Now, therefore, I have acknowledged the receipt of the copies of the Pleint and evidence, along with the summons.

Person acknowledging receipt of Pleint along with the summons:

Signature:

Name:

Date:

Time:

Schedule-5

(Relating to sub-section (1) of Section 104 and Section 114)

Summons Issued byOffice/Office

in the Name of Defendant

Whereas, Mr./Ms....., age of years, son/ daughter/ husband/ wife of, a resident of Gown, Ward No.....,VDC/Municipality,District, has lodged a Complaint ofcase against you Mr./Ms....., age of years, son/ daughter/ husband/ wife of, a resident of Gown, Ward No.....,VDC/Municipality, in this Office/Court ondate;

Now, therefore, a copy of the Complaint is also hereby herewith forwarded. You are hereby informed to appear in person or send an attorney or law practitioner in accordance with law, accompanied by a Statement of Defense and your documentary evidence in accordance with law within twenty one days excluding the time limit required for journey after the date of receipt of this summons by you or the date of affixation of this summons at your house according to law.

If you fail to appear in person or through an attorney or law practitioner, accompanied by the Statement of Defense within the time-limit, the case shall be adjudicated according to law, and any of your complaints on this matter shall not be entertained in the future.

Summons issuing authority:

Signature:

Name:

Post:

Date:

Time:

Date of service:

(a) In cases where the summons is received by the person required to receive:

I hereby sign covenanting that I have myself received a copy of the summons, as well as a copy of the Complaint, issued in my name as mentioned herein in presence of the following witnesses:

(b) In cases where the summons is received by a member of the joint family of the person required to receive:

As the person named in the summons as mentioned herein has refused to receive the summons/ has not been found, I....., age of.....year, who is.....by relation ofthe person who is named in the summons, hereby sign covenanting that I have received a copy of the summons, as well as a copy of the Complaint, issued in his/her name as mentioned herein, in presence of the following witnesses:

(c) In cases where the summons is affixed at the house of the person required to receive:

We, the following persons, hereby sign covenanting that as the person named in the summons as mentioned herein as well as any major member of his/her joint family has refused to receive the summons/has not been found, a copy of the summons, as well as a

copy of the Complaint, issued in his/her name, has been affixed at his/her house in a manner conspicuously to all in presence of us, the following witnesses, and it is true that a copy of the summons has been delivered to the Office of Ward No.... ofVDC/Municipality.

(d) In cases where the summons is to be served when the person required to receive it is not found:

We, the following persons, hereby sign covenanting that as the person required to receive the summons as mentioned herein or his/her house as well has been searched but not found, a copy of the summons issued in his/her name has been affixed at.... of the concerned Ward or at public place..... (set out the place) of street...., and the copy of the Complaint and the served summons have been sent back....

Witnesses

We hereby sign covenanting that it is true that the summons has been served in our presence in accordance with the above-mentioned clause.

1. Mr./Ms....., age of years, a resident of village, Ward No.....,VDC/Municipality,District.
2. Mr./Ms....., age of years, a resident of village, Ward No.....,VDC/Municipality,District.

3. Mr./Ms....., age of years, a resident of
village, Ward No.....,VDC/Municipality,
.....District.

In presence:

Mr./Mrs., member/secretary..... of
.....VDC/Municipality,..... District

**In cases where affixed at house or village city or street is not
found**

Employee or office-bearer who signs covenanting that one copy of the
summons as mentioned herein has been tendered for affixing at the
notice-board of the Office of Ward No..... of this
.....VDC/Municipality:

(Employee or office-bearer)

Process server:

Process server's name, surname:

Signature:

Date:

Schedule-6

(Relating to sub-section (2) of Section 104)

Summons Issued byOffice/Office

in the Name of Person Except Defendant

Whereas, it is necessary to inquire you, Mr./Ms....., age of years, son/ daughter/ husband/ wife of, a resident of village, Ward No.....,VDC/Municipality,District, into some matters in connection with the case of, between the plaintiff..... and the defendant.....;

Now, therefore, you are hereby informed to appear in person in this Office/Court or send an attorney or law practitioner appointed in accordance with law within seven days excluding the time limit required for journey after the date of receipt of this summons by you or the date of affixation of this summons at your house according to law.

If you fail to appear in person or through an attorney or law practitioner within the time-limit, the case shall be adjudicated according to law, and any of your complaints on this matter shall not be entertained in the future.

Summons issuing authority:

Signature:

Name:

Post:

Date:

Time:

Date of service:

- (a) In cases where the summons is received by the person required to receive:**

I hereby sign covenanting that I have myself received a copy of the summons, as well as a copy of the Complaint, issued in my name as mentioned herein in presence of the following witnesses:

- (b) In cases where the summons is received by a member of the joint family of the person required to receive:**

As the person named in the summons as mentioned herein has refused to receive the summons/ has not been found, I....., age of.....year, who is.....by relation ofthe person who is named in the summons, hereby sign covenanting that I have received a copy of the summons, as well as a copy of the Complaint, issued in his/her name as mentioned herein, in presence of the following witnesses:

- (c) In cases where the summons is affixed at the house of the person required to receive:**

We, the following persons, hereby sign covenanting that as the person named in the summons as mentioned herein as well as any major member of his/her joint family has refused to receive the summons/has not been found, a copy of the summons, as well as a copy of the Complaint, issued in his/her name, has been affixed at his/her house in a manner conspicuously to all in presence of us, the following witnesses, and it is true that a copy of the summons has

been delivered to the Office of Ward No.... ofVDC/Municipality.

(d) In cases where the summons is to be served when the person required to receive it is not found:

We, the following persons, hereby sign covenanting that as the person required to receive the summons as mentioned herein or his/her house as well has been searched but not found, a copy of the summons issued in his/her name has been affixed at.... of the concerned Ward or at public place..... (set out the place) of street...., and the copy of the Plaint and the served summons have been sent back....

Witnesses

We hereby sign covenanting that it is true that the summons has been served in our presence in accordance with the above-mentioned clause.

1. Mr./Ms....., age of years, a resident of village, Ward No.....,VDC/Municipality,District.
2. Mr./Ms....., age of years, a resident of village, Ward No.....,VDC/Municipality,District.
3. Mr./Ms....., age of years, a resident of village, Ward No.....,VDC/Municipality,District.

In presence:

Mr./Mrs., member/secretary..... of
.....VDC/Municipality,..... District

**In cases where affixed at house or village city or street is not
found**

Employee or office-bearer who signs covenanting that one copy of the
summons as mentioned herein has been tendered for affixing at the
notice-board of the Office of Ward No..... of this
.....VDC/Municipality:

(Employee or office-bearer)

Process server:

Process server's name, surname:

Signature:

Date:

Schedule-7

(Relating to sub-section (3) of Section 113)

**Receipt Given by Attorney or Law Practitioner upon Receiving Plaint
Accompanied by the Summons/Summons**

I have received the Plaint accompanied by the summons and a copy of evidence/summons tendered by Mr./Ms....., who has lodged the Plaint in this Office/Court on.....(date), for the purpose of submitting a State of Defense.

Attorney or law practitioner receiving plaint accompanied by the summons/summons:

Signature:

Name, surname:

Address:

Date:

Time:

Certificate number of attorney/law practitioner:

Schedule-8

(Relating to Section 120)

Format of Statement of Defense

To be filled by Court/Office

Registration number:

Date of registration:

Statement of Defense Submitted to

.....Court/Office

Civil diary number of the year.....

Mr./Ms....., age of years, son/daughter/husband/wife of
....., a resident of -Defendant

(If there are two or more Defendants, mention the same details in the case of each Defendant)

Versus

....., age of years, son/daughter/husband/wife of
....., a resident of -Plaintiff

(If there are two or more Plaintiffs, mention the same details in the case of each Plaintiff)

Case:

Whereas, in the above-mentioned case, the summons accompanied by the
Plaint has been served on..... (date);

I/we have appeared along with the Statement of Defense within the time-limit, in relation to the matters claimed by the Pliant in various paragraphs of his/her Plaint.

1. I/we have set out the following paragraphs my/our true statements in relation to the matters claimed by the Plaintiff:

(a)

(b)

(c)

(d)

(e)

2. I/we admit the claims of Plaint fully or partly/do not admit the same at all.

3. Mention counter claims if any:

(a)

(b)

(c)

4. In the case of appointment of law practitioner, details thereof:

(a) Name..... Certificate number.....

(b) Name..... Certificate number.....

(c) Name..... Certificate number.....

5. I/we have tendered the following fees for payment herewith:

(a) Rs..... for.....

(b) Rs..... for.....

6. Evidence:

I/we have attached the copies of the following evidentiary documents in this matter:

(a)

(b)

(c)

6. Witness:

(a)

(b)

(c)(Mention full names, ages, and addresses of witnesses)

7. For such and such reasons, this matter is or is not liable to preliminary hearing pursuant to Section 131 of the Civil Procedure Code, 2067 (2011).

8. The matters contained herein are true and correct. If they are proved false, I shall be liable to consequences in accordance with law.

Statement of Defense submitted by:

.....

Done onday of the month of.....of the year.....

Schedule-9

(Relating to sub-section (4) of Section 137)

Format of Book of Due Date

Book of Due Date maintained in.....Court/Office

Year:.....

Month, Day	SN	Case	Name of appellant/ plaintiff/petitioner	Name of respondent/ plaintiff	Purpose of appointment of due date	Remarks

Signature:

Schedule-9
(Relating to sub-section (4) of Section 137)
Format of Memorandum of Due Date

Memorandum of due date issued by.....in the name of.....

.....Versus.....

Whereas, the date of, has been appointed as the due date for presence for the purpose of, in the case of....., civil diary number of the year.....;

Now, therefore, you are hereby required to make presence at.....o'clock on the said day.

Signature of employee appointing due date:

Date:

Schedule-11
(Relating to sub-section (7) of Section 138)
Format of Receipt of Due Date

Receipt of Due Date Maintained in.....Office/Court

Plaintiff

Defendant

Case:

On.....(date)

Whereas, the case is scheduled to be heard finally for judgment or
.....business is to be conducted on.....(date);

Now, therefore, I hereby sign covenanting that I shall make presence
at.....o'clock on the said day.

Plaintiff:

Defendant:

Schedule-12

(Relating to sub-section (2) of Section 151)

Format of Power of Attorney

I have, by this power of attorney, appointed and authorized Mr./Ms....., age ofyears, holding citizenship number.....(year and district of issue of citizenship certificate), a resident of, as my attorney to carry out the act of..... (set out the purpose) on my behalf, in the case of..... with..... He/she does not suffer any disqualification for being an attorney, in accordance with law. Any such penalty, fine, court fees, government amount in question or other fees as imposed on me by the court pursuant to law is not due and payable by me. The contents mentioned above are true and correct. I consent that this power of attorney may be annulled pursuant to law if the contents mentioned above are proved to be false.

Date:

Thumb impressions

Right Left

Signature:

.....(Full name)

.....(Full address)

I hereby consent to act as an attorney of Mr./Ms....., age of years, holding citizenship number..... (year and district of issue of citizenship certificate), a resident of....., as mentioned above. I shall perform the said act with honesty. Any such penalty, fine, court fees, government amount in question or other fees as imposed on me by the court pursuant to law is not due and payable by me. I do not suffer any disqualification for being an attorney, in accordance with law.

Date:

Thumb impressions

Signature:

Right Left

.....(Full name)

.....(Full address)

Witnesses:

It is true and correct that this power of attorney has been drawn up and signed in our presence.

(1)age ofyears, a resident of.....

(2)age ofyears, a resident of.....

(3) Writer:.....

This Power of Attorney has been drawn up at.....

Date:

Schedule-13

(Relating to sub-section (3) of Section 185)

Format of Summons Issued in the Name of Witness

Summons issued by..... Office/Court in the name of.....a resident
of.....

Whereas, you have been mentioned as a witness by in the case
of....., in which.....is plaintiff andis defendant, and it is
required to inquire you into some matters and take your deposition;

Now, therefore, you are hereby required to appear in this Office/Court
at.....o'clock in the morning on the-----day of the month of.....the
year..... If you fail to appear, it shall be in accordance with the laws.

Signature of summons issuing authority:

Signature:

Name:

Post:

Date:

(Seal of the Office/Court)

Schedule-14

(Relating to sub-section (5) of Section 186)

Format of Deed of Records of Examination of Witness through Video Conferencing

It is true and correct that since Mr./Ms....., a resident of....., who is a witness of the plaintiff/defendant, in the case....., in whichis plaintiff anddefendant , could not appear in the court, that witness has been examined through video conferencing by an order dated..... The witness was examined in presence of us, the following persons.

Name, surname of the witness:

Signature of employee deputed by the court:

Name, surname and post of employee deputed by the court:

Signature of plaintiff, defendant or their attorney or law practitioner:

Name and surname of plaintiff, defendant or their attorney or law practitioner:

Signature of member or representative of local body:

Name, surname and post of member or representative of local body:

Schedule-15
(Relating to Section 189)
Form of Oath To be Taken by Witness

I.....hereby take an oath in the name of the God/ swear with truth and honesty that in the case of.....versus....., I shall give true statement of whatever I have seen, known and heard; that I shall not conceal or lie any matter; and that I shall give true answers to all questions asked by the Office/Court and by or on behalf of the parties to the case, to the extent of whatever I have seen, known and heard. If the matters are proved false, I shall be liable to the consequences as per law.

Signature of oath taking person:

Date:

It is true and correct that the witness has taken oath in my presence.

(Signature of the judge)

Date:

Schedule-16

(Relating to sub-section (4) of Section 192)

Format of Taking Deposition of Witness

Case.....

Civil Diary Number.....of the year.....

.....Versus.....

Deposition of witness.....

Questions and answers of the questions

1. Question (to be asked by the court): What is your and your father's, mother's name?

Answer:

What is your age? What is your occupation? Where do you live?

Answer:

2. Question (to be asked by the concerned party/his/her law practitioner):

(a) Answer:.....

(b) Answer:.....

(c) Answer:.....

(d) Answer:.....

(Note: If the concerned party or law practitioner does not ask any question, the court shall ask necessary questions)

3. If the opposite party/law practitioner has made cross-examination, details thereof:.....

(a) Answer:.....

(b) Answer:.....

(c) Answer:.....

- (d) Answer:.....
4. If the concerned party party/law practitioner desires to make re-examination, details thereof:.....
- (a) Answer:.....
- (b) Answer:.....
- (c) Answer:.....
- (d) Answer:.....
5. If the court desires to ask any question, details thereof:.....
- (a) Answer:.....
- (b) Answer:.....
6. It is true and correct that this deposition records what I have stated.

Signature of the party:

Signature of the person making deposition:

Signature of the person/judge taking deposition:

Date:

Schedule-17
(Relating to sub-section (2) of Section 194)
Form of Commission/Letter of Rogetory

A commission/letter rogetory sent by.....
Case number
Of the year.....
Case
.....Plaintiff
Versus
.....Defendant

Deposition of witness.....

1. Question: What is your and your father's name?
Answer:
What is your age? What is your occupation? Where do you live?
Answer:
2. Questions asked and sent by the court:
 - (a) Question: Answer:.....
 - (b) Question: Answer:.....
 - (c) Question: Answer:.....
 - (d) Question: Answer:.....
 - (e) Question: Answer:.....
3. If the opposite party/law practitioner has appeared and made cross-examination, details thereof:.....
 - (a) Answer:.....
 - (b) Answer:.....
 - (c) Answer:.....
4. It is true and correct that this deposition by commission records what I have stated.

Signature of the party:

Signature of the person making deposition by commission:

Signature of the person or judge taking deposition by commission:

Date:

Schedule-18

(Relating to sub-section (3) of Section 203)

.....Court

Form of Judgment

.....District Court/Office

Bench

Judgment passed by.....

Civil Diary Number.....of the year.....

Case:

Name, surname and address of the Plaintiff (If there are two or more Plaintiffs, mention the same details in the case of each Plaintiff)	Name, surname and address of the Defendant (If there are two or more Defendants, mention the same details in the case of each Defendant)
Plaintiff's witness.....	Defendant's witness.....
Evidence:	Evidence:

Examined by the court:

Witness:.....

Evidence:.....

.....

Brief facts of the case:

Matters to be decided by the court:

Verdict of the court, accompanied by the reasons:

Other necessary matters:

(Note: On the basis of the plaint lodged, statement of defense submitted in rebuttal of the plaint, counterclaims, evidences furnished by the plaintiff or the defendant in the concerned case, and the relevant laws, the judge shall have to set down his/her verdict specifying the reasons why the claims of the plaint or counterclaims sustain or not.)

1. Matter relating to the execution of judgment:
2. Matter relating to time-limit for appeal:
3. Matter relating to court fees:
4. Other necessary matters:

(Note: In the matters to be mentioned in the subsequent part of the judgment, the judgment passing judge shall mention how the judgment is executed, whether it is appealable or not and if appealable, in which court it is appealable, whether court fees, charges are to be recovered or not, and if so recovered, how they are to be recovered and other necessary matters depending on the nature of the case).

The judge has to put his/her full signature here,
along with the date

Name of the employee assisting in the preparation of the judgment:

Done on, the.....day of the month of.....of the year.....

Schedule-19

(Relating to sub-section (3) of Section 205)

Format of Notice of Appeal Time Limit along with Judgment/ Notice of Judgment

The notice of appeal time limit along with judgment/notice of judgment issued byCourt/Office in the name of, a resident of.....

Whereas, in the case of....., in whichis plaintiff andis defendant, judgment has been passed by this Court/Office on....., sustaining the plaintiff claim/dismissing the plaintiff claim/withholding the plaintiff claim;

Now, therefore, if you are not satisfied with the judgment, you are hereby informed to make an appeal in the Appellate Court within....days from the date of receipt of this time-limit or of the affixation of the notice of time-limit at your house. If you fail to make an appeal within the time limit and expire the time limit, the case shall be dealt with in accordance with law. Any of your subsequent claims shall not be entertained. This notice is hereby sent for your information.

Signature of authority issuing the notice of appeal time limit/judgment:

Signature:

Name:

Post:

Date:

Schedule-20

(Relating to sub-section (3) of Section 213)

Format of Memorandum of Appeal

To be filled by Court/Office

Registration number:

Date of registration:

Memorandum of Appeal

filed in.....Court/Office

....., a resident of..... Appellant/Plaintiff/Defendant

(If there are two or more Appellants, mention the same details in the case of each Appellant)

Versus

....., a resident of..... Respondent/Plaintiff/Defendant

(If there are two or more Respondents, mention the same details in the case of each Respondent)

Case:

The judge and Court/Office passing judgment:

Date of judgment:

Case file number of judgment:

Whereas, I/ we am/are not satisfied with the judgment passed by the said judge and the court/office in the above-mentioned case in which I/ we am/are party, thereby holding the following matters in relation to the

following matters, and I/ we have got the notice of the judgment on....(mention the date);

Now, therefore, I/ we hereby make the following appeal, pursuant to Section.....of the Civil Code, 2067 (2010).

1. Short description of the case:
2. Grounds on which the judgment is based:
3. Reasons for making appeal and matters of rebuttal of the grounds on which the judgment is based:
 - (a)
 - (b)
 - (c)
4. Appeal pleas:
5. Court fees and other fees chargeable in making appeal:
6. Other necessary matters, if any:
 - (a)
 - (b)
 - (c)
7. The matters contained herein are true and correct. If they are proved false, I shall be liable to consequences in accordance with law.

Appellant's signature:

Date:

Schedule-21

(Relating to sub-section (1) of Section 219)

Format of Notice Issued to Summon the Presence of Respondent

.....Office/Office

..... Appellant/Plaintiff/Defendant

Versus

..... Respondent/Plaintiff/Defendant

Notice issued in the name of Mr./Ms....., age of years, son/
daughter/ husband/ wife of, a resident of
village/street, Ward No.....,VDC/Municipality,District.

Whereas, an order (mention the short description of the order) was issued by
this Court on.....(date);

Now, therefore, this notice, accompanied by a copy of the order, is hereby
sent to you for your information. You are hereby informed to appear in
person or send an attorney or law practitioner in accordance with law,
accompanied by your documentary evidence in that case. Otherwise, the
matter shall be proceeded with in accordance with law. The case may be
matured for decision after fifteen days of the service of this notice.

On this.....day,of the month ofof the year....., this
notice is issued under the seal of the court and with my signature.

(Seal of court)

As ordered,

Signature

Schedule-22

(Relating to sub-section (4) of Section 220)

Form of Appellate Judgment

.....Court

(Single/Division Bench)

Judgment passed by Honorable Judge.....

Civil Appeal Number.....of the year.....

Case:.....

Full name, surname and address of the Appellant

Appellant/Plaintiff/Defendant

(If there are two or more Appellants, mention the same details in the case of
each Appellant)

Vs

Full name, surname and address of the Respondent

Respondent/Plaintiff/Defendant

(If there are two or more Respondents, mention the same details in the case
of each Respondent)

1. Brief facts of the case:
(Mention brief facts of the case and matters in which appeal has been made)
2. Mention short description of the order made by the Appellate Court to summon the presence of the Respondent:
3. Mention short description of the evidence, if any, examined:
4. Appeal claims and matters to be decided by the Appellate Court
(mention in points)

(a)

(b) Decision and verdict of the Court, accompanied by the reasons and grounds:

Subsequent section:

1. Matter relating to the execution of judgment:
2. Matter relating to time-limit for appeal:
3. Matter relating to court fees:
4. Other necessary matters:

(Note: In the matters to be mentioned in the subsequent part of the judgment, the judgment passing judge shall mention how the judgment is executed, whether it is appealable or not and if appealable, in which court it is appealable, whether court fees, charges are to be recovered or not, and if so recovered, how they are to be recovered and other necessary matters depending on the nature of the case).

The judge has to put his/her full signature here,
along with the date

Name of the employee assisting in the preparation of the judgment:

Done on, the.....day of the month of.....of the year.....

Schedule-23

(Relating to sub-section (3) of Section 228)

Format of Request for the Service of Judicial Document

1. Name and address of the foreign court making order to serve the judicial document in Nepal:
2. Description of the case:
3. Description of the judicial document to be served:
4. The name, surname, address of, and other necessary details to identify, the person on whom the judicial has to be served:
 - (a)
 - (b)
 - (c)
 - (d)
5. Description of which procedure or mode has to be adopted for the service of the judicial document:
6. Description of the body making request for the service of the judicial document:

Concerned authority:

Signature:

Name, surname:

Office:

Date:

The description of this Schedule is a general format, and it can be used with necessary alterations.

Schedule-24

(Relating to sub-section (7) of Section 229)

Format of Description of the Service of Judicial Document

The undersigned has certified that the following judicial document has been served as follows or that it has not been served:

1. Country making request for the service of the judicial document and authority of such a country:
2. Description of the judicial document served:
3. Date of receipt of the judicial document to be served:
4. Case:
5. The name, surname and address of the person on whom the judicial to be served or has been served:
 - (a)
 - (b)
 - (c)
 - (d)
6. Description of whom the judicial document has been delivered to and served:
 - (a) Full name:
 - (b) Address:
 - (c) His/her relation with the person whom the judicial document to be served or has been served:
7. Where the service has been executed in any manner other than that set forth in paragraph 6, description thereof:

8. Whether service has been executed in accordance with the laws of Nepal or in accordance with separate mode pursuant to the request of the concerned country:
9. In the event of failure to execute the service, description thereof:
10. In the event of failure to execute the service, description of the return of the judicial document:

Certifying authority:

Name, surname:

Office:

Signature:

Date:

The description of this Schedule is a general format, and it can be used with necessary alterations.

Schedule-25

(Relating to sub-section (3) of Section 230)

Format of Details of Evidence To Be Examined Abroad

1. Name and address of the court/office making order to examine the evidence abroad:
2. Description of the case:
3. Date of filing of case:
4. Plaintiff..... Defendant.....
5. Description of the evidence to be taken:
6. The name, surname, address of, and other necessary details to identify, the person from whom evidence has to be taken:
 - (a)
 - (b)
 - (c)
 - (d)
7. Procedures and manner of examination of the evidence:
8. Description of the body making request for the taking of evidence:

Concerned authority:

Signature:

Name, surname:

Office:

Date:

The description of this Schedule is a general format, and it can be used with necessary alterations.

Schedule-26

(Relating to sub-section (5) of Section 249)

Format of Summons Issued to Summon the Presence of Party For the Purpose of Execution of Judgment

Twenty-one Day Summons issued by theDistrict Court in the name of Mr./Ms....., son/ daughter/ husband/ wife of, a resident of village/street, Ward No.....,VDC/Municipality,District.

Whereas, final judgment (mention short details what has been adjudicated) was passed by the..... Court on.....(date), in the case of.....in whichis plaintiff andis defendant;

Now, therefore, this summons has been issued to summon your presence for the purpose of execution of the judgment. You are hereby informed to appear in person or send an attorney or law practitioner in accordance with law, within twenty one days, excluding the time limit required for journey, after the date of receipt by you of this summons or that of affixation of the summons upon fulfillment of the legal requirements. The matter shall be proceeded with in accordance with law if you do not make presence within the time limit.

(Signature)

(Full name, surname)

Bailiff

Done onday of the month ofof the year.....

Schedule-27

(Relating to sub-section (9) of Section 252)

Format of Summons Issued to Summon the Person to Open the Lock of House/Shop to be Foreclosed

Fifteen-Day Summons issued by theDistrict Court in the name of Mr./Ms....., son/ daughter/ husband/ wife of, a resident of village/street, Ward No.....,VDC/Municipality,District.

Whereas, final judgment (mention short details what has been adjudicated) was passed by the..... Court on.....(date) to make foreclosure, in the case of.....in whichis plaintiff andis defendant, and whereas, a mission was sent by his Court to make foreclosure, by the mission found that the house/shop, built in plot number....., situated at Ward No.....,VDC/Municipality,.....District, was locked up and you, who are the owner of that house/shop did not appear to open that lock;

Now, therefore, this fifteen-day summons has been affixed at the house/shop to be foreclosed, hereby requiring you to open the lock of that house/shop. You are hereby required to open the lock of that house/shop within fifteen days after the affixation of this summons. If you do not open the lock within that time limit, the mission sent by the court shall effect the foreclosure of

the house or shop by breaking the lock. Any complaint by you in this regard shall not be entertained in the future.

(Signature)

Done onday of the month ofof the year.....

Schedule-28

(Relating to sub-section (2) of Section 255)

Format of Summons Issued to Summon the Coparcener Who Does not Appear For Setting Aside Partition Share

Fifteen-Day Summons issued by theDistrict Court in the name of Mr./Ms....., age ofyears, son/ daughter/ husband/ wife of, a resident of village/street, Ward No.....,VDC/Municipality,District.

Whereas, final judgment was passed by the..... Court on.....(date) to execute partition, in the case of.....in whichis plaintiff andis defendant, and whereas, the other coparceners appeared in the Court for the setting aside of partition shares in accordance with law in pursuance of the judgment but you were absent;

Now, therefore, this summons is hereby issued requiring you to make presence to receive your share in partition in accordance with law. You are hereby required to appear in person or send an attorney or law practitioner in accordance with law, within fifteen days, excluding the time limit required for journey, after the date of receipt by you of this summons or that of affixation of the summons upon fulfillment of the legal requirements. If you make presence, the partition shall be effected by setting aside the partition

shares of all coparceners including you at the same time. But if you fail to make presence, you shall not be entitled to make a complaint in the future that the partition was executed in your absence and executed partition was not proportionate or was unjust. The matter shall be proceeded with in accordance with law if you do not make presence in the court within the time limit.

(Signature)

Done onday of the month ofof the year.....

Schedule-29

(Relating to sub-section (8) of Section 255)

**Format of Summons Issued to Summon the Coparcener Who Is To Give
Partition Share or Who Takes Custody of Property To Be Partitioned**

Fifteen-Day Summons issued by theDistrict Court in the name of Mr./Ms....., age ofyears, son/ daughter/ husband/ wife of, a resident of village/street, Ward No.....,VDC/Municipality,District.

Whereas, final judgment was passed by the..... Court on.....(date) to execute partition, in the case of.....in whichis plaintiff andis defendant, and whereas, a commission was sent by the court to execute partition in pursuance of the judgment but you were not found and any major person in your undivided family did not produce all properties as set forth in the inventory of property;

Now, therefore, this summons is hereby affixed at your house. You are hereby required to appear in person in the court or send an attorney or law practitioner in accordance with law, within fifteen days, excluding the time limit required for journey, after the date of affixation of the summons, in order to show and set aside all properties that are to be partitioned and in your custody, as set forth in the inventory of properties, and effect partition accordingly. If you fail to make presence in person or send your attorney or law practitioner, the matter shall be proceeded with in accordance with law.

(Signature)

Done onday of the month ofof the year.....

Schedule-30
(Relating to Section 268)

Civil cases in which Government is plaintiff

1. Case involving the right, interest or concern of the Government of Nepal or any office thereof, court, constitutional body
2. Case relating to concealment of governmental land
3. Case relating to concealment of land tax or tariff
4. Case under Sections 460 and 461 of Chapter-11 of this Code
5. Case involving the issue of concealment of governmental money or asset or case involving the matter of determination of governmental *locus standi*
6. Such other civil case as may be specified to be one in which the Government of Nepal is plaintiff, pursuant to this Code, by the Government of Nepal from time to time by publishing a notice in the Nepal Gazette.

Schedule-31
(Relating to Section 285)
Format of Index of Documents

.....versus.....

Case:

Case file number.....of year.....

Serial number of documents	Short description of documents		Name of parties submitting documents	Date of submission of documents	Signature of employee
	Never to be disposed	To be disposed after five years			

Signature of preparer:

Signature of certifying officer: