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Ecuador

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Ecuador is a unitary republic.

I. CONSTITUTIONAL SYSTEM

The 1945 Political Constitution (Polit. Const., RO no. 228 of 6 March 1945) was declared in force by the present President of the Republic on 15 Feb. 1972, together with the other laws of the country "in so far as they are not in opposition to the aims of political transformation" (Supreme Decree no. 1, RO no. 1 of 16 Feb. 1972). Said aims are expressed in a document published by the Government in 1972 under the title *Filosofía y Plan de Acción del Gobierno Revolucionario y Nacionalista del Ecuador*.

1. Nationality

Ecuadoreans acquire nationality by birth or naturalization.

The following are Ecuadoreans by birth: (1) those born within the territorial limits of the Republic (*jus soli*); (2) those born abroad, of a native-born Ecuadorean father or mother, who later become resident in the Republic or express the desire to be Ecuadoreans; (3) those born abroad, of a native-born Ecuadorean father or mother, while either of them carried out an official appointment or was exiled for political reasons, unless they express a desire to the contrary (*jus sanguinis*).

The following are naturalized Ecuadoreans: (1) foreigners who obtain naturalization papers in accordance with law, and (2) foreigners to whom this privilege is granted by Congress as a reward for important services to the country.

Native-born Latin-Americans and Spaniards, who are domiciled in Ecuador and express the desire to be Ecuadoreans, shall be considered Ecuadoreans without relinquishing their original nationality.

Neither marriage nor its dissolution affects the nationality of the spouses or of their issue. The law establishes a procedure whereby a foreign woman married to an Ecuadorean may acquire her hus-

band's nationality with greater ease. It also expedites the acquisition of Ecuadorean nationality by foreign men married to Ecuadorean women and domiciled in Ecuador (1945 Polit. Const. art. 10 and 11).

2. Territorial Division

The territory of the Republic is divided in provinces, cantons and parishes. At present, there are 20 provinces, one of which is the Colon Archipelago (*Islas Galápagos*) (1945 Polit. Const. art 96; Law on Territorial Division, RO no. 350 of 22 April 1897 and no. 256 of 28 Feb. 1973).

3. State Organs

a. *The Head of State.* – The President of the Republic is the Head of State and represents it as such.

b. *The Legislative.* – The legislative power is exercised by the National Congress, composed of a single chamber made up in the following manner: (1) by deputies elected by popular and secret suffrage by each of the provinces in proportion to its population and (2) by 25 functional deputies (*diputados funcionales*) elected by the universities, primary and secondary school teachers; journalism, cultural institutes, academies and scientific societies: industrialists, agriculturists, traders, workers, farmers, Indian organizations and the Armed Forces.

At the present time, the President of the Republic exercises not only the executive but also the legislative power, and for this reason the National Congress does not function.

c. *The Government.* – Government is exercised by the President of the Republic. He directs public administration and freely appoints and dismisses Ministers of State, Governors, heads of diplo-

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matic missions, officers in the Armed Forces and other civil servants. He is in charge of preserving order within the country and of safe-guarding the external security of the Republic, he directs diplomatic negotiations and disposes of the Armed Forces in defence of the nation; on general lines, he exercises the faculties granted him by the Political Constitution and the laws. At present, he has taken over supreme command and the various state functions are concentrated in him (dictatorship) (1945 Polit. Const. art. 55 to 83; Law on the Administrative System, Suppl. to RO no. 1202 of 20 Aug. 1960,¹ art. 5 to 20; Supreme Decree no. 1, *supra*).

d. *Territorial authorities.* – There is a Governor in each province (except for the province of Pichincha, in which the capital of the Republic, Quito, is located). There is a Political Chief in each canton and a Political Lieutenant in each rural parish. There is a Provincial Council, presided by a Provincial Prefect, in each provincial capital. Each canton forms a municipality. Municipal government is in the hands of a Cantonal Council; in the capitals of provinces the Council is presided by a Mayor. Provincial Prefects, Mayors, Provincial Councillors and Cantonal Councillors are elected by direct popular vote (1945 Polit. Const. art. 97, 99 and 102; Law on the Provincial System, RO no. 112 of 10 Feb. 1969; Law on the Municipal System, Suppl. to RO no. 331 of 15 Oct. 1971).

4. The Judiciary

a. *Constitutional judiciary.* – According to the 1945 Political Constitution, constitutional jurisdiction is essentially in the hands of the Court of Constitutional Guarantees, made up of nine members (art. 159). When the present dictatorial Government took over in February 1972, it declared the 1945 Constitution to be in force; however, as it has taken over all powers of state, the Court of Constitutional Guarantees established by the Constitution is not in operation.

b. *Courts of law in civil, commercial and labour matters.* – Judges of the first instance exercise ordinary jurisdiction according to the amount involved and the territory.

The following exercise special or exclusive jurisdiction: (1) Labour judges hear and decide on individual disputes arising from labour relations. Collective disputes (strikes and lock-outs) are

heard by Conciliation and Arbitration Courts composed of five members (*vocales*), viz., a Labour Inspector or Sub-Inspector, who presides over the court, two members appointed by the employer and two by the workers. Cases are heard in a second and final instance by the Higher Court of Conciliation and Arbitration which is presided over by a Director or Sub-Director of Labour. (2) Leasehold judges hear cases on leasehold or letting of real estate within urban boundaries; in this case, provincial judges hear the case in the second instance and Higher Courts hear it in the third. (3) Juvenile judges hear disputes involving minors, on assistance to pregnant mothers, on voluntary recognition of issue and on adoption. The Juvenile Court is the court of second and final instance.

The Higher Courts which operate in almost all the provincial capitals, consist of one to three Divisions according to the importance of the district. There are three judges in each Division. There is also a Fiscal Attorney (*Ministro Fiscal*) in each Court.

The Supreme Court of Justice has its seat in the capital of the Republic. It is made up of a President three Divisions with three judge-justices each and a Fiscal Attorney (Charter Law on the Judiciary, Suppl. to RO no. 1202 of 20 Aug. 1960; Supreme Decree no. 979, RO no. 496 of 10 May 1965; Supreme Decree no. 138, RO no. 32 of 3 April 1972; Labour Code, Suppl. to RO no. 239 of 7 June 1971, art. 441, 453, 454 and 455; Law on Leaseholds, RO no. 299 of 6 Nov. 1962, art. 34. Code for Minors, RO no. 320 of 3 Dec. 1969, art. 134, 138 and 140).

c. *Administrative judiciary.* – There is a Contentious-Administrative and a Fiscal Court, hearing contentious-administrative petitions (Law on Contentious-Administrative Jurisdiction, RO no. 338 of 18 March 1968; Fiscal Code, RO no. 490 of 25 June 1963, art. 110 ss.).

d. *Prosecutions* are brought in the first instance by an Assistant Attorney (*Agente Fiscal*) – there is one in each Criminal Court – and by Fiscal Attorneys in the Higher Courts and in the Supreme Court. There are also Criminal Courts to deal with more serious offences which are subject to terms of imprisonment.

The Public Prosecutor's Office is exercised by the Attorney General for the Nation together with the Fiscal and Assistant Attorneys (Charter Law on the Judiciary, *supra* b, art. 73, 78 and 188; Law on State Defense (Public Prosecutor's Office), RO no. 278 of 30 July 1971).

¹ Special editions of laws prepared by the Permanent Legislative Commission or by the Juridical Commis-

sion take the form of Supplements to the *Registro Oficial* (RO).

II./III. SOURCES OF LAW AND BRIEF HISTORY OF THEIR EVOLUTION

1. Ecuador has a system of *written law*. The Political Constitution is the supreme rule and it is followed on a descending scale by the laws, supreme decrees (decree-laws), executive decrees, agreements and resolutions. Regulations are issued in the form of executive decrees or resolutions. Executive decrees are issued by the President of the Republic and resolutions are issued by Ministers of State. Municipal and provincial decisions of a general nature are called ordinances. Laws become compulsory only after they have been promulgated by the President of the Republic (1945 Polit. Const. (*supra* I) art. 163; Law on the Administrative System, *supra* I 3c, art. 44, 45 and 136; Civil Code, Suppl. to RO no. 104 of 20 Nov. 1970, art. 5; Law on the Municipal System, *supra* I 3d, art. 126).

2. There is *no customary law* and custom is not considered law except in cases in which the law refers to it (CC art. 2). Commercial usage may fill any gaps in the law, when the acts constituting it are uniform, public, generally executed in the Republic or in a determined locality, and have been repeated for over 10 years (Comm.C Suppl. to RO no. 1202 of 20 Aug. 1960, art. 4).

3. The *Supreme Court* meeting in Plenary Session has the power – in the case of contradictory decisions on the same point of law – to set forth an annulling rule to govern future cases, and it is generally compulsory unless the law provides to the contrary (Charter Law on the Judiciary, *supra* I 4b, art. 14).

4. In 1960, the *Permanent Legislative Commission* published a collection containing the Political Constitution of the Republic, some codes and the

most important laws; in 1961, it published a collection of the social, military and economic laws. These compilations have been published as Supplements to the *Registro Oficial* no. 1202 of 20 Aug. 1960, no. 327 of 28 Oct. 1961, no. 352 of 30 Oct. 1961 and no. 353 of 31 Oct. 1961 respectively.

The *Juridical Commission*, an institution with similar functions to that previously mentioned and working in 1970 and 1971, codified and published several codes and laws and collected them in the 1971 compilation published as a Supplement to the *Registro Oficial* no. 104 of 1970 and no. 147, 197, 200, 239, 322 and 331 of 1971.

Under the authority of the 1967 Constituent Assembly, the largest law collection was published by a private entity, the *Corporación de Estudios y Publicaciones*, *Códigos y Leyes de la República del Ecuador*, and kept up to date by a loose-leaf system.

Legislation is published in the *Registro Oficial* (RO). The most interesting court decisions are published in the *Gaceta Judicial*.

5. The *Civil Code* came into force in the Republic on 1 Jan. 1861. On general lines, it follows the Chilean Civil Code. The present text, taking into account numerous later amendments has been published in Suppl. to RO no. 104 of 20 Nov. 1970.

6. The *Commercial Code* has been in force since 25 Aug. 1906. The Spanish Commercial Code of 1829, much praised and considered superior to the 1885 one, was of great use in drawing up the earlier Ecuadorian Code of 1878. The present text, including numerous amendments has been published in Suppl. to RO no. 1202 of 20 Aug. 1960.

IV. PRIVATE LAW

The Civil Code includes a preliminary chapter containing the fundamental principles of legislation, and four books, the first of which dealing with "Persons"; the second with "Things and

their ownership, possession, use and enjoyment"; the third deals with "Inheritance owing to death and gifts inter-vivos" and the fourth with "Obligations in general and contracts."

V. COMMERCIAL LAW

1. The *Commercial Code* governs the obligations of traders in their business dealings and also commercial acts and contracts even when they are executed by non-traders. Traders are those who, having the capacity to contract, make trade their customary profession. Commercial acts are those mentioned in Comm.C art. 3 par. 1 to 16.

Any person having the capacity to contract, in accordance with the provisions of the Civil Code, has also the capacity to engage in trade. However, the following may not engage in trade: (1) ecclesiastic corporations, members of religious orders and the clergy; (2) public officials who are forbidden to engage in trade by Penal Code art. 242, with the exceptions established in the same article, and (3) bankrupts who have not been reinstated.

2. Any person wishing to engage in trade must register in the *Canton Registry*. The following must also register: brokers, auctioneers and ships' captains.

3. The *Commercial Registry* shall be kept by the Canton Registration Office. The registry shall be kept in a single folio book, in which the following are registered: the registration number of traders and of marketable share, commercial, industrial and agricultural companies, as well as all other acts enumerated by Comm.C art. 30.

4. *Commercial Companies*. There are five types of commercial companies, as follows: partnership (*en nombre colectivo*), limited partnership or limited partnership with shares (*comandita simple o por acciones*), limited liability company (*de responsabilidad limitada*), marketable share company (*anónima*), and the company with mixed private and public participation (*economía mixta*). These five types of companies are legal entities. The law also recognizes *de facto* companies (Company Law, Suppl. to RO no. 197 of 6 April 1971, art. 2).

There are also insurance, financial and professional companies, governed by special laws.

5. *Commercial Instruments*. The Law on Bills of Exchange is based on the 1912 Hague Convention and on the draft of the Central Executive Council of the Inter-American High Commission of 1916, adopted by the Congress of the Republic of Ecuador on 5 Dec. 1925 with a few unimportant amendments (present text: Comm.C art. 410 to 525).

The Law on Cheques enacted on 13 Sept. 1963 has been in force since 20 Oct. 1963 (RO no. 56 of 16 Sept. 1963).

6. *Bankruptcy* is regulated by the Code of Civil Procedure (Suppl. to RO no. 1202 of 20 Aug. 1960) in Book II Chap. II s. 5a. Bankruptcy takes place in cases of assignment of property and in cases of insolvency, either owing to lack of relinquishment of property by the debtor when he is compelled to make it known for attachment, or for insufficient relinquishment. When registered traders are involved, bankruptcy is declared, in addition to the cases already mentioned, when a creditor presents an unsettled writ for payment, when the debtor has ceased to fulfil his obligations to three or more different persons with claims embodied in a recognized document or a public document.

7. The *Labour Code* was enacted on 5 Aug. 1938 (RO no. 78/81 of 14/17 Nov. 1938). The present text of the Labour Code was promulgated in Suppl. to RO no. 239 of 7 June 1971. On 2 Oct. 1935 compulsory social security was established and the Social Security Institute (*Instituto Nacional de Previsión*) founded; it is now called Ecuadorean Social Security Institute (*Instituto Ecuatoriano de Seguridad Social*). The Law on Compulsory Social Security may be found mainly in Suppl. to RO no. 1202 of 20 Aug. 1960 and RO no. 15 of 10 July 1970.

VI. STATE DIRECTION OF TRADE

The 1945 Polit. Const. art. 146 contains the principles and fundamental guarantees related to the economy, but the constitutional text has been superseded by the following documents which we must abide by on this subject: *Filosofía y Plan de*

Acción del Gobierno Revolucionario y Nacionalista del Ecuador (see *supra* I), *Lineamientos Fundamentales del Plan Integral de Transformación y Desarrollo* and *Plan Integral de Transformación y Desarrollo, 1973-1977*.

The Government shall establish national ob-

jectives, give them priority and attribute all the means considered necessary to achieve them. It shall draw up a multi-year plan which shall be compulsory for the public sector and informative for the private sector.

The social function of property is stressed so as to prevent the concentration of economic power in minority groups. Private initiative compatible with the social aims of Ecuador shall be encouraged.

1. The *National Planning and Coordination Council*—with headquarters in Quito—is the organization in charge of planning the economic and social development of the country and of coordinating its activities in these fields. This council was founded on 28 May 1954 (RO no. 527 of 29 May 1954; see also Law on the Administrative System, *supra* I 3c, art. 135 and RO no. 281 of 1961 and RO no. 33 of 1963).

2. The *Superintendency of Banks* carries out the

supervision and inspection of state as well as of private banks, of insurance and finance companies, of mutual-benefit societies for savings and housing credits, of farming credit banks and foreign exchange firms (General Law on Banks, RO no. 132 of 23 May 1967).

3. The *Superintendency of Companies* exercises the supervision and inspection of marketable share companies, of limited partnerships with shares, of companies with joint public and private capital and of stock exchanges (Company Law, *supra* V 4).

4. Ecuador applies the Common System of Treatment to Foreign Capital and on Trade Marks, Patents, Licences and Royalties, approved by the Cartagena Treaty Commission (Decision 24). This Treaty provides for regional economic integration between Bolivia, Colombia, Chile, Ecuador and Peru—the Andean Pact (RO no. 345 of 9 Jan. 1970 and RO no. 264 of 12 July 1971).

VII. INDUSTRIAL PROPERTY AND COPYRIGHT

1. The *Law on Copyright* (Suppl. to RO no. 1202 of 20 Aug. 1960) is applied to all forms of intellectual output. Unless there is proof to the contrary, the author of a work is considered to be the person appearing as such with his name or known pseudonym on the work or on reproductions of it. The person appearing as author when the work is utilized or presented is considered to be the author. Both private persons as well as legal entities may be authors (art. 3 *in fine*). The author of a work has the right to use it and to divulge it by any known lawful means.

The law guarantees copyright for the entire lifetime of the author and for 50 years thereafter in favour of his heirs if they be private persons; if the heir is a legal entity, copyright is valid for 50 years from the date of original publication.

Acts infringing the law are established. The author may sue for (1) sanction against the acts infringing the right; (2) confiscation of the fraudulent copies, possessed by the infringing party and restitution of the value of the copies sold; and (3) corresponding compensation for damage. Those responsible for an infringement are sentenced to a fine ranging from Sucres 500 to 6000 (US \$ 20 to 240), to confiscation of the works and to pay-

ment of the damages to the author caused by the infringement.

2. The state grants exclusive rights for the exploitation of any invention, improvement or import under the conditions and with the exceptions set forth in the Law on Patents for the Exploitation of Inventions of 2 Oct. 1961 (Suppl. to RO no. 353 of 31 Oct. 1967).

The immediate effect of the granting of a patent is to assure the inventor or improver full enjoyment of the invention or improvement and exclusive exploitation of it in the manner he considers best. The concession is granted by the Ministry for Production by means of a document called "exclusive patent". A patent on an invention or improvement may have a duration of 3 to 12 years, according to the importance of the invention or improvement and it may cover the whole of Ecuador or part of it.

The holder of a patent may convey or transfer his rights, either against payment or free of charge, by a public document registered in the book of assignments kept by the Ministry.

3. According to the *Law on Trademarks* (Suppl.

to RO no. 353 of 31 Oct. 1961) any private person or legal entity, whether Ecuadorean or foreign, has the right to designate products he or it manufactures by means of a mark and to register it. A trademark consists in any symbol, device,

word, slogan or special and characteristic design, used to distinguish articles and show their provenance. Trademarks are registered at the Ministry for Production.

VIII. PRINCIPLES OF JUDICIAL PROCEDURE IN CIVIL AND COMMERCIAL CASES

There has been a common procedure for civil and commercial cases since 28 Oct. 1909 when the Commercial Court was abolished. Matters for which no special procedure has been provided are heard in a "summary verbal judgment". Therefore, the Code of Civil Procedure (Suppl. to RO

no. 1202 of 20 Aug. 1960) is applicable.

This code is inspired basically, as are all other similar Latin-American codes by the Spanish Law of Civil Procedure (*Ley de Enjuiciamiento Civil*) of 1855.

IX. PRIVATE INTERNATIONAL LAW AND INTERNATIONAL PROCEDURE

On 5 Dec. 1878, in Lima, Ecuador signed a Treaty with Argentine, Peru, Chile, Bolivia, Venezuela and Costa Rica to establish uniform rules on Private International Law. On 11 Jan. 1889, a Treaty on Procedure was signed in Montevideo with Uruguay, Argentine, Bolivia, Brazil, Chile, Paraguay and Peru. On 18 June 1903 a Treaty with Colombia on Private International Law was signed in Quito. On 18 July 1911 a Pact on the Execution of Foreign Court Decisions was signed in Caracas with Bolivia, Peru, Colombia and Venezuela. Ecuador also signed the Convention on Private International Law, agreed by the Sixth Panamerican Conference at La Havana in 1928, which approved the Bustamante Code of Private International Law *Código de Derecho internacional privado* - CDIP -, Suppl. to RO no. 1202 of 20 Aug. 1960).

1. As to *nationality*, see *supra* I 1 and also CDIP art. 9, 10 and 11.

2. With regard to *domicile*, the territorial law governs the concept, acquisition, loss and recovery of the general and special domicile of private persons and legal entities (CDIP art. 22 and CC art. 45, 46, 47).

3. The *main rules* of private international law in the Civil Code are the following:

The law is binding upon all the inhabitants of the Republic including foreigners and no person

is excused owing to ignorance of the law (CC art. 13).

In the following matters Ecuadoreans are subject to the laws of their country, even when they reside or are domiciled abroad: (1) in all matters relating to the status of persons and to their capacity to execute certain acts, provided the acts take place in Ecuador, and (2) on the rights and obligations arising from family relations, but only as regards the Ecuadorean spouse and kinsmen (Personal Statute, CC art. 14).

Marriage celebrated in a foreign country, in agreement with the laws of that country or the laws of Ecuador shall have the same civil effects in Ecuador as if it had been celebrated within Ecuadorean territory (CC art. 91).

Property located in Ecuador shall be subject to Ecuadorean laws, even when the owner is a foreigner or resides in another country (Real Statute, CC art. 15 par. 1).

The formalities of public documents are determined by the law of the place in which they are drawn up. Their authenticity shall be proved according to the rules established by the Code of Civil Procedure (CC art. 16 par. 1).

Inheritance to a person's estate begins at the moment of death, in his last domicile, exception being made for certain expressly stated cases. Inheritances are governed by the law of the decedent's last domicile, saving legal exceptions (CC art. 1019).

4. In matters of *procedure* Ecuador accepts the rule that the law of each state determines the jurisdiction of the courts, as well as their organization, forms of procedure and execution of court decisions and appeals against them (CDIP art. 314).

In addition, the CDIP gives detailed rules on jurisdiction, the exercise of judicial proceedings in other states and the execution of foreign court decisions (CDIP art. 323, 324, 325 and 423).

In addition, there are the following rules of Ecuadorean law: public documents drawn up in a foreign country shall have the same value in Ecuador as in the country of origin when they have been authenticated (CCProc. art. 209).

The litigant who bases his right on a foreign law must have its text authenticated, and this may be done at any stage of the action. An affidavit by the

respective diplomatic agent on the authenticity of the law is considered certified proof (CCProc. art. 210).

Foreign court decisions shall be executed if they do not contravene Ecuadorean public law or any Ecuadorean law and if they conform to the treaties in force. When there are no treaties, they shall be executed, if in addition it appears from the respective letters rogatory that the decision has become *res judicata* according to the law of the country in which it was given, and that it is based on a personal action (CCProc. art. 451).

The United Nations Convention of 17 Dec. 1958 on Recognition and Execution of Foreign Arbitral Awards also applies to Ecuador (RO no. 43 of 29 Dec. 1961).

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Chapter VII: Copyright Statute of 24 Oct. 1957: Copyright Laws [Ecuador] Item 1.

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Gaceta Judicial (since 1902, three times a year); *Rodríguez*, Índice Alfabético de las series primera, segunda y tercera de la Gaceta Judicial (1923); *Serrano*, Prontuario Alfabético de la Gaceta Judicial (I ed. 2, 1956; II-VII 1946-1970); Revista Forense (1913-1961, irregularly); Revista de Derecho (since 1964, quarterly); Revista del Instituto de Derecho del Trabajo e Investigaciones Sociales (since 1961, irregularly); Gaceta de la Propiedad Industrial (since 1965, monthly); Anales de la Universidad Central (since 1883, annually in general); Anales de la Universidad de Cuenca (since 1940, annually); Revista Universitaria de Loja (since 1934, irregularly); Anales de la Universidad de Guayaquil (since 1946, monthly); Revista del Instituto de Derecho y Ciencias Sociales (1933-1963, 40 issues); Boletín del Instituto de Derecho Comparado (since 1951, irregularly); Revista de Derecho Internacional (1933-1963, 40 issues); Anuario Ecuatoriano de Derecho Internacional (1964-1967, three issues).

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Egypt

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After 1922, when it ceased to be a British Protectorate, Egypt became a parliamentary monarchy with a Constitution, dated 19 April 1923, modelled on Western lines. In the Constitution it was expressly declared that all power emanated from the people and that ministers were to be responsible before the Chamber of Deputies. Under this regime, the executive, represented by the King, encroached upon the other branches of government, to such an extent that, in 1930, it was able to promulgate a new Constitution strengthening the executive at the expense of the parliament. However, five years later, the King was obliged to give way and to revert to the 1923 Constitution which then continued in force until the National Revolution of 1952.

In 1952 the Revolution resulted in the immediate abdication of the King. The 1923 Constitution was provisionally replaced by a Declaration of Principles promulgated on 10 Feb. 1953 (*al-waḳā'i' al-miṣṣā'īya* (the Official Gazette of the period) no. 12 bis b). The Council of the Revolution then assumed full powers and on 18 June 1953 it was able to proclaim the end of the monarchy and the birth of the "Egyptian Republic". Egypt, a republic for the first time in its long history, was finally given a new Constitution on 16 Jan. 1956 (*al-waḳā'i' al-miṣṣā'īya* no. 5 bis). Under this Constitution the people elected the President of the Republic who also acted as the President of the Council of Ministers. In this respect the new Constitution favoured the establishment of a Presidential regime, but in other respects it preserved a

parliamentary basis. Ministers were made individually responsible before a National Assembly elected by universal suffrage. Finally the new Constitution followed the modern fashion in proclaiming duties of the citizen as well as his rights. The new state had a socialist bias.

However this Constitution ceased to be in force on 12 Feb. 1958 when the Republics of Egypt and Syria merged to form a new state: "The United Arab Republic". This new state was governed by a provisional Constitution of 5 March 1958 (*al-djāridat al-rasmiyya* - Off. Gaz. - no. 1 of 13 March 1958), which was inspired by, and in essence reproduced, the 1956 Constitution. It in turn was terminated in 1961 following the break between Egypt and Syria. On 27 Sept. 1962 the powers of the state authorities were set out in a Constitutional Proclamation (Off. Gaz. no. 222) and another Constitutional Proclamation followed on 24 March 1964 (Off. Gaz. no. 69) which established a new Constitution that has been in force since 25 March 1964. However, the National Assembly was to establish a definite Constitution to be subjected to a referendum. This definitive Constitution has been promulgated on 11 Sept. 1971 (Off. Gaz. no. 36 of 12 Sept. 1971). In general, it maintains the principles that were contained in the Constitutional Proclamation.

The state is no longer designated as "United Arab Republic", but has now adopted the name "Arab Republic of Egypt" (*Djumhūriya Miṣr al-'Arabiya*).

I. CONSTITUTIONAL SYSTEM

The 1971 Constitution provides in art. 1: "The Arab Republic of Egypt is a State whose system is democratic and socialist and is based on the alliance of the working forces of the people. The Egyptian people are part of the Arab Nation and work to bring about its overall unity."

Egypt is a democratic republic. As provided by Const. art. 3, "[s]overeignty is for the people only. The people are the source of authority; they exer-

cise this sovereignty and protect it, and safeguard national unity in the manner prescribed in the Constitution."

Egypt is also a socialist republic. Const. art. 4 states: "The economic foundation of the Arab Republic of Egypt is a socialist system based on sufficiency and justice to prevent exploitation and to seek to dissolve class distinctions." According to art. 5 "[t]he Arab Socialist Union is the political

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organization which, by its formations based on democracy, represents the alliance of the working forces of the people – the farmers, workers, soldiers, the intelligentsia and national capital. It is the instrument of this alliance in deepening the values of democracy and socialism, in following up national action in its various fields, and in piloting this national action towards its set goals.”

Finally, art. 2 provides: “Islam is the religion of the State and Arabic its official language. The principles of Islamic Sharia are a main source of legislation.”

1. Nationality

Prior to the first Law on Egyptian Nationality, promulgated on 26 March 1926, nationals were considered as subjects of the Ottoman Empire. But the 1926 Law never came into force. Another Nationality Law of 26 Feb. 1929 was replaced by a Law of 13 Sept. 1950 (Off. Gaz. no. 11 of 18 Sept. 1950) which in turn was replaced by the Law of 20 Nov. 1956. This law as amended by Law no. 282 of 1959 (Off. Gaz. no. 287 of 29 Dec. 1959) is currently in force. Law no. 82 of 1958 promulgated on 22 June 1958 (Off. Gaz. no. 17 of 3 July 1958) substituted “Arab Nationality” for “Egyptian Nationality”.

a. *Acquisition of nationality.* – In terms of art. 2 par. 1 of that law the nationality of Egyptian is in principle acquired by legitimate descent. Every legitimate child, whose father is a national of Egypt, is automatically a national of Egypt. Where the child is illegitimate, or born of a father who is stateless or whose nationality is unknown, the nationality of Egyptian will be conferred on the child if its mother is a national of Egypt and it is born in Egypt (art. 2 par. 2 – 3). A child born in Egypt of unknown parents is automatically granted Egyptian nationality (art. 2 par. 4).

Nationality may also be acquired by naturalization for which a presidential decree is required. The principal condition is at least ten years residence in Egypt (art. 5), though this will be reduced to five years where, prior to taking up residence, an alien obtains permission to reside with a view to becoming naturalized (art. 6). A similar reduction is made where the person seeking naturalization was born abroad of a mother with Egyptian nationality, and whose father is unknown or stateless (art. 2).

There is no residence requirement where the individual was born in Egypt of a father who was himself born there, and who belongs to the racial majority of a country whose language is Arabic or whose religion is Islam (art. 10). It is this move-

ment towards an “arab nationality” which justifies the name given to the enactment.

However, any alien, born in, and resident in Egypt may opt for Egyptian nationality on reaching the age of majority (art. 4). Yet a presidential decree is still necessary.

Egyptian nationality may also be acquired by marriage. Any woman who marries a citizen of Egypt, becomes herself a citizen of Egypt, provided that (1) she declares her desire to acquire her husband's nationality to the Ministry of the Interior and (2) the marriage subsists for two years following that declaration (art. 13).

b. *Loss of nationality.* – In principle a citizen of Egypt loses his Egyptian nationality on acquiring a foreign nationality through naturalization. But such naturalization will only be recognized where the individual has obtained prior authorization by means of a presidential decree, to abandon his Egyptian nationality (art. 17). A woman loses her Egyptian nationality without the necessity of prior authorization, on marrying a foreigner, provided that she expressly declares her intention to acquire her husband's nationality (art. 19).

Nationality may also be lost by disqualification, as a punishment in certain specific cases (art. 22). Also, where an Egyptian citizen takes up permanent residence abroad, he will lose his nationality after six months (art. 23). In all these cases, a presidential decree is required.

2. Territorial Division

Local administration is currently regulated by Law no. 24 of 1960 (Off. Gaz. no. 67 of 4 April 1960), as amended by Law no. 57 of 1971 (Off. Gaz. no. 29, 1971). Art. 1 of the Law of 1971 provides that the country shall be divided into provinces (*gouvernorats*), towns and villages, which shall, at the same time, constitute units of local administration with separate legal personality.

Provision is made for each province to have two councils – the Popular Council and the Executive Council (art. 4). In the towns a Municipal Council and in the villages a Village Council is respectively being set up (Law of 1960).

The Popular Council in the province consists firstly of members of the Arab Socialist Union of the province together with representatives of the youth and the feminist movement. The Executive Council is presided over by the governor (art. 21) who is appointed by the President of the Republic. The Council is composed primarily of civil servants from the various administrations within the province.

The members of the Municipal and Village

Councils respectively comprise in part appointed persons and a larger portion elected by the Arab Socialist Union. Administrative supervision of the various councils by the central government is exercised through the President of the Republic or the Ministry of Local Administration. However, there are also links between the Popular Council of the province and the National Assembly (Law of 1971 art. 45).

3. State Organs

a. *General structure.* – The present Constitution establishes a parliamentary regime where the Head of State has wide powers. Art. 73 states: "The Head of the State is the President of the Republic. His duty is to uphold the sovereignty of the people, the respect of the Constitution, the rule of law, and the protection of the national unity and the fostering of socialist gains. He also supervises the lines of division between the authorities to ensure the proper fulfilment of their role in national action."

The government consists of the Prime Minister, Vice-Prime Ministers, Ministers, and Vice-Ministers (art. 153).

Legislative power is exercised by the National Assembly (art. 86).

Judicial authority lies with the judges who are subject to no authority other than statute law (art. 166).

b. *Head of State.* – The Head of State is the President of the Republic who is elected for six years (art. 77) by universal suffrage following the approval of his candidature by the National Assembly (art. 76). He nominates and dismisses the Prime Minister and the other ministers (art. 141).

The President promulgates (art. 112), and may initiate legislation. He may interpose a veto (art. 113). However, where an enactment is passed a second time with a two-thirds majority of the National Assembly it will be promulgated (art. 113). The President may promulgate decrees having the force of statute, when the Assembly is dissolved or in recess (art. 147). Finally, the President may use a plebiscite to consult the people on matters of important state interest (art. 152).

c. *Legislature.* – Power to legislate belongs, in principle, to the National Assembly whose members are elected by secret ballot and universal suffrage. However, the President of the Republic has the right to designate ten members. At least half of the membership must be composed of workers and peasants (art. 87). The Assembly mandate lasts for five years (art. 92).

d. *Government.* – The government and its members are responsible for their acts before the National Assembly (art. 126), which may withdraw its confidence from the whole government or from one of its members (art. 126). If a motion of censure is adopted, the Prime Minister must offer the resignation of the government. Should such a motion of censure refer to a single member of the government alone, then he must resign (art. 128).

On the other hand, the President of the Republic has the right to dissolve the National Assembly. However, he should only exercise this right in case of necessity and after having called a popular referendum (art. 126).

e. *Local government.* – See *supra* 2.

4. Judiciary

a. *Constitutional Court.* – On 1 Nov. 1969 a Supreme Court with seven judges has been established (Law no. 81 of 1969, Off. Gaz. no. 35 bis of 31 Aug. 1969). Every plea of unconstitutionality must be submitted to this court which has exclusive jurisdiction to examine the constitutionality of laws (art. 4 par. 1). The court may also interpret legislative norms, and this interpretation is binding (art. 4 par. 2). Further, the court decides conflicts of jurisdiction between various courts, which had hitherto been brought before a special court. Finally, the Supreme Court may order that the execution of any arbitral award concerning the state or a public entity be suspended, if enforcement would adversely affect the economic plan or public services.

b. *Court structure.* – (See Law no. 43 of 1965, Off. Gaz. no. 162 of 22 July 1965). The lowest courts in the judicial system are the summary courts and the courts of first instance. Courts of Appeal decide cases at second instance and a Court of Cassation is the highest court. As a general rule these various courts are competent for all matters: civil, commercial or criminal. As will be seen, a special Administrative Court has recently been set up to deal with certain cases involving the administration. Any conflict of jurisdiction between the two systems of courts is referred for decision to the Supreme Court, created in 1969.

There are about 150 summary courts, each with a single judge competent in minor civil and commercial matters. In the smallest matters the court's decision is final. In criminal matters the court's jurisdiction covers all offences and minor crimes. Generally, commercial and civil matters are not separated, but in certain large towns (Cairo, Alexandria), a summary judge is designated to

hear commercial cases exclusively. Similarly, in Cairo since 1953, a specialized judge has been designated to hear labour law cases.

The courts of first instance (about 20) sit in the main town of each province. Each court has three judges with jurisdiction over all civil and commercial matters that are outside the jurisdiction of the summary courts. Within the internal organization of the court, particular chambers may deal with commercial matters, but this does not imply the existence of a proper commercial court. In criminal matters the court of first instance hears appeals against decisions of the summary courts.

There are six Courts of Appeal each sitting in a large town and each composed of three judges. In civil and commercial matters they hear appeals from decisions of the courts of first instance while in criminal matters three judges form an Assize Court with jurisdiction over crimes and serious offences. The Assize Court is a court of first and last resort, and sits in each town where there is a court of first instance.

The Court of Cassation at Cairo has five judges. It hears in general appeals (*pourvois*) against final judgements of the Appeal or Assize Courts on the grounds of violation of the law or grave procedural mistakes. It has power to reverse the attacked decision and in certain cases may decide itself on the merits.

As regards labour law, arbitration tribunals were established under a special enactment (Law no. 318 of 1952, Off. Gaz. no. 157 of 8 Dec. 1952), to hear actions between employers and employees.

c. *Administrative jurisdiction.* – In 1946 a Council of State was set up on the French model and it is now regulated by Law no. 55 of 1959 (Off. Gaz. no. 33b of 21 Feb. 1959). As an administrative court the Council of State includes: (1) The Administrative High Court with three counsellors – a sort of administrative Court of Cassation; (2) The Court of Administrative Disputes sitting at Cairo and Alexandria; (3) Administrative Tribunals – attached to various ministries or administrative departments.

The competence of the administrative courts is limited by art. 8 of the law and does not extend to all cases arising between an individual and the administration. The courts hear primarily actions for the reversal of administrative decisions as well as actions for damages for loss caused by such decisions (art. 9).

d. *Public Prosecution.* – Prosecution in criminal cases is a matter for the office of the Public Prosecutor (Law no. 43 of 1965 on the Organization of the Courts of 1965 (*supra* b) art. 26), which is under the authority of the Minister of Justice (art. 31). The Prosecution is represented in the Court of Cassation by a Procurator General (art. 29). Attached to each Court of Appeal there is an Advocate-General (art. 30) and before each court of first instance the Prosecution is represented by substitutes (art. 29).

The officers of the judicial police who are qualified to take part in preliminary examination proceedings (*l'instruction*) are responsible to the Prosecution, but any member of the Prosecution may conduct a preliminary examination (Code of Criminal Procedure of 1950 art. 200, Law no. 150 of 1950, Off. Gaz. no. 90 of 15 Oct. 1951). In certain cases the preliminary examination may be conducted by a judge (art. 64).

An accused person may be remanded in custody on the order of a member of the Prosecution or the examining judge (art. 142 and 201) or provisionally released (art. 204).

A person accused of a crime will be brought before a judge for referral to an Assize Court (art. 170 ss.).

During the course of criminal proceedings, the victim of the crime may always appear as civil party to the case (art. 251 ss.).

Finally it has been possible since Law no. 252 of 1953 (Off. Gaz. no. 426b of 21 May 1953) for a person accused of an offence or misdemeanour to be convicted and fined up to a certain amount, merely on an order obtained at the request of the Prosecution without either preliminary examination or pleadings.

II. SOURCES OF LAW

1. Constitution

The Constitution is written and contained in an Act promulgated on 11 Sept. 1971 (see *supra* introduction).

2. Legislation

Legislation is the primary source of law in Egypt for all matters generally (see CC art. 1 par. 2). However, in questions of personal status the primary source is to be found in the writings of

the Muslim, *ḥanafī* school, or, where the case is between two non-Muslim citizens of the same religious faith, the Christian or Jewish Canon law according to the appropriate sect. Generally speaking Muslim law, like Christian or Jewish law, does not take the form of a statute, but is to be found in the leading works or collections on Canon law. The leading legal writings thus come to be placed alongside legislation as a formal source of law. There is thus a basic "dualist" approach in the system.

3. Custom

Custom is a subsidiary source applicable only in the absence of a legislative provision (CC art. 1 par. 2). It is none the less a formal source of law.

In the absence of both enacted law and custom, the judge in accordance with the Civil Code art. 1 must turn to "the principles of Muslim law". This is not here confined to questions of personal status. The "Principles" of Muslim law (*ḥanafī* or otherwise), are thus made a formal subsidiary source in all matters. They represent the "spirit" of the law taken as a whole. This article has not yet been applied. Finally, in the absence of legislation, custom, or "principles of Muslim law" the judge may have recourse to "natural law or the rules of equity" (CC art. 1 par. 2).

4. Case Decisions

Case decisions are not at all a formal source of law. Following French law, Egyptian law considers them to have persuasive authority only.

5. Codes

There are six codes: (1) The Civil Code of 1948 (Off. Gaz. no. 108 extraordinary of 29 July 1948). A French translation has been published under the

auspices of the Ministry of Justice in 1952; (2) the Commercial Code of 1883 which has been heavily modified by specific statutes; (3) the Maritime Commercial Code of 1883; (4) the Code of Civil and Commercial Procedure of 1968 (Off. Gaz. no. 19 of 9 May 1968); (5) the Criminal Code of 1937 (Law no. 58 of 1937); (6) the Code of Criminal Procedure of 1950 (Off. Gaz. no. 90 of 15 Oct. 1951).

There is as yet no code dealing with personal status but there are several special laws which have substantially altered the general applications of the *ḥanafī* law. The principal ones are: (1) Law no. 25 of 1920 (*Rég. égypt. législ. et jurispr., sub Statut personnel* 1) and Law no. 25 of 1929 (Off. Gaz. no. 27 of 25 March 1929) altering certain rules relating to marriage and divorce; (2) Law no. 119 of 1952 (Off. Gaz. no. 118 of 4 Aug. 1952) on the protection of the property of incapables; (3) Law no. 77 of 1943 (Off. Gaz. no. 92 of 12 Aug. 1943) on intestate succession; (4) Law no. 7 of 1946 (Off. Gaz. no. 92 of 12 Aug. 1946) on wills.

6. Works of Reference

For legislation there is an Official Gazette (now called *al-djāridat al-rasmiyya*), published by the Ministry of Justice.

Decisions of the courts are also published by the Ministry of Justice in an Official Report (*al-madjmū'at al-rasmiyya*), which contains summaries translated into French of some decisions or judgments. There are also collections of decisions published by the Council of State (*madjmū'a madjlis ad-daula*) since 1950, and the Court of Cassation (*madjmū'at al-ḥawā'id al-ḥanūniyya allatī ḥarrarathā maḥkamat an-naḥḍ*), since 1931.

The Society of Advocates also publishes a great number of decisions and judgments in the revue *al-muḥāmāt*. All these publications are in Arabic.

III. SHORT HISTORICAL SURVEY

Egypt's present legislative system is for the most part Western in origin. Prior to the first codifications at the end of the nineteenth century, Muslim law was generally applied. The establishment of mixed tribunals, called "Tribunals of Reform", in 1876 started the process of the promulgation of modern codes based on the French codes. In 1883, following the creation of the National Tribunals, national codes, came into being alongside the existing mixed codes. These

new codes were also based on French ideas. After the abolition of the mixed tribunals, a new Egyptian Civil Code was promulgated in 1948, which borrowed widely from the most evolved Western codifications.

The Egyptian Civil Code only deals with the law of property and obligations. Family law, and the law of testate and intestate succession have yet to be codified. There are some particular enactments, with an Islamic basis, which regulate

matters of personal status (see *supra* II 5), but for the rest Muslim law is still in force, and for non-Muslims the law of their own religion applies. Since 1956 when the religious tribunals were abolished, religious laws have been applied by the

ordinary civil courts.

The Commercial Code of 1883 is still in force, but it has been altered in important respects – notably with regard to companies – by special laws.

IV. PRIVATE LAW

As has been already stated, there was a new Civil Code in 1948, based largely on borrowed notions. Generally speaking, the conceptions adopted were French, but case decisions and modern writings were taken into account. New solutions were also taken from other Western codifications such as the Swiss Code. It should not be forgotten that Muslim law has certain particularities which, in spite of everything, have left their imprint.

1. Persons

Personality (capacity to bear rights), begins on the completed birth of the child (CC art. 29). The age of majority is 21 years (art. 44). Legal entities of private law are: commercial and civil companies, associations and foundations established in accordance with the law, *wakf* (property in mortmain) under the form of *khairi* (*infra* 2), and any group of persons or any property which by any legal disposition is considered to be a legal entity (art. 52).

2. Property

The 1948 Code adopted a new conception of the law of property: that of the social function of property. The exercise of a property right is no longer legitimate if the only purpose of its exercise is to cause damage to a third party, where the interest satisfied by its exercise is minimal as compared to the prejudice caused to third parties, or where its exercise will tend to accomplish an illegal purpose (art. 5).

The Muslim institution of the *wakf* (property in mortmain) has been abolished, but it still remains under the form of *khairi* where the property is dedicated to charitable purposes.

The 1952 Revolution particularly introduced the Agricultural Reform (Law no. 178 of 1952, Off. Gaz. no. 130 of 9 Sept. 1952), which effected a re-distribution of agricultural lands reducing the number of large property holdings and greatly increasing the number of small ones.

There still remains, however, a trace of Muslim law since "preemption" is still regarded as a

method of acquiring property, though its limits have been restricted.

Finally there is a special enactment concerning publicity for immovable property (Law no. 114 of 1946, Off. Gaz. no. 85 of 24 Aug. 1946), together with the Law on the Land Register (Law no. 142 of 1964, Off. Gaz. no. 69 of 29 March 1964). Under these enactments a transaction must be registered before a transfer of property or of any other real right is effective as between the parties themselves, or as against third parties.

3. Contracts

The 1948 Code adopted an objective notion of contract. The declaration of consent supersedes internal intention. A contract may be avoided on the ground of exploitation.

Room has been given to certain Muslim notions. Under the theory of the "contractual meeting", an offer may be accepted as long as the "contractual meeting" is not concluded. The notion of "excuse" permits the contracting parties, particularly where the contract is a lease (CC art. 608), to terminate the contract before the due date, if serious or unforeseen circumstances supervene to render execution of the contract unduly onerous.

Generally speaking the notion of obligation is presented in a new light. It is no longer so much the legal bond which links the contracting parties, but rather the economic value of the debt, which is to be found in the patrimony of the debtor. It follows from this that not only the assignment of a claim, but also the transfer of a debt is admitted.

4. Civil Responsibility

In principle, the notion of fault is preserved (art. 163), but the theory of the abuse of rights is widely admitted (art. 5). Contrary to Muslim law, any moral damage must be repaired (art. 222) and any agreement which seeks to exclude civil responsibility is null and void (art. 217).

However, in specific instances of liability, *e.g.*, for the actions of a third party, or an agent, or for animals or inanimate objects the Code has intro-

duced the notion of risk (guarantee or duty of care) in its most evolved form, although such a notion is unknown in Muslim law.

Absolute liability has been accepted in certain special cases (see Law no. 202 of 1958 on Accidents at Work, Off. Gaz. no. 40b of 11 Dec. 1958).

5. Family Law and Succession

As has been indicated (*supra* II) the Civil Code is not the primary source of family law. In principle the Muslim *ḥanafī* law is applied, save in cases involving citizens who have the same, non-Muslim religious faith, when the law of the parties will be applied.

But legislation has been necessary to introduce reforms advocated by the various schools of writers on Muslim law. These reforms, which have been sporadic, have sought to adopt modern concepts into Muslim law (see the laws cited *supra* II 5.). One result is that a wife may now, in certain

prescribed circumstances, request a divorce.

The age at which persons may marry has been fixed at 18 years for men and 16 years for women. A contract of marriage may now only be proved by a formal notarial document. A marriage concluded in violation of these rules is not void *ab initio*, but where a plaintiff has not conformed to the law the court will dismiss his case.

The protection of the property of an incapax (tutorship and curatorship) is subject to a special law (Law no. 119 of 1952, *supra* II 5).

Intestate and testate succession are integral parts of the law of personal status – but they have also been regulated by special legislation (*supra* II 5) which has been based on, but differs from Muslim *ḥanafī* law. Thus a difference of nationality will no longer disqualify a person from his rights in a succession. The notion of representation in the succession, unknown in Muslim law has been introduced by means of a fiction, the so-called “obligatory” will.

V. COMMERCIAL LAW

The Commercial Code of 1883 is still in force but the draft of a new code is being studied. The 1883 Code broadly maintains the notions and concepts adopted by the French Commercial Code. It applied to “commercial acts” as defined by the code (see Comm.C art. 2). A trader is one who professionally performs “commercial acts” (art. 1). Registration in the Commercial Register is governed by special legislation (Law no. 219 of 1953, Off. Gaz. no. 38 *bis* of 7 July 1953) and other legislation governs the organization of the Chambers of Commerce (Law no. 189 of 1951, Off. Gaz. no. 98 of 25 Oct. 1951).

1. *Limited companies* are subject to detailed regulations. Law no. 26 of 1954 (*Nashra tashrī'īya* no. 1, 53) governs marketable share companies, partnerships limited by shares and also limited liability companies. Companies wishing to offer their shares wholly or partly for public subscription must obtain prior authorization from the government which is granted in the form of a decree. Marketable share companies with both public and private shareholders are also subject to the law of 1954. However, special laws have been enacted to regulate companies engaged in activities of a public service nature or whose activities involve a national interest. There is also a law under which the state may nationalize certain companies (Law no. 117 of 1961, Off. Gaz. no. 162 of 20 July 1961).

In this case all the shares are converted into government bonds.

Art. 18 of the Constitutional Proclamation of 1964 provides: “The State encourages co-operation and looks after co-operative establishments in all their forms.” On the basis of this provision a law has been enacted to organize agricultural co-operatives (Law no. 317 of 1956, Off. Gaz. no. 70b of 2 Sept. 1956).

2. *Commercial agency* has similarly been made subject to special regulations (Laws no. 47 and 107 of 1961, Off. Gaz. no. 134 of 17 June 1961).

3. *Forward dealing in securities* was the subject of a special law (Law no. 331 of 1956, Off. Gaz. no. 74b of 13 Sept. 1956), as also were sales by public auction and hire purchase (Law no. 100 of 1957, Off. Gaz. no. 35b of 4 May 1957). The sale and mortgage of a business are governed by Law no. 11 of 1940 (Off. Gaz. no. 24 of 7 March 1940).

4. *The law relating to bills of exchange* and other commercial instruments does not yet conform to the uniform law established by the Geneva Conventions, but the draft of the new Commercial Code presently in preparation will ensure conformity.

5. *Bankruptcy* is governed in the same way as in